

Richmond
General Plan Update
Final Environmental Impact Report

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Richmond General Plan Update Final Environmental Impact Report

Prepared for:

City of Richmond
Development Services Department

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The logo for the company ATKINS, featuring the word "ATKINS" in a bold, blue, sans-serif font.

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1. INTRODUCTION

1.0 INTRODUCTION

PURPOSE OF THIS DOCUMENT

This document contains public comments received on the Draft Environmental Impact Report (Draft EIR) for the Richmond General Plan Update (proposed project). Written comments were received by the City of Richmond during the public comment period held from February 14, 2011 through March 31, 2011. This document includes written responses to environmental issues raised in comments on the Draft EIR. The responses clarify, correct, and amplify text in the Draft EIR, as appropriate. Also included are text changes made at the initiative of the Lead Agency (City of Richmond). These changes do not alter the conclusions of the Draft EIR. This document has been prepared in accordance with the California Environmental Quality Act (CEQA; Public Resources Code (PRC) sections 21000-21177).

BACKGROUND

In accordance with CEQA regulations, the City released a Notice of Preparation (NOP) on February 1, 2008, with a comment period from February 1, 2008 to March 2, 2008. The City distributed the NOP to responsible agencies, interested parties and organizations, as well as private organizations and individuals that have stated an interest in the project. The purpose of the NOP was to provide notification that an EIR for the project was being prepared and to solicit guidance on the scope and content of the document. The NOP and public and agency responses to the NOP are included in Appendix A of the Draft EIR in accordance with CEQA. The City held a scoping meeting on February 28, 2008. Public or agency comments submitted at the scoping meeting included general questions about the CEQA process, questions about the proposed project, effects of the proposed project on adjacent uses and vice versa, and economic impacts of the proposed project. Questions raised at the scoping meeting that are pertinent to the environmental analysis were addressed in the Draft EIR.

The Draft EIR was circulated for public review and comment for a period of 45 days from February 14, 2011 through March 31, 2011.

PROJECT UNDER REVIEW

The Richmond General Plan Update is its constitution for future growth and development, typically over the next 20 years or so; it establishes the framework for population and job growth, providing public services and facilities, and protecting and enhancing the environment. In order to ensure thorough analysis of potential environmental impacts, this EIR assumes that the City will adopt a land use map allowing for significant development. With input from the community, the City has identified 16 areas, called "Change Areas" where land use change may occur. Employment and population growth for the options are estimated based on historical data and range from modest to aggressive growth.

California Government Code section 65300 *et seq.* mandates that all cities prepare a general plan that establishes policies and standards for future development, housing affordability, and resource protection. State law encourages cities to keep general plans current through regular updates. Further, each city's general plan must include the following seven elements: Land Use, Circulation, Housing, Conservation, Open Space, Noise, and Safety. Additional elements may be included in the General Plan, at the discretion of the City. Beyond the seven state-required general plan elements, Richmond's comprehensive General Plan Update includes 11 additional elements covering topic areas deemed especially critical to the community. These topics include: economic development; education and human services; urban design; community facilities and infrastructure; energy and climate change; growth management; parks and recreation; community health and wellness; arts and culture, historic resources; and national historical park.

Required Approvals

The General Plan project requires City Council certification of this EIR, adoption of a Mitigation Monitoring Program (MMP) and a statement of overriding conditions and approval of the Richmond General Plan 2030.

After the General Plan is approved, the City will initiate amendments to the Zoning Ordinance and other sections of the Municipal Code to achieve consistency with the adopted General Plan. The Zoning Ordinance would further define land use designations and the performance standards applicable to the land use designations. The Zoning Ordinance would also establish the land use entitlement process applicable to the land use designations. Additional approvals may include:

- Adoption of financing or fee programs for public infrastructure.
- Rezoning of parcels to ensure consistency with the new General Plan Land Use Diagram.
- Acquisition of land for public facilities, finance and construction of public infrastructure projects or consideration of private development requests for infrastructure projects such as transit and roadway improvements consistent with the General Plan Circulation Element, construction of parks, trails, infrastructure improvements (e.g., water distribution and treatment facilities, wastewater facilities, drainage improvements), other capital improvements, natural resource preservation and/or restoration.
- The City would consider approval of various private development entitlement requests (e.g., specific plans, master plans, tentative subdivision maps, design review, use permits) that are consistent with the General Plan and its Land Use Diagram.
- Construction of public infrastructure projects or consideration of private development requests for infrastructure projects such as transit and roadway improvements, water distribution facilities, wastewater facilities, drainage improvements, other capital improvements, and natural resource preservation and/or restoration.

TYPE OF DOCUMENT

This document is a Program-level EIR for the proposed General Plan and, in certain instances, may function as a first tier EIR for later projects based on the specific project. It is assumed, however,

that subsequent projects will still require additional environmental review. The City will review each application on a project-by-project basis, and, based on the details and specifics of the project, will determine the appropriate environmental review.

The EIR is an informational document intended to disclose to the decision makers and the public the environmental consequences of approving and implementing the proposed project. The preparation of the Final EIR focuses on the responses to significant environmental issues raised in comments on the Draft EIR. CEQA Guidelines section 15132 specifies the following:

The Final EIR shall consist of:

- a) The Draft EIR or revision of the draft.
- b) Comments and recommendations received on the Draft EIR either verbatim or in summary.
- c) A list of persons, organizations, and public agencies commenting on the Draft EIR.
- d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process.
- e) And any other information added by the Lead Agency.

This document contains the list of agencies and persons commenting, comments received, and responses to the significant environmental points raised in the comments and text changes made at the initiative of the Lead Agency. These changes do not alter the conclusions of the Draft EIR. The Draft EIR is hereby incorporated by reference.

The City of Richmond, the Lead Agency, must certify that the EIR, which includes both the Draft EIR and Final EIR, adequately discloses the environmental effects of the project and has been completed in conformance with CEQA, and that the decision-making bodies independently reviewed and considered the information contained in the EIR prior to taking action on the project (CEQA Guidelines section 15090). The EIR must also be considered by the Responsible Agencies, which are public agencies that have discretionary approval authority over the project in addition to the Lead Agency. For this project, any “responsible agencies” must consider the environmental effects of the project, as shown in the EIR prior to approving any portion of the project over which it has authority.

The following approvals and/or permits may be required from other agencies, including various “responsible agencies” as defined by CEQA. The EIR has been designed to provide information to these agencies to assist them in the permitting processes for the proposed project. Technically, no federal agency can be a “responsible agency” within the meaning of CEQA, as federal agencies are beyond the reach of state law, which does impose various duties on responsible agencies. Even so, various federal agencies, discussed below, may use the analysis in this document in order to assist with the preparation of their own analyses required by federal law.

The following are some of the agencies that could be required to act as responsible agencies for subsequent projects:

- California Department of Fish and Game
- State Lands Commission
- State Department of Parks and Recreation
- State Water Resources Control Board
- Regional Water Quality Control Board
- Bay Area Air Quality Management District
- United States Army Corps of Engineers
- United States Fish and Wildlife Service
- Caltrans
- East Bay Municipal Utilities District
- Contra Costa County Local Agency Formation Commission (LAFCo)
- West Contra Costa Unified School District

ORGANIZATION OF THIS DOCUMENT

For this document, comments and responses are grouped by comment letter. As the subject matter of one topic may overlap between letters, the reader must occasionally refer to one or more responses to review all the information on a given subject. To assist the reader, cross references are provided. The comments and responses in this document, in conjunction with the Draft EIR as amended by the text changes, constitute the Final EIR that will be considered for certification by the City of Richmond.

This document is organized as follows:

Chapter 1 - Introduction: This chapter includes a summary of the project description and the process and requirements of a Final EIR.

Chapter 2 – Text Changes to the Draft EIR: This chapter lists the staff-initiated text changes to the Draft EIR.

Chapter 3 - List of Agencies and Persons Commenting: This chapter contains a list of all of the agencies or persons who submitted comments on the Draft EIR during the public review period.

Chapter 4 - Comments and Responses: This chapter contains the comment letters received on the Draft EIR and the corresponding response to each comment. Each letter and each comment within a letter has been given a number. Responses are provided after the letter in the order in which the comments were assigned. Where appropriate, responses

are cross-referenced between letters. The responses following each comment letter are intended to supplement, clarify, or amend information provided in the Draft EIR, or refer the commenter to the appropriate place in the document where the requested information can be found. Comments not directly related to environmental issues may be discussed or noted for the record.

PUBLIC PARTICIPATION AND REVIEW

The City of Richmond notified all responsible and trustee agencies and interested groups, organizations, and individuals that the Draft EIR for the proposed project was available for review. The following list of actions took place during the preparation, distribution, and review of the Draft EIR:

- The City of Richmond filed a Notice of Preparation (NOP) for an EIR with the State Clearinghouse for a 30-day public review period for the proposed project on February 1, 2008.
- A public scoping meeting was held on February 28, 2008.
- A Notice of Completion (NOC) and copies of the Draft EIR were filed with the State Clearinghouse on February 14, 2011. A 45-day public review period for the Draft EIR was established by the State Clearinghouse, ending on March 31, 2011.
- A Notice of Availability (NOA) was distributed to interested groups, organizations, and individuals.
- The Draft EIR, and the notice inviting comments, was posted on the City's web site at www.cityofrichmondgeneralplan.org
- Copies of the Draft EIR were available for review at the following locations:
 - City of Richmond Planning Division
 - Richmond City Hall, Second Floor
 - 450 Civic Center Plaza
 - Richmond, CA 94804-1630
 - (Open to the public from 8:30 a.m. to 4:00 p.m.)

2. TEXT CHANGES

2.0 TEXT CHANGES

INTRODUCTION

This chapter presents minor corrections and revisions made to the Draft EIR initiated by the public, the Lead Agency, and/or consultants based on their on-going review. New text is indicated in underline and text to be deleted is reflected by ~~strike through~~ unless otherwise noted in the introduction preceding the text change. Text changes are presented in the page order in which they appear in the Draft EIR.

Section 3.2, Demographics

The following measures are added on pages 3.2-8 and ES-12 of the Draft EIR:

3.2-1 The City shall continue to track the number of new housing units as building permits are issued to determine if new development exceeds the amount of development assumed in the EIR (15,548 housing units). As part of its annual Housing Element progress report, City staff shall provide a report on the number of new housing units to the City Council annually. If the number of units approaches or exceeds 80 percent of the number assumed in the General Plan EIR (12,438 housing units), the City shall prepare an update to the General Plan and General Plan EIR to assess the environmental effects of additional projected growth.

3.2-2 Based on available U.S. Census or ABAG data, the City shall track the number of new jobs to determine if new development exceeds the amount of development assumed in the EIR (22,488 jobs). City staff shall provide a report on the number of new jobs to the City Council annually and if the number of jobs approaches or exceeds 80 percent of the number assumed in the General Plan EIR (9,950 jobs), the City shall prepare an update to the General Plan and General Plan EIR to assess the environmental effects of additional projected growth.

Section 3.3, Air Quality

The discussion of odor thresholds beginning on page 3.3-16 of the Draft EIR is revised as follows:

Odor Thresholds

~~Special overlay zones need to be established around existing and proposed land uses that emit odors. According to the Bay Area Air Quality Management District, the location of existing and planned odor sources in the plan area must be identified in order for plan level documents to be considered less than significant with respect to odors. Also, the plan must identify goals, policies, and objectives to minimize potential impacts for sources of odors and sensitive receptors. These overlay maps should be included as part of the proposed General Plan. Individual projects shall be evaluated based on the established BAAQMD screening~~

~~levels to determine adequate special overlay zone distances between odor sources and receptors. A plan level assessment is determined to be less than significant with respect to odors if it complies with the following:~~

- ~~• The land use diagram must identify special overlay zones around existing and planned sources of odors; and~~
- ~~• The plan must identify goals, policies, and objectives to minimize potential impacts and create overlay zones for sources of odors and receptors.~~

The last two bullets of Mitigation Measure 3.3-3b on pages 3.3-27 and ES-14 have been revised as follows.

- *The City will support buffer zones between industrial areas and sensitive land uses, including port development. Proposed port developments should not site the heavily impacted areas immediately upwind (based on prevalent wind direction) of sensitive land uses. Siting of port developments that have the potential to emit TACs should be done in consultation with the BAAQMD to determine the need for a health risk assessment.*
- *The City will support buffer zones between industrial areas and sensitive land uses, including refinery development. Proposed petroleum refineries should not site the heavily impacted areas immediately upwind (based on prevalent wind direction) of sensitive land uses. Siting of refineries should be done in consultation with the BAAQMD to determine the need for a health risk assessment.*

The discussion under Impact 3.3-4 on page 3.3-28 is revised as follows:

The individual projects that are included in the development of the City have not been planned to the level of detail where odor sources can be identified and emissions quantified. In the absence of specific project data, the BAAQMD Guidelines provide thresholds of significance for plan-level analysis. In order for General Plans to be considered less than significant with respect to potential odor emissions, a plan must identify the location of existing and planned odor sources in the plan area and include policies to reduce potential odor impacts in the plan area. ~~special overlay zones need to be established around existing and proposed land uses that emit odors. Special overlay zones should be included in the proposed plan policies, land use maps, and implementing ordinances. Section 15.04.510 of the Richmond Municipal Code details the Resource Management Overlay Districts¹² and the existing use of special overlay zone maps. The BAAQMD has established screening levels to aid in the determination of adequate overlay zone distances for minimizing impacts from odor sources. With the evaluation and inclusion of all future odor source development into the existing zone areas and ensuring they are properly mapped,~~ The General Plan identifies areas of potential nuisance odor sources that could potentially affect nearby uses as the industrial area of the City in the vicinity of Harbor Way South, Marina Way South, Interstate 580, and Hall Avenue. The General Plan includes policies LU5.3 and ED8.2 that are

intended to minimize conflicts between land uses to protect human and environmental health and safety, preserve community character, and retain job generating activities.

The accompanying actions, LU5.C and ED7.B, require new industrial uses adjacent to existing residential or commercial uses to incorporate measures, such as enclosure of industrial activities in buildings, to minimize impacts on residential uses. New residential and commercial uses established adjacent to existing industrial uses must also incorporate measures to minimize impacts to the residents from odors. The City would review proposed uses for the potential to result in nuisance odors to ensure compliance with these actions. With these policies and actions in place to reduce exposure of sensitive receptors to nuisance odors, the proposed General Plan complies with the BAAQMD guidelines for odors and would, therefore, result in a **less-than-significant** impact related to odor.

Section 3.4, Biological Resources

The following text is added on page 3.4-3 of the Draft EIR following the discussion of Tidal Marsh:

Eelgrass Beds

Eelgrass (*Zostera marina*), a submergent aquatic plant, forms beds in the subtidal zone off the San Pablo Peninsula. This aquatic plant community represents essential habitat for a wide variety of fish and shellfish species as it provides an abundance of food and cover. Additionally, this habitat acts as nursery beds to many common sport and game species. Once much more widespread, eelgrass beds are easily harmed by sedimentation, coastal runoff and pollution, and have declined due to dredging and pollution that promotes the growth of algae and phytoplankton, which limit the amount of sunlight reaching the beds. The loss of eelgrass beds has been tied to a loss of fish abundance and diversity.

The following text is added on page 3.4-5 of the Draft EIR under the heading Grasslands:

Coastal Prairie Grasslands

This vegetation community, which occurs in the coastal fog belt where summer evapotranspiration rates are low, is dominated by native perennial bunch grasses. These species include California oatgrass (*Danthonia californica*), California fescue (*Festuca californica*), coast fescue (*Festuca elmeri*), and Idaho fescue (*Festuca idahoensis*). Other plants that characterize this community include leafy reed grass (*Calamagrostis foliosa*), tufted hair grass (*Deschampsia cespitosa*), bracken fern (*Pteridium aquilinum*), Douglas' iris (*Iris douglasiana*), blue dicks (*Dichelostemma capitatum*), and blue-eyed grass (*Sisyrinchium bellum*). Within the boundaries of the Richmond General Plan area, this vegetation community is found in relatively undisturbed portions of the San Pablo Peninsula, such as Point Molate, and near the southern shoreline in the vicinity of the UC Richmond Field Station.

The following text is added on page 3.4-7 of the Draft EIR following the discussion of Eucalyptus/ Monterey Pine Groves:

Oak Woodlands

Oak woodland is typically found along the ridges and sheltered hillsides of the General Plan area and varies from savanna-like to more forest-like stands with higher tree densities and partially closed canopies. This community intergrades with non-native annual grassland, typically forms the herbaceous understory of this habitat. While coast live oak (*Quercus agrifolia*) is the dominant canopy species in this habitat, species such as California bay (*Umbellularia californica*), California buckeye (*Aesculus californicus*), toyon (*Heteromeles arbutifolia*), coyote brush (*Baccharis pilularis*), and poison oak (*Toxicodendron diversilobum*), are also common in the General Plan boundaries.

Oak woodlands provide food, shelter, and nesting opportunities for a wide variety of wildlife species. Bird species typically found in this habitat include acorn woodpecker (*Melanerpes formicivorus*), Nuttall's woodpecker (*Picoides nuttallii*), northern flicker (*Colaptes auratus*), white breasted nuthatch (*Sitta carolinensis*) and house wren (*Troglodytes aedon*). Other birds occurring in woodland communities include red-shouldered hawk (*Buteo lineatus*), and great horned owl (*Bubo virginianus*). Common mammals in this community include bobcat, coyote, gray fox, striped skunk, western gray squirrel (*Sciurus griseus*), deer mice (*Peromyscus* sp.), dusky woodrat (*Neotoma fuscipes*), and mule deer.

The following text is added to the first paragraph under the heading Significant Ecological Areas on Draft EIR page 3.4-7:

The Contra Costa County General Plan⁴ designated Significant Ecological Areas throughout the County. ~~Significant Ecological Areas in general proximity or, including those within or in~~ the vicinity of the City include those shown below (the numbering below corresponds to General Plan listing):⁵ Additional significant ecological areas have been identified by the East Bay Chapter of the California Native Plant Society and California Audubon Society.

The following text is added to the description of the San Pablo Ridge on page 3.4-8:

San Pablo Ridge. The grassland areas on clay and clay loam soils on San Pablo Ridge support a population of Santa Cruz tarweed (*Holocarpha macradenia*) which was transplanted from a hillside in Pinole. San Pablo Ridge also represents part of an unbroken transect of natural habitat from the subtidal zone, through portions of Point Molate to the ridge top.

The following descriptions of the UC Richmond Field Station and Richmond Shoreline are added on page 3.4-8 following the description of the Sobrante Ridge Manzanita Grove.

UC Richmond Field Station. The UC Richmond Field Station contains some of the last undisturbed coastal terrace grassland adjacent to the San Francisco Bay shoreline, and

includes a very rare patch of slender wheatgrass (*Elymus trachycaulus*). This site also includes a variety of other sensitive habitats such as seasonal wetlands, a large native cordgrass (*Spartina foliosa*) marsh that provides habitat for the federally listed as endangered California Clapper Rail (*Rallus longirostris obsoletus*), tidal mudflats and eelgrass beds. These resources have been identified as areas of Unique Restoration Opportunities in the Baylands Ecosystem Habitat Goals Report.

Richmond Shoreline. The Richmond shoreline is a part of the San Pablo Bay, and has been designated by the California Audubon Society as an Important Bird Area due to the important foraging habitat provided by the tidal marshes and eelgrass beds in the area.

The text on page 3.4-30 is amended as follows:

- CN1.A Habitat Conservation Plans. Work closely with Contra Costa County, the East Bay Chapter of California Native Plant Society (CNPS), and the East Bay Regional Park District to develop habitat conservation plans. Ensure that these plans identify locations and protect sensitive habitat including wetlands, marshes, baylands, creeks and open space. The plans should also establish clear mitigation criteria including no net losses in natural resource acreage, functions or values. The plan should provide for safe wildlife movement by limiting roadways within habitat areas, creating wildlife passable fencing for existing roadways, incorporating design features and by creating habitat preserves that are immediately adjacent to each other.

The following text is added on page 3.4-33 of the Draft EIR under Impact 3.4-3:

Sensitive natural communities identified in the CNDDDB, and by EBCNPS in from the vicinity of the City of Richmond include Eelgrass Beds, Northern Coastal Salt Marsh, Northern Maritime Chaparral, Oak Woodlands, Coastal Prairie Grassland, and Valley Needlegrass Grassland. ...

Section 3.6, Climate Change

General Plan Policy EC6.3, beginning on page 3.6-26 of the Draft EIR is revised as follows:

- EC6.3 Adapting t o Climate C hange.** Prepare for and adapt to future impacts of changing weather patterns and sea level fluctuations. ~~Develop a climate action plan and work with regional regulatory agencies and local property owners to develop strategies aimed at reducing the potential impacts of climate change and sea level fluctuations. All projects proposed for construction within 300 feet of the existing shoreline (high tide) will include an evaluation of the impact of a one meter rise in sea level. Protect neighborhoods, infrastructure and facilities, the shoreline and natural resources from the impacts of climate change. Require new developments to include an evaluation of climate change impacts in the project review process. Shoreline and public access improvements shall be designed to allow future increases in elevation along the shoreline edge to keep up with higher sea level rise, should it occur. Design elements shall include adequate setbacks to allow for future elevation increases of at least three feet from the existing elevation along the shoreline.~~

Mitigation Measures 3.6-1g and h on pages 3.6-30 and ES-21 through ES-22 are revised as follows:

- 3.6-1 g. Implement an Anti-Idling Policy for heavy-duty diesel trucks, including local delivery trucks and long-haul truck transport within the City. This policy would prohibit idling of on and off-road heavy duty diesel vehicles for more than 5 minutes. This policy would be implemented by requiring signage at all loading docks and along truck routes informing drivers of the requirement to limit idle time to no more than five minutes at loading docks and parking areas. Variances to the policy would include the necessity to idle while in traffic lanes due to traffic congestion on the roadway, or during emergency situations. Employers who own and operate truck fleets would be required to inform their drivers of the anti-idling policy. Enhances General Plan Policy EC5.3.
- h. Provide tax and development incentives for employers with more than 100 employees within the City to establish a trip reduction plan that would incorporate annual employee commute surveys, marketing of commute alternatives, ride matching assistance, and transit information at a minimum. Additional measures shall be incorporated such that vehicle trips are reduced by a minimum of 4%. Measures may include and implement secure bicycle parking, showers and lockers for employees who bike to work, among others. This measure could would encourage building management companies and smaller localized businesses to cooperate in establishing joint trip reduction plans. Enhances General Plan Actions EC2.F and EC2.I.

The following mitigation measure has been added to pages 3.6-31 and ES-23.

- 3.6-1 p. The City of Richmond shall adopt a Climate Action Plan within 18 months of the adoption of the General Plan Energy and Climate Change Element. The Climate Action Plan shall include the following pursuant to CEQA section 15183.5(b):
- a. The quantification of greenhouse gas emissions, both existing (2005) and projected for 2020 and General Plan horizon year (2030). These inventories and projections shall be used in the forthcoming Climate Action Plan.
- b. The Climate Action Plan shall define reduction targets that are California State Assembly Bill 32 (AB 32) compliant and continue reducing emissions past 2020 in order to address cumulatively considerable impacts of greenhouse gas emissions. At a minimum, the Climate Action Plan shall set a target to reduce emissions to 1990 levels by 2020, which is anticipated to be a reduction of 15% from 2005 levels.
- c. The 2020 and 2030 Business As Usual (BAU) Inventories provide emissions by land use types and emission sectors based upon the anticipated changes and growth in land use within the General Plan Land Use and Urban Design Element, which fulfills the criteria of CEQA Guidelines 15183.5(b)(C). As such, the inventories shall provide quantities and context of the emissions

that need to be reduced in order to achieve the reduction target. Reduction measures in the Climate Action Plan shall focus on reducing the emissions from the sectors and land use types identified in the 2020 and 2030 BAU inventories.

- d. The Climate Action Plan shall specify reduction measures or groups of reduction measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the AB 32 compliant reduction target. To implement the goals and policies in the General Plan Energy and Climate Change Element, the Climate Action Plan shall include adaptation strategies that focus on potential local impacts of climate change, such as sea level rise, increased risk of flooding, diminished water supplies, and public health. Broader sustainability measures may include the preservation of local water quality, air quality, open space, and biodiversity. In addition, the following reduction strategies shall be incorporated into the Climate Action Plan:
- i. Require all new or renovated municipal buildings to seek California Green 2010 Tier 1 building standards or higher and require new development building design to be, at a minimum, compliant with California Green 2010 building standards.
 - ii. Require all municipal fleet purchases to be fuel efficient vehicles for their intended use, based on the fuel type, design, size, and cost efficiency.
 - iii. Require new development projects to implement a construction plan that demonstrates how activities will reduce waste through recycling and/or salvaging of nonhazardous construction and demolition debris at a minimum of 50%.
- e. In order to establish a mechanism to monitor the Climate Action Plan's progress towards achieving the reduction targets and to require amendment if the Climate Action Plan is not achieving the reduction targets, the Climate Action Plan shall include an implementation chapter describing how the reduction measures are to be implemented, emissions monitored, and the Climate Action Plan updated. Emissions inventories shall be conducted at minimum intervals of five years in order to evaluate the progress of the Climate Action Plan. The Climate Action Plan shall be updated together with future General Plan Updates or as necessary to implement new statewide reduction thresholds.
- f. The Climate Action Plan, including all updates, is a project subject to public review and comment under the California Environmental Quality Act.

Section 3.9, Hydrology and Water Quality

Following page 3.9-9, a new Figure 3.9-2A has been inserted and is included at the end of this chapter.

On pages 3.9-34 and ES-28 of the Draft EIR, the following text has been amended:

3.9-8 Development within the City could be subject to dam failure inundation and sea level rise flood hazards. Implementation of General Plan Policies and Implementing Actions as well as the implementation of mitigation measures, would render this a *less-than-significant impact*.

On pages 3.9-36 and ES-28 of the Draft EIR, the following text has been amended:

Mitigation Measure

~~None required.~~

3.9-8 a. For all projects within the inundation zone for maximum sea level rise as identified in Map 8.1 of Chapter 8 of the General Plan, the project site shall be graded such that finished floor elevations are 3.5 feet above the Base Flood Elevation (BFE), and streets and pads are 3 feet above BFE to allow for future sea level rise, thereby elevating all structures above the existing and potential future flood hazard area.

b. For all projects within the inundation zone for maximum sea level rise as identified in Map 8.1 of the General Plan, shoreline and public access improvements shall be designed to allow future increases in elevation along the shoreline edge to keep up with higher sea level rise values, should they occur. Design elements shall include providing adequate setbacks to allow for future elevation increases of at least 3 feet from the existing elevation along the shoreline. Before a Small Lot Final Map is approved, the project Applicant must petition the appropriate governing body to form (or annex into if appropriate) and administer a special assessment district or other funding mechanism to finance and construct future improvements necessary to ensure that the shoreline, public facilities, and public access improvements will be protected should sea level rise exceed 16 inches at the perimeter of the project. Prior to the sale of the first residential unit or lease of the first commercial or industrial space, the legislative body shall have acted upon the petition to include the property within the district boundary. The newly formed district shall also administer a Monitoring and Adaptive Management Plan to monitor sea level and implement and maintain the protective improvements. All improvements shall be subject to approval by the City of Richmond planning and public works staff prior to issuance of building or grading permits. These improvements shall include, but are not limited to, one or more of the following:

- Construction of a shoreline protection system that is initially built to accommodate a mid-term rise in sea level of 16 inches, with a design that is adaptable to meet higher than anticipated values in the mid-term, as well as for the long-term;
- Construction of a storm drainage system that is initially built to accommodate a mid-term rise in sea levels of 16 inches, with a design that is adaptable to meet higher than anticipated sea level rise values (similar to the first bullet); and
- Construction of buildings and vital transportation infrastructure at elevations that would not be exceeded by flood waters, even if the shoreline protection does not function, for existing conditions and over a longer-term as compared to the two above.

Page 3.9-38, the end of the last paragraph has been amended as follows:

... The proposed General Plan includes policies for preventing flood risks and adaptive management for future sea level rise that reduces potential impacts to less-than-significant levels. Project-specific mitigation measures are included for all projects that are within the 55-inch inundation zone identified on General Plan Map 8.1. The policies provide for an adaptive management strategy to accommodate potential sea level rise, protect future structures, and preserve public safety. As such, the proposed General Plan would not contribute considerably to cumulative sea level rise impacts.

The following text is to be inserted on page 3.9-38, following the last paragraph:

The traditional approach to designing coastal developments is as specified by FEMA and local agency guidance policies, which is to set interior grades throughout a community such that finished floor elevations for buildings (e.g., the elevation of the first floor of inhabitable space) would be at or above the present-day Base Flood Elevation (BFE) (i.e., the water surface elevation that would occur during a 100-year flood event). Improvements along the shoreline are required only to protect nearby structures or facilities against storm wave run-up and overtopping during a flood event that has a one percent chance of occurring, as specified by FEMA (sometimes referred to as the "One Percent Annual Chance of Occurrence Event").

The modest amount of sea level rise that has been estimated by the National Oceanic and Atmospheric Administration (NOAA) based on historical observations is about 8 inches over the past century, which is consistent with the estimates that traditional coastal developments have included in their design. However, based on climate change studies over the past two decades, the rate of sea level rise appears to be accelerating and climate change models are predicting greater rates of sea level rise in the future in response to warmer temperatures and melting ice caps.

Executive Order S-13-08, which was issued in November 2008, recognizes the impact that sea level rise may have on coastal development in California. The executive order directs the

California Resources Agency to request that the National Academy of Sciences convene an independent panel to complete the first California Sea Level Rise Assessment report. The report, which is anticipated to be completed in 2012, would advise how California communities should plan for sea level rise.

The San Francisco Bay Conservation and Development Commission (BCDC), in a recently released study (BCDC 2009), is recommending that Bayfront developments consider a 16-inch sea level rise value by 2050 (mid-term) and a 55-inch sea level rise value by 2100 (long-term). The California State Coastal Conservancy (SCC) has issued a similar guidance policy (SCC 2009) with the same mid-term and long-term values. These values were based on work by the California Climate Change Center (CCCC 2006).

Although no specific design criteria related to sea level rise have been formally adopted by federal, state, or local agencies, any development projects in the potential inundation area must be designed to account for sea level rise as part of the planning process to prevent future flooding or loss of infrastructure resulting from shoreline erosion. For a long-term planning horizon (for example, beyond 50 years from now), the evolving nature of climate change and sea level rise science needs to be recognized, and no single sea level rise value should be relied upon at this point in time. Instead, an adaptive management strategy should be put in place such that improvements for sea level rise beyond the mid-term planning horizon can be designed and implemented as sea levels rise.

Development Areas

In accordance with MM 3.9-8(a), all buildings and entrances to subterranean parking and streets for projects that are located within the sea level rise inundation zone as identified on Map 8.1 in Chapter 8 of the General Plan would be set at an elevation that is 36 inches higher than the existing BFE. This 36-inch sea level rise allowance, plus a freeboard of 6 inches, would be used for finished floor elevations of all buildings. This would ensure that even if no shoreline protection improvements are undertaken, or in the event of a slope failure along the shoreline, neither buildings nor transportation infrastructure would be flooded when water levels rise 42 inches higher than current BFE. Additionally, this allowance provides subterranean parking a minimum of approximately 36 inches between parking finish floor and present groundwater levels. This increase in elevation would provide flood protection beyond the 2080 time frame according to the most aggressive sea level rise, and well beyond 2100 according to the highest IPCC projection.

Adaptation Strategy

As a part of MM 3.9-8(b), a project-specific sea level rise adaptation strategy would be required for all development projects within the sea level rise inundation zone to provide guidance, identify relevant stakeholders, define appropriate management actions and triggers, and establish a project-specific funding mechanism. It would be administered by an entity created for the project that would have taxing authority and funding responsibility.

The strategy envisions incorporating ongoing measurements of sea level rise from the scientific community into a Monitoring Program that would guide the decision-making process for future improvements. The Monitoring Program would include protocols to compare observed changes in sea level with the as-built perimeter elevations, using updates of changes in sea level provided by the NOAA, National Geodetic Survey, or other appropriate agencies. The Monitoring Program would be administered by a public entity with similar funding responsibilities as a Community Facilities District (CFD). This entity would guide the decision-making process for implementation of future improvements, such as raising the perimeter.

The Adaptive Management Plan would define specific triggers for action, based on observed changes in sea level arising from ongoing measurements obtained during the Monitoring Program. The Plan would require 5- or 10-year updates based on observed changes in sea levels, as well as any other effects of climate change (i.e., more or less extreme storm wave conditions). The initial strategy, as well as any updates, would be coordinated with relevant stakeholders, including the City of Richmond and Contra Costa County, State Parks, FEMA, and BCDC.

Future improvements that may be needed to respond to sea level rise are as follows:

- When the mean sea level rises 16 inches above existing values, the crest elevation of the shoreline protection system would be raised 20 inches and storm drain system pumps would be installed; and
- When the mean sea level rises 36 inches above existing values, the shoreline protection system would be improved to act as a flood barrier

Potential Adaptation Measures

The proposed development setback distances would enable a variety of future perimeter modifications to accommodate at least 55 inches, with the ability to accommodate sea level rise even higher than 55 inches. The adaptive management strategy described above is based on elevation and structural characteristics of the shoreline along city boundaries. The varied nature of this shoreline, ranging from protected and unprotected slopes, beaches, seawalls, and wharves, results in a multitude of potential adaptive management measures.

Perimeter adaptations would likely include a combination of the following components in response to varying land uses and wave run-up characteristics at different locations around individual project sites:

- Raising the shoreline embankment in place to function as a storm surge or flood barrier;
- Constructing a series of embankments of increasing heights away from the water. Land between sets of embankments could hold periodic wave overtopping that “drain out” between high tides;
- Constructing sea walls; and

- Where feasible, “lay back” the shoreline to create cobblestone beaches or tidal marshes that limit wave run-up and overtopping, rather than increasing embankment heights.

Mitigation measure MM 3.9-8(a) provides for the protection of individual project sites from sea level rise over the life of the project by requiring the design to be adaptable to higher levels of sea level rise by leaving a significant development setback such that future improvements can be made. A funding source to construct these improvements is required by MM 3.9-8(b) and would also be part of the Adaptation Plan.

Section 3.10, Noise

The following changes are made on pages 3.10-16 through 3.10-18 of the Draft EIR:

Section 9.52.090 – Prohibited Noises. ~~This section prohibits noise within the City that is considered a noise disturbance including, but not limited to, the following:~~

- ~~1. Vibration. Operating or permitting the operation of any contraption or device that creates a vibration so as to create a noise disturbance or cause any violation of this chapter.~~
- ~~2. Power Tools, Machinery. Operating or permitting the operation of any mechanically powered saw, drill, grinder, lawn or garden tool, leaf blower, or similar machinery at any time between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and 8:00 p.m. and 8:30 a.m. on weekends and legal holidays, or at any other time so as to create a noise disturbance or cause any violation of this chapter. Any motor, machinery, generator, pump, which, by its nature or necessary function, must be operated on a continuous or regular basis, such as swimming pool equipment, or air conditioning/heating system, shall be enclosed or muffled and maintained so as not to create a noise disturbance or otherwise violate this chapter.~~
- ~~3. Loading and Unloading. Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, or similar objects between the hours 10:00 p.m. and 7:00 a.m. in any residential or commercial zoning district or adjacent to any noise-sensitive uses or so as to create a noise disturbance or cause any violation of this chapter.~~
- ~~4. Construction Activities. Causing or permitting the operation of any tools or equipment used in construction, drilling, repair, alteration or demolition work at any time between the hours of 7:00 p.m. and 7:00 a.m. on weekdays or 6:00 p.m. and 8:30 a.m. on weekends and legal holidays in any residential or commercial zoning district or adjacent to any noise-sensitive uses or so as to create a noise disturbance or cause any violation of this chapter. Prior to commencing any construction project, the project sponsor may meet and confer with the City Public Works Department to establish an appropriate construction schedule which is designed to minimize~~

construction noise impacts and which is in conformity with the requirements of this subsection. Where construction activities on a construction project which is adjacent to any noise sensitive use(s) are anticipated to last for a year or more, temporary noise barriers shall be constructed that break the line of sight between the noise-sensitive use(s) and the construction project, and that minimize noise impacts.

Section 9.52.100 – Exterior Noise Standards

1. No uses or activities shall create levels which exceed the standards in Table 3.10-7. In addition, the exterior noise limits for any source of noise within any residential zone shall be reduced by 10 dBA between 10:00 p.m. and 7:00 a.m. The exterior noise limits for any source of noise in any zone other than a residential zone shall be reduced between 10:00 p.m. and 7:00 a.m. so that when measured at the property line of a “noise sensitive use,” the noise does not exceed 50 dBA.

Zoning District	Maximum Noise Level in dBA (levels not to be exceeded more than 30 minutes in any hour)		Maximum Noise Level in dBA (level not to be exceeded more than 5 minutes in any hour)
	Measured at Property Line or District Boundary	Measured at Any Boundary of a Residential Zone	Between 10 p.m. and 7 a.m., ³ Measured at Any Boundary of a Residential Zone
Single-Family Residential	60	—	—
Multifamily Residential	65	—	—
Commercial	70	60	50 or ambient noise level
Lt. Industrial and Office Flex ¹	70	60	50 or ambient noise level
Heavy and Marine Industrial ²	75	65	50 or ambient noise level
Public Facilities and Community Use	65	60	50 or ambient noise level
Open Space and Recreational Districts	65	60	50 or ambient noise level

Notes:
1. For M-1 and M-2 the measurement will be at property lines.
2. For M-3 and M-4 the measurement will be at boundary of the district.
3. Restricted hours may be modified through condition of an approved conditional use permit.
Source: City of Richmond, *City of Richmond Municipal Code*, 2006.

Section 9.52.110 – Temporary noise-generating equipment. Where technically and economically feasible, construction activities shall be conducted in such a manner that the maximum sound levels at affected properties will generally not exceed those listed in Tables 3.10-8 and 3.10-9, below.

MOBILE EQUIPMENT (STANDARDS FOR THE CITY)¹			
	SFR-1, SFR-2, SFR-3 Zoning Districts (Single-Family Residential)	MR-1, MR-2, MR-3 Zoning Districts (Multi-Family Residential)	Commercial and Industrial Zoning Districts
Weekdays, 7:00 a.m. to 7:00 p.m.	75 dBA	80 dBA	85 dBA
Weekends, including legal holidays 9:00 a.m. to 8:00 p.m.	60 dBA	65 dBA	70 dBA
Note: 1. _____ Maximum sound levels for nonscheduled, intermittent, short-term operation (period less than 15 days) of mobile equipment. Source: City of Richmond. <i>City of Richmond Municipal Code</i> , 2006.			

STATIONARY EQUIPMENT (STANDARDS FOR THE CITY)¹			
	SFR-1, SFR-2, SFR-3 Zoning Districts (Single-Family Residential)	MR-1, MR-2, MR-3 Zoning Districts (Multi-Family Residential)	Commercial and Industrial Zoning Districts
Weekdays, 7:00 a.m. to 7:00 p.m.	60 dBA	65 dBA	70 dBA
Weekends, including legal holidays 9:00 a.m. to 8:00 p.m.	55 dBA	60 dBA	65 dBA
Note: 1. _____ Maximum sound levels for respectively scheduled and long-term operation (period exceeding 15 days or more) of stationary equipment. Source: City of Richmond. <i>City of Richmond Municipal Code</i> , 2006.			

9.52.040 General Prohibition

It shall be unlawful for any person, corporation, firm or association to make, create or continue, or cause, permit, maintain, or suffer to be made or continued, any loud, raucous, unnecessary, and unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area or that exceeds the maximum dBA levels set forth herein or that violates any provision of this Chapter. The standard for determining whether a violation of the provisions of this chapter exists may include, but is not limited to, the following:

- (a) The volume, level and intensity of the noise;
- (b) Whether the nature of the noise is usual or unusual;
- (c) Whether the origin of the noise is natural or unnatural;
- (d) The level and intensity of the background noise, if any;
- (e) The proximity of the noise to residential dwellings;
- (f) The proximity of the noise to residential sleeping facilities;
- (g) The nature and zoning of the area within which the noise emanates;
- (h) The density of the inhabitation of the area within which the noise emanates;
- (i) The time of day or night the noise occurs;

- (j) The duration of the noise;
- (k) Whether the noise is recurrent, intermittent, a cumulative period, or constant;
- (l) Whether the noise is produced by a commercial or non-commercial activity; and
- (m) Whether the noise can be heard more than twenty-five (25) feet away from any adjoining property boundary line in a residential district;
- (n) The intrusiveness of the noise;
- (o) Whether it is a mobile noise source;
- (p) The number of persons affected by the noise; or
- (q) Whether noise exceeds the maximum dBA levels set forth in 9.52.100 or 9.52.110.

9.52.050. Specific Prohibitions.

In addition to and separate from any provision of this Code, the following acts, and the causing, suffering or permitting thereof, shall be considered excessive and annoying noises creating a nuisance and disturbing the peace and shall constitute a violation of this Code. The listing of the following specific prohibited acts is not intended to limit the City's authority to regulate any and all loud, unnecessary and unusual noises and even if not included herein, such noise disturbances shall be subject to regulation pursuant to section 9.52.30:

- (a) Mechanical or Electronic Devices. Using any mechanical or electronic device for the intensification of any sound or noise into the public streets which produces excessive or annoying noise;
- (b) Advertisement. Using any instrument, whistle, drum or bell or making any other unnecessary noise for the purpose of advertising, announcing, or otherwise calling attention to any goods, wares, merchandise, or to any show, entertainment, or event. The provisions of this section shall not be construed to prohibit the selling by verbally announcing the sale of merchandise, food, or beverages at licensed sporting events, parades, fairs, circuses or other similar licensed public entertainment events;
- (c) Animals and Birds. Owning, possessing, or harboring any animal or bird which howls, barks, meows, squawks, or makes other annoying noises continuously and/or incessantly for an unreasonable period of time so as to create a noise disturbance across a real property line. For the purposes of this chapter, the animal or bird noise shall not be deemed a noise disturbance if a person is trespassing or threatening to trespass upon private property in or upon which the animal or bird is situated, or is using any other means to tease or provoke the animal or bird. This provision shall not apply to public zoos, licensed animal parks or licensed veterinarian facilities;
- (d) Emergency Signaling Device. The intentional sounding or permitted sounding outdoors of any fire, burglar, or civil defense alarm, siren, whistle, or similar stationary emergency

signaling device not in compliance with subsection (d)(1) or (2) unless occurring for emergency purposes or required by State or Federal regulations or the weekly testing of community emergency warning system:

(1) The testing of a stationary emergency signaling device shall not occur before seven a.m. or after seven p.m. Any such testing shall use only the minimum cycle test time, in no case shall such test time exceed sixty (60) seconds.

(2) The testing of the complete emergency signaling system, including the functioning of the signaling device, and personnel response to the signaling device, shall not occur more than once in each calendar month, except for the testing of the community emergency warning system that may be conducted weekly or as needed to protect public safety, health and welfare. Such testing shall not occur before seven a.m. or after seven p.m. The time limit specified in subsection (d)(1) of this section shall not apply to such community emergency warning system testing;

(e) Stationary Non-emergency Signaling Devices. Sounding of any electronically amplified signal from any stationary bell, chime, siren, whistle, or similar device, intended primarily for non-emergency purposes, from any place, for more than ten seconds in any one hour period. Parking structure exit alarms and any warning and/or signaling devices required by State or Federal law shall be exempt from the operation of this provision;

(f) Burglar or Fire Alarm. Sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm which is not terminated within fifteen (15) minutes of activation;

(g) Loading and Unloading. Loading, unloading, opening, closing, or other handling of boxes, crates, containers, building materials, refuse, or similar objects between the hours of nine p.m. and six a.m. in such a manner as to cause a noise disturbance across a residential real property line or at any time to violate the applicable noise provisions of the Richmond Planning Code.

This subsection shall not apply to the collection and disposal of garbage and recyclable materials by the City's franchises;

(h) Domestic Power Tools; Machinery. Operating or permitting the operation of any mechanically powered saw, sander, drill, grinder, leaf blower, lawn or garden tool, or similar tool between 9:00 p.m. and 7:00 a.m. during weekdays, so as to create a noise disturbance across a residential real property line or at any time to violate the applicable noise provisions as set forth in the Richmond Planning Code. Power tools and/or machinery or other tools creating noise associated with construction, manufacturing or gardening activities prior to 9:00 a.m. or after 7:00 p.m. on Saturdays and Sundays if the noise from such tools or machinery creates a noise disturbance across a residential property line or at any time violates any noise provisions of the Richmond Planning Code;

(i). Noise Sensitive Uses. Creation of any noise disturbance adjacent to or within one-thousand feet of a hospital or medical care facility, nursing home, school during school hours, courthouse during hours of operation, day care, church during hours of worship services, or similar facility, so as to interfere with the functions of such activity;

(1) Where construction activities on a construction project which is adjacent to any noise sensitive use(s) are anticipated to last for a year or more, temporary noise barriers shall be constructed that break the line of sight between the noise-sensitive use(s) and the construction project, and that minimize noise impacts.

(j). Noise resulting from construction and demolition activities, the operation of commercial refrigeration units, air conditioning systems, compressors, commercial exhaust systems, ventilation units, use of any instrumentality that results in impulsive sound, and other commercial or industrial noises associated with land use activities, shall be regulated pursuant to standards contained within the noise regulations of the Richmond Planning Code.

(k) Vehicular Attachments. Attaching any accessory or device to any vehicle which results in the creation of unnecessary noise.

(l) Radios, television sets, musical instruments or similar devices. Operating, playing, or permitting the operation or playing of any radio, television set, compact disc player, stereo, drum, musical instrument or similar device which reproduces sound so as to create a noise disturbance or cause any violation of this Chapter;

(m) Sound amplifier. Using or operating or permitting or allowing the using or operating, for any purpose, a sound amplifier except in compliance with and under a Sound Amplifier permit issued pursuant to Chapter 7.64 of this Code is prohibited.

(n) Places of public entertainment. Operating or permitting or allowing the operation or playing of any loudspeaker, musical instrument, motorized racing vehicle, or other source of sound in any place of public entertainment as to create a noise disturbance or which can be heard more than 500 feet from the property line of the property on which the public entertainment is located after 9:00 p.m. or before 8:00 a.m., except if the public entertainment is permitted or occurs on property that is not located within 1000 feet of residential dwellings.

(o) Tampering. The removal or rendering inoperative, other than for purposes of maintenance, repair or replacement, of any noise control device, muffler, or other sound dissipative device or element thereof; as required under federal, state or local law, and the use of said product after its noise control device has been removed or rendered inoperative, other than for purpose of maintenance, repair or replacement.

(p) Train bells, sirens, horns, whistles or similar audible warning devices shall be exempt from the provisions of this chapter only to the extent that the General Code of Operating

Rules (GCOR) adopted by railroad companies or Federal or State law permits or requires their use and such use is strictly limited to the GCOR or Federal or State sounding standards, including, but not limited to, the sound level, the necessity for using the signal and the pattern or frequency of use.

Where an adopted GCOR allows the use of "other forms of communication," railroad companies are encouraged to use maximum reasonable restraint in the use of horns, particularly during times when people are likely to be sleeping (10:00 PM until 7:00 AM) and to use "other forms of communication," including radios and visible signals whenever possible, consistent with safety requirements.

9.52.060 Persistent Noises

Failure to comply with the following provisions shall constitute a nuisance and violation of this ordinance:

(a) All construction equipment powered by internal combustion engines shall be properly muffled and maintained.

(b) Unnecessary idling of internal combustion engines is prohibited.

(c) All stationery noise-generating construction equipment such as tree grinders and air compressors are to be located as far as is practical from existing residences.

(d) Quiet construction equipment, particularly air compressors, are to be selected whenever possible.

(e) Use of pile drivers, sources of impulsive sound and jack hammers shall be prohibited on Sundays and holidays, except for emergencies or as approved in advance by the Building Official.

9.52.070 Noise from Radios, etc. in Vehicles; Appeal

(a) It shall be unlawful for any person to use or operate a radio, tape player, tape recorder, record player, television or similar device in a vehicle on a street, which is audible to a person of normal hearing sensitivity more than twenty-five (25) feet from said vehicle.

(b) Any penalties that may be imposed under this Chapter may be subject to being offset by the performance of community service work as determined by a court commissioner, judge or administrative hearing officer.

(c) The provisions this section shall be enforced by the Richmond Police Department or authorized peace officer.

(d) Provisions of section 9.52.070 are to be supplementary and complementary to all of the provisions of this Code, the laws of the State of California and any other applicable law, and

nothing in this chapter shall be read, interpreted or construed in any manner so as to limit any existing or future right or power of the City of Richmond to control or limit excessive noise caused by radios or other devices in vehicles.

9.52.080 Noises--Exceptions

Nothing in this Chapter shall apply to the playing of music by a band or the blowing of a bugle, or the announcing of any show, entertainment, or event upon the public streets for which band music, bugle blowing or privilege or announcing, the Chief of Police has granted a special permit specifying the time and place when and where such music may be played or such bugle blown, or shall apply to the blowing of any whistle or horn or the ringing of any bell or other noise necessary as a vehicular or pedestrian traffic warning or signal; or to any regularly licensed peddler calling his or her wares in an ordinary tone of voice. Emergency vehicles, including police vehicles, fire vehicles and ambulances are exempt from the requirements of this Chapter.

9.52.100 Alternative Use of Maximum noise limits by dBA levels.

It addition to determining noise violations under the standard set forth elsewhere in this Chapter, the enforcing officer may alternatively use the maximum decibel ("dBA") levels to determine a violation of this Chapter. The standard chosen by the enforcing officer for the specific incident shall be the sole means used to determine if a violation has occurred. Neither standard shall be considered superior, nor controlling, nor preempt the other.

If the enforcing officer selects the alternative standard to using the dBA level standard, evidence of dBA levels within the maximum permitted levels may be presented in defense of the charged violation only if the proffered dBA reading was taken at the exact time and location and under identical conditions, including wind, and temperature, as those encountered by the enforcing officer encountered at the time he or she charged the violation and by a decibel meter with valid current calibration records and evidence of the training or expertise of the person offering the dBA reading as evidence of compliance with this ordinance.

It shall be unlawful to maintain, permit, allow or suffer any use or activity that creates noise levels which exceed the following standards:

TABLE 3.10-7			
ALLOWABLE NOISE LEVELS IN THE CITY			
<u>Zoning District:</u>	<u>Maximum Noise Level in dBA</u> <u>(levels not to be exceeded more than</u> <u>30 minutes in any hour)</u>		<u>Maximum Noise Level in dBA</u> <u>(level not to be exceeded more</u> <u>than 5 minutes in any hour)</u>
	<u>Measured at</u> <u>Property Line or</u> <u>District Boundary</u>	<u>Measured at Any</u> <u>Boundary of a</u> <u>Residential Zone</u>	<u>Between 10 PM and 7AM***,</u> <u>Measured at Any Boundary of a</u> <u>Residential Zone</u>
<u>Single-Family Residential</u>	<u>60</u>		
<u>Multifamily Residential</u>	<u>65</u>		
<u>Commercial</u>	<u>70</u>	<u>60</u>	<u>50 or ambient noise level</u>
<u>Lt. Industrial and Office</u> <u>Flex*</u>	<u>70</u>	<u>60</u>	<u>50 or ambient noise level</u>
<u>Heavy and Marine</u> <u>Industrial</u>	<u>75</u>	<u>65</u>	<u>50 or ambient noise level</u>
<u>Public Facilities and</u> <u>Community Use</u>	<u>65</u>	<u>60</u>	<u>50 or ambient noise level</u>
<u>Open Space and</u> <u>Recreational Districts</u>	<u>65</u>	<u>60</u>	<u>50 or ambient noise level</u>
Notes:			
* For M-1 and M-2 the measurement will be at property lines.			
** For M-3 and M-4 the measurement will be at boundary of the district.			
*** Restricted hours may be modified through condition of an approved conditional use permit. Section subsections of this Chapter also provide for additional restricted hours and the most restrictive hours shall be controlling.			

(b) In determining whether any noise exceeds the maximum exterior noise limits set forth in this section, measurements shall be taken at the property line of the property from which the noise emanates, except that for noise emanating from property in an M-3 or M-4 zoning districts, measurement shall be taken at boundary of the zoning district in which the property is located.

(c) No person shall operate or cause to be operated within a dwelling unit, any source of sound that causes the sound level when measured inside a neighboring receiving dwelling unit to exceed the allowable noise level, for any period of time.

(d) In the event the noise, as judged by the enforcing authority, contains a steady, pure tone such as a whine, screech or hum, or is an impulsive sound such as hammering or riveting, or contains music or speech, the standard limits set forth above shall be reduced by 5 decibels.

(e) The exterior noise limits for any source of noise within any residential zone shall be reduced by 10 dBA between 10:00 p.m. and 7:00 a.m. The exterior noise limits for any source of noise in any zone other than a residential zone shall be reduced between 10:00 p.m. and 7:00 a.m. so that when the noise measured at the property line of a "noise-sensitive use" does not exceed 50 dBA.

9.52.110 Temporary construction activity.

Where technically and economically feasible temporary construction activity shall be conducted in such a manner that the maximum sound levels at affected properties shall not exceed the following dBA levels:

(a) Mobile construction equipment- Maximum sound levels for nonscheduled, intermittent, and short term operation of less than 15-days:

TABLE 3.10-8			
MOBILE EQUIPMENT (STANDARDS FOR THE CITY)			
	SFR-1, SFR-2, SFR-3 Zoning Districts (Single- Family Residential)	MR-1, MR-2, MR-3 Zoning Districts (Multifamily Residential)	Commercial and Industrial Zoning Districts
<u>Weekdays, 7:00 a.m. to 7:00 p.m.</u>	<u>75 dBA</u>	<u>80 dBA</u>	<u>85 dBA</u>
<u>Weekends, including legal holidays 9:00 a.m. to 8:00 p.m.</u>	<u>60 dBA</u>	<u>65 dBA</u>	<u>70 dBA</u>

(b) Stationary Construction Equipment- Maximum sound levels:

TABLE 3.10-9			
STATIONARY EQUIPMENT (STANDARDS FOR THE CITY)			
	SFR-1, SFR-2, SFR-3 Zoning Districts (Single- Family Residential)	MR-1, MR-2, MR-3 Zoning Districts (Multifamily Residential)	Commercial and Industrial Zoning Districts
<u>Weekdays, 7:00 a.m. to 7:00 p.m.</u>	<u>60 dBA</u>	<u>65 dBA</u>	<u>70 dBA</u>
<u>Weekends, including legal holidays 9:00 a.m. to 8:00 p.m.</u>	<u>55 dBA</u>	<u>60 dBA</u>	<u>65 dBA</u>

The title on Figure 3.10-2 on page 3.10-10 has been revised (Figure 3.10-2 is included at the end of this chapter):

Existing Traffic Noise Contours within the City of Richmond

The alignment of the labels of the columns has been revised on Figure 3.10-3 on page 3.10-15 of the Draft EIR. The figure is attached to the end of these responses.

The text on page 3.10-19 under the heading "Standards of Significance" is changed as follows:

For the purposes of this EIR, implementation of the proposed General Plan would have a significant impact to noise in the City if it would ~~de~~ cause any of the following:

The title on Figure 3.10-4 on page 3.10-32 is changed as follows (Figure 3.10-4 is included at the end of this chapter):

Future Traffic Noise Contours under the Proposed General Plan Update

Section 3.11, Parks and Recreation

The text on page 3.11-5 under the heading “Trails and Greenways” is changed as follows:

Trails and greenways dispersed throughout the City provide connections between neighborhoods, commercial centers, parks and shorelines. The San Francisco Bay Trail links many of the City and regional parks in Richmond, including the Point Isabel Regional Shoreline, six City-owned parks in Marina Bay, Point Isabel Regional Shoreline, and the Miller/Knox Regional Shoreline, as well as the Richmond Greenway and the Wildcat Creek Regional Trail. This trail also provides regional connections through a network of regional walking and cycling trails, like the Richmond Greenway. This trail also provides regional connections through a network of regional walking and cycling trails, like the Richmond Greenway. The San Francisco Bay Trail is a planned 500-mile hiking and biking trail encircling San Francisco and San Pablo Bays. ~~Twenty-five~~ Thirty miles of this trail have been completed in the City, and will ultimately run along the shoreline wherever feasible.

Section 3.14, Transportation and Circulation

The text on page 3.14-21 under the heading “Multi-Use Trails” is changed as follows:

Richmond’s trails and greenways provide important bicycle and pedestrian connections between some neighborhoods, commercial centers, parks, and the Richmond shoreline. Figure 3.14-5 shows the completed and planned segments of the Richmond portion of the San Francisco Bay Trail. When completed, the San Francisco Bay Trail will provide a ~~400~~500-mile separated right-of-way for bicycles and pedestrians around San Francisco and San Pablo bays, connecting through Richmond. Ultimately, the Richmond segment of the Bay Trail will provide for recreational as well as utilitarian trips. As of 2011~~0~~, more than ~~28~~ 30 miles of the trail within Richmond had been completed, with approximately ~~13~~ 11 additional miles planned.

The text on page 3.14-30 is revised as follows:

... In addition, assumptions were made regarding the following planned roadway projects in the City of Richmond:

- ~~Interstate 580 will have an additional HOV lane in both directions throughout the City~~
- 23rd Street was narrowed to a two lane bi-directional facility between Carlson Avenue and San Pablo Avenue, consistent with the current 23rd Street planning effort
- Barrett Avenue was narrowed to a four lane facility between 23rd Street and Harbour Way, to provide for the construction of bicycle lanes

Figure 3.14-7, Proposed General Plan Circulation Element Map 4.3: Planned Roadway Improvements, on page 3.14-31 of the Draft EIR has been revised and is included at the end of this chapter.

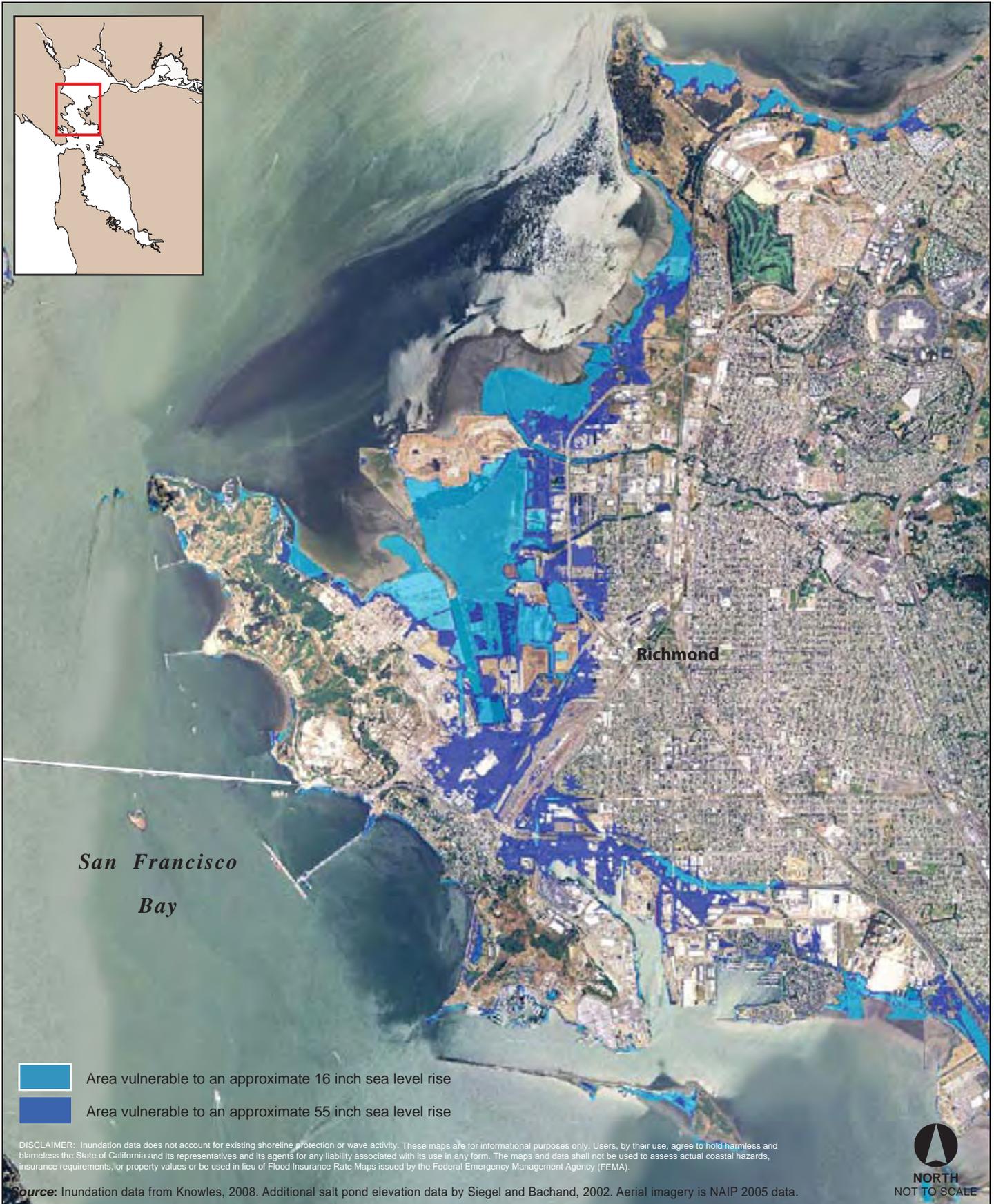


FIGURE 3.9-2A
Potential Sea Level Rise

100018268

Richmond GPU EIR

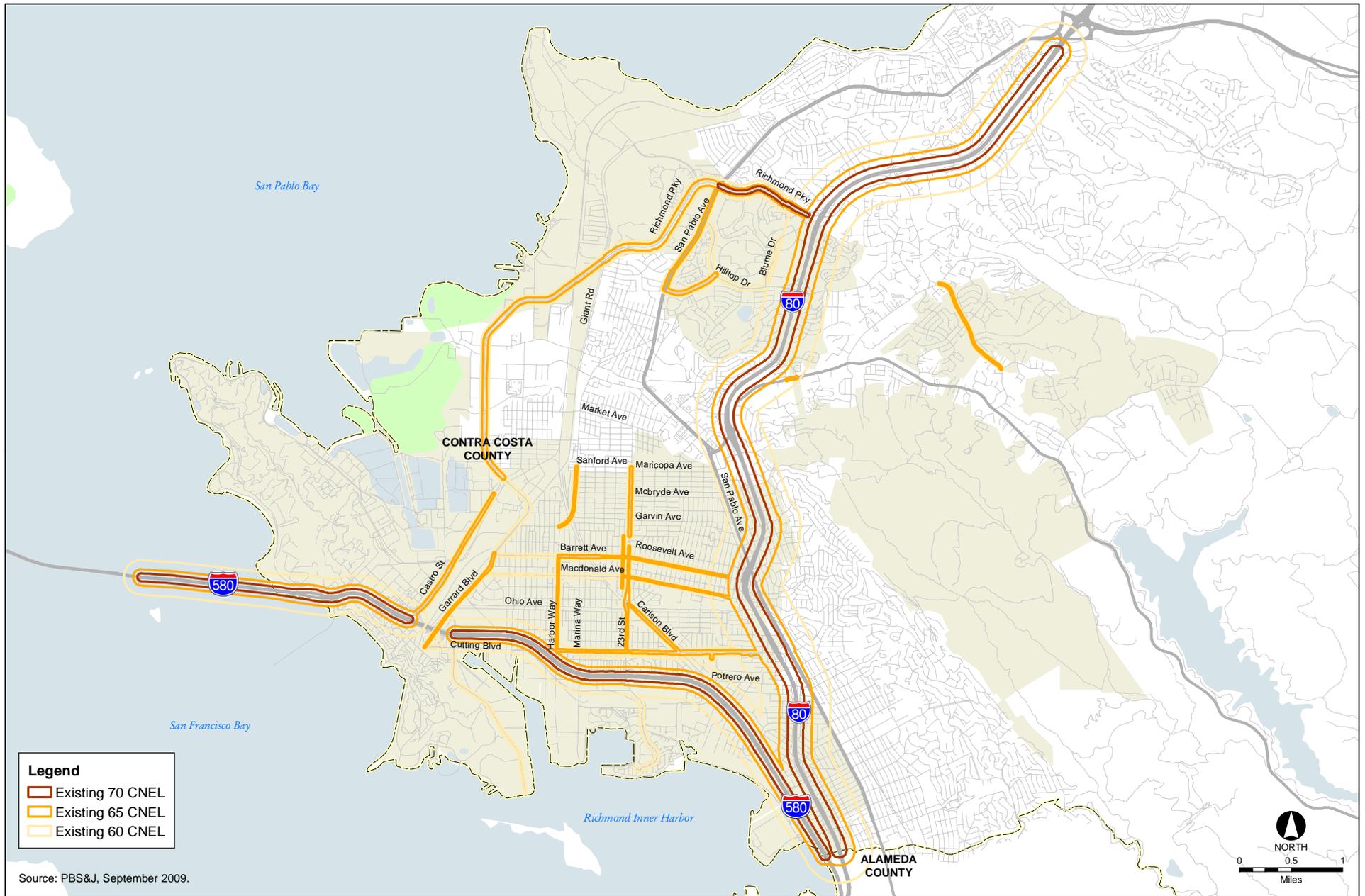


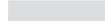
FIGURE 3.10-2
Existing Traffic Noise Contours within the City of Richmond



100018268

Land Use Category	Community Noise Exposure - L _{dn} or CNEL, dB							
	55	60	65	70	75	80	85	
Residential – Low-Density Single Family, Duplexes and Mobile Homes								
Residential – Multifamily								
Transient Lodging – Motels, Hotels								
Schools, Libraries, Churches, Hospitals, Nursing Homes								
Auditoriums, Concert Halls, Amphitheaters								
Sports Arena, Outdoor Spectator Sports								
Playgrounds, Neighborhood Parks								
Golf Course, Riding Stables, Water Recreation, Cemeteries								
Office Buildings, Business Commercial and Professional								
Industrial, Manufacturing, Utilities, Agriculture								

Source: Governor's Office of Planning and Research, State of California General Plan Guidelines. 2003.

-  Normally Acceptable
Specified land use is satisfactory, based upon the assumption that any buildings involved are of normal conventional construction, without any special noise insulation requirements.
-  Conditionally Acceptable
New construction or development should be undertaken only after a detailed analysis of the noise reduction requirements is made and needed noise insulation features included in the design. Conventional constructions, but with closed windows and fresh air supply systems or air conditioning will normally suffice.
-  Normally Unacceptable
New construction or development should generally be discouraged. If new construction or development does proceed, a detailed analysis of the noise reduction requirements must be made and needed noise insulation features included in the design.
-  Clearly Unacceptable
New construction or development should generally not be undertaken.

Source: City of Richmond, 2009.



FIGURE 3.10-3
Noise Exposure Land Use Compatibility Standards

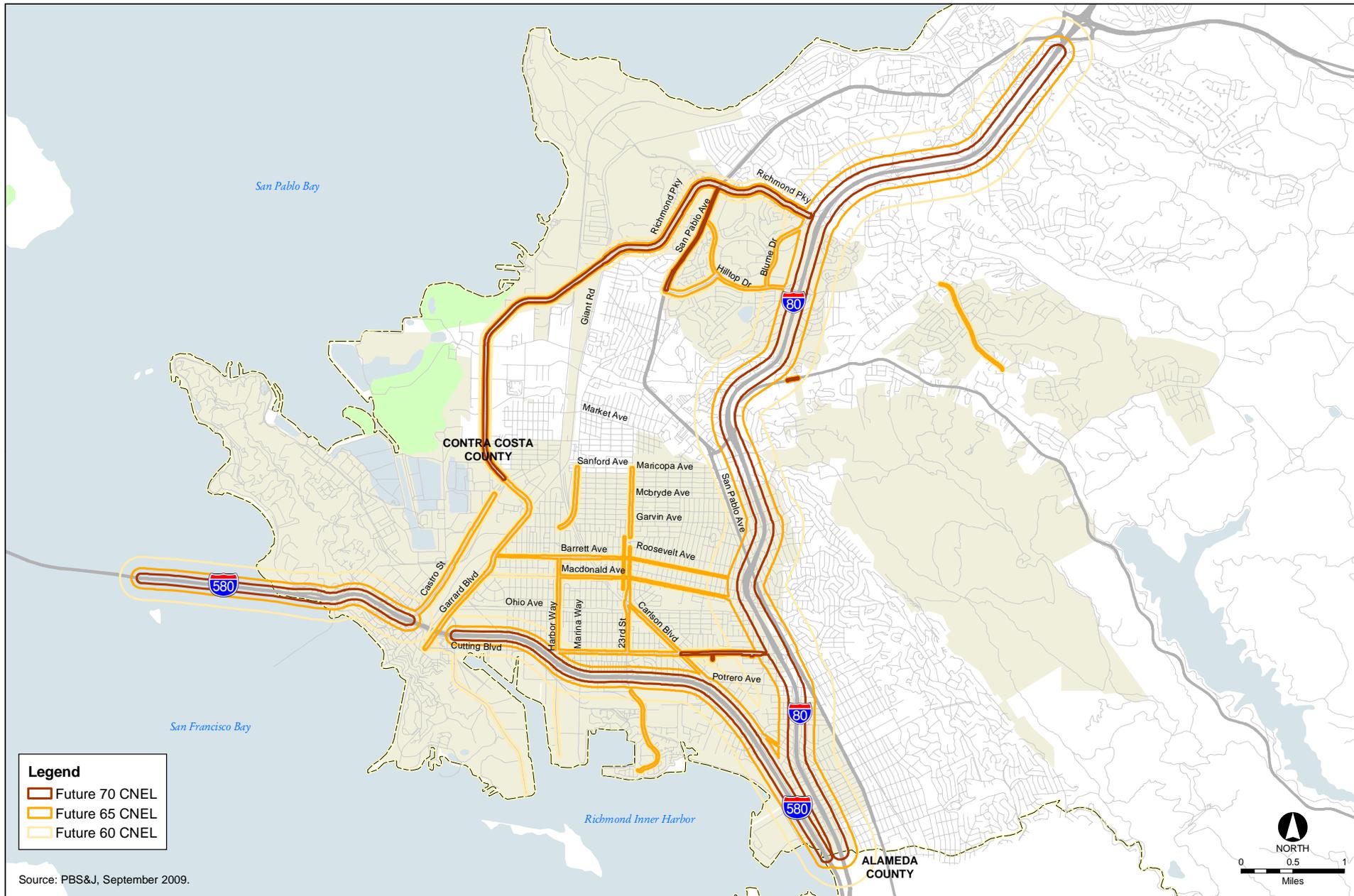
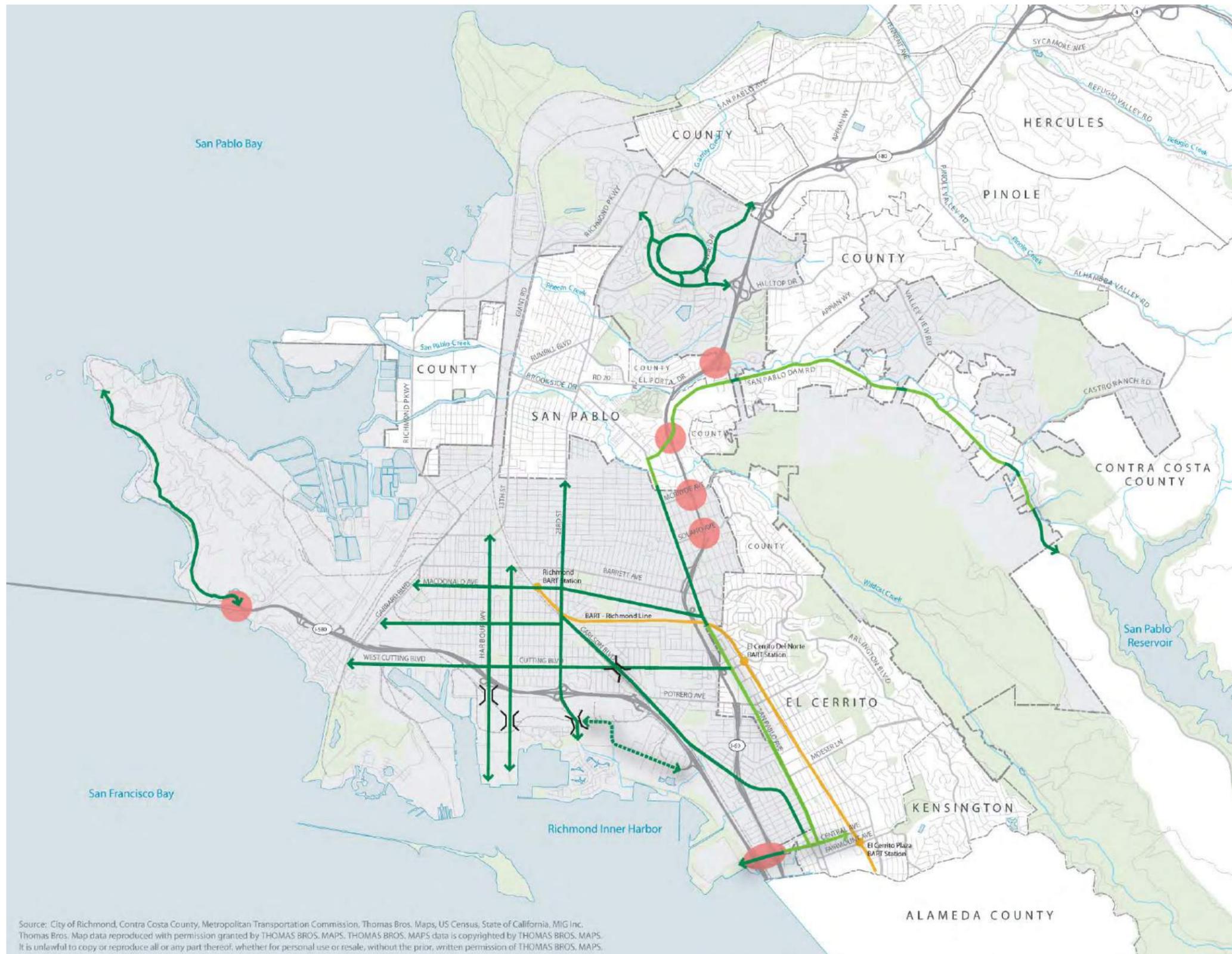


FIGURE 3.10-4

Future Traffic Noise Contours under the Proposed General Plan Update



100018268



LEGEND:

- Streetscape *
- New Roadway Alignment
- Streetscape (Surrounding Jurisdictions)
- Grade Separation
- Freeway Interchange



*Streetscape improvements may include pedestrian and bicycle amenities such as sidewalks, street lights, street furniture, signage, crosswalks and trees.



NORTH
SCALE IN MILES

Source: City of Richmond, Contra Costa County, Metropolitan Transportation Commission, Thomas Bros. Maps, US Census, State of California, MIG Inc. Thomas Bros. Map data reproduced with permission granted by THOMAS BROS. MAPS. THOMAS BROS. MAPS data is copyrighted by THOMAS BROS. MAPS. It is unlawful to copy or reproduce all or any part thereof, whether for personal use or resale, without the prior, written permission of THOMAS BROS. MAPS.

Fehr & Peers, 2009.



FIGURE 3.14-7
Proposed General Plan Circulation Element Map 4.3: Planned Roadway Improvements

100018268

Richmond GPU EIR

3. LIST OF AGENCIES AND PERSONS COMMENTING

3.0 LIST OF AGENCIES AND PERSONS COMMENTING

AGENCIES

- Native American Heritage Commission, Rob Wood
- San Francisco Bay Conservation and Development Commission, Timothy Doherty
- California Native Plant Society, Laura Baker
- State of California, Department of Transportation, Lisa Carboni
- West Contra Costa Transportation Advisory Committee, Christina Atienza
- Governor's Office of Planning and Research, Scott Morgan

LOCAL ORGANIZATIONS AND INDIVIDUALS

- El Cerrito Community Development Department, Mitch Oshinsky
- Stuart Flashman, March 4, 2011
- Council of Industries, Katrinka Ruk
- Krause Engineering Services, Nick Krause
- Trails for Richmond Action Committee, Bruce Beyaert
- Bruce Beyaert
- Communities for a Better Environment, Greg Karras
- Point Richmond Neighborhood Council, Peter Minkwitz
- Richmond Equitable Development Initiative, Del Price
- Citizens for a Sustainable Point Molate, Joan Garrett
- Communities for a Better Environment, Ana Orozco
- Cox Castle Nicholson LLP, Anne Mudge
- Garland Ellis
- Stuart Flashman, March 31, 2011
- Fred Glueck
- JHS Properties, Robert Herbst
- Levin Richmond Terminal Corporation, Jim Cannon
- Paul Minault
- Murray Parkway Partners, Daniel Murray
- Richmond Annex Neighborhood Council, Mary Selva
- Richmond Development Company LLC, Joshua Genser
- SSL Law Firm LLP, Diane Hanna

- Temple Beth Hillel, Joshua Genser
- Virtual Development Company, Richard Poe
- East Bay Regional Park District, Brian Holt

CITY OF RICHMOND CITY PLANNING COMMISSION PUBLIC HEARING

- Del Price
- Anna Orozco
- Greg Karras
- Tiana Drisker
- Maria Alegria
- Tarnel Abbott
- Nita Sisamouth
- Colin Miller
- Marcy Rein
- Antonio Medrano
- Rick Borjes
- Ralf Morgan
- Nick Krause
- Daniel Murray, Jr.
- Daniel Murray, Sr.
- Len Nibbi
- Robert Herbst
- Joshua Genser
- Christine Griffith
- Owen Martin
- Katrinka Ruk
- Mary Selva
- Garland Ellis
- Jerry Yoshida
- Torm Nompraseurt
- Teijae Taylor
- Patricia Jones
- John Adams

4. COMMENTS AND RESPONSES

4.0 COMMENTS AND RESPONSES

This section contains the comment letters that were received on the Draft EIR and responses to the comment letters received on the Draft EIR. The section begins with a discussion of the purpose and role of the General Plan and General Plan EIR, which is followed by the comment letters and responses to those comments. Each comment letter is bracketed and numbered and followed by a response by the City intended to supplement, clarify, or amend information provided in the Draft EIR. The reader may also be referred to the appropriate place in the Draft EIR where the requested information can be found or, in some cases, to another response. Comments that are not directly related to environmental issues may be discussed or noted for the record. Where text changes in the Draft EIR are warranted based upon comments on the Draft EIR, those changes are generally included following the response to comment, as well as in Chapter 2, Text Changes.

Introduction to the Responses to Comments

The City received a number of comment letters and comments made during the Draft EIR hearing that are not comments on the adequacy of the Draft EIR, but on the General Plan itself. Other comments focused on the specificity of the analysis in the Draft EIR and the program-level of analysis contained in the Draft EIR. Each of the comments received is addressed in responses to the individual letters in the following section, but background is provided in this introduction to allow for a more comprehensive discussion of the process for preparing a general plan and its accompanying environmental impact report.

Purpose and Role of the General Plan and General Plan EIR

The Richmond General Plan serves as a long-term policy guide for the physical and economic development of the City. Its language is purposefully broad in order to establish a lasting vision that reflects the City's core values and philosophical approach on public and private development. To articulate this vision, the General Plan includes a framework of goals and policies that establish a basis by which public decisions are made. These are supported by a series of "actions," which enable the City to implement the goals and policies.

A key component of the General Plan is the Land Use and Urban Design Element, which includes a diagram that illustrates the boundaries, location, and distribution of existing and planned land uses in the City. The land use diagram illustrates many different land use classifications, which describe the types of uses and development densities/intensities that can be accommodated. The development capacity that can be accommodated by each land use classification is expressed as a range, and does not assume that development will occur at the minimum or maximum levels allocated. This approach allows available land areas to develop in response to market demands, recognizing that there is a limited amount of development that can be reasonably accommodated within the General Plan's 20-year planning horizon.

The General Plan is not a stand-alone document and is designed to be used in tandem with several other adopted City regulatory documents and plans. These include the City's Municipal Code (of which the Zoning Ordinance is a part), Capital Improvement Program, Specific Plans, Master Plans, and Redevelopment Plans. Often, these types of regulatory documents are adopted pursuant to one of the General Plan's "actions." The various regulatory documents adopted by the City are used to implement the General Plan, by providing specific details and regulations for such matters as land development, circulation, public services, and public health. It is common in a general plan update process to create inconsistencies with existing plans and ordinances, such as those referenced above. However, as part of implementation of a general plan, the city would update these plans to reconcile any potential inconsistencies within a reasonable amount of time after the General Plan's adoption.

One such regulatory document is the City Zoning Ordinance. In order to implement the high-level policy framework of the General Plan's Land Use and Urban Design Element, the City's Zoning Ordinance establishes zoning districts that articulate specific permitted uses, development standards, density/intensity standards, and other regulations. Because zoning regulations are applied to properties individually, the Zoning Ordinance is the mechanism that contains specific standards guiding development and/or redevelopment of land. Again, while the General Plan and Zoning Ordinance work in conjunction with one another, the General Plan is purposefully broad in nature, with specific implementing regulations carried out through the Zoning Ordinance. As discussed in the Draft EIR (page 3.1-6), following adoption of the General Plan, the City will update the Zoning Ordinance to maintain consistency with the General Plan.

The General Plan also addresses issues outside of the City of Richmond's jurisdiction, such as mandates for the Bay Area region and matters that affect the entire state. For instance, it outlines an approach to provide for the City's fair-share housing allocation as issued by the Association of Bay Area Governments (ABAG), and an approach to reduce greenhouse gas emissions as required by the State. While the General Plan includes the policy direction to address these matters consistent with the City's overarching intent, it does not include specific regulations to govern their implementation, such as creating regulations for the control of air emissions or regulations for cleanup of contaminated sites, which are already controlled by existing regulations from other agencies. Instead, the General Plan contains "actions" to address these types of issues with implementation to occur through a variety of mechanisms, such as adoption of regulations, coordination with affected agencies, or local government administration.

As discussed above, the General Plan is a long-term policy guide for the development of the City, but does not propose specific development that can be analyzed at a project-specific level. Therefore, the City prepared a program EIR for the General Plan Update. Several comments requested more detail in the analysis of impacts, including site-specific analyses, precise quantification of impacts, and more specific mitigation measures. As discussed in Chapter 1, Introduction, of the Draft EIR, a program EIR provides a more general analysis of the General Plan that focuses on the *overall* effects of the proposed General Plan within the proposed change areas. Because the General Plan is a policy-level document, the City is not committed to development at any particular densities or intensities and there is no assurance that development will even occur

under the Plan, even though the General Plan designates areas for a particular land use and specifies minimum and maximum intensities. CEQA recognizes the impacts of policy-level decisions cannot be predicted or examined with the same exactitude and detail required for a construction project and where the proposed project is a large-scale, planning-level decision, an EIR may contain only generalized mitigation criteria and policy-level alternatives, and defer future study the formulation of details regarding later, site-specific projects (Koster v. County of San Joaquin (1996) 47 Cal.App.4th at pp.37, 41).

Because the General Plan does not contain details of any specific project, the location-specific effects cannot be analyzed without speculation as to the ultimate use that could be proposed on a particular site. The proposed General Plan designations provide the parameters of uses that would be allowed, but a multitude of different business types or residential uses could be developed at a varying intensities or densities at any particular location, so the project-level detail is not available to support meaningful environmental evaluation of impacts at specific sites. "Where future development is unspecified and uncertain, no purpose can be served by requiring an EIR to engage in sheer speculation as to future environmental consequences." (City of Santee v. County of San Diego (1989) 214 Cal.App3d at p. 1453)

Similarly, in order to provide project-level quantification of impacts and specificity of mitigation measures, the City would be required to speculate regarding the details of future development. The Draft EIR includes programmatic mitigation, where applicable, to mitigate potential impacts. For impacts where it cannot be concluded that mitigation will reduce impacts to a less-than-significant level, those impacts were found to be significant and unavoidable. However, some impacts determined to be significant and unavoidable may be reduced to less than significant based on project-specific information that is available at the time a subsequent project is proposed. All future development applications will be subject to project-specific CEQA review at the time a project is proposed to determine if it is within the scope of this EIR and whether new or additional mitigation would be required to reduce impacts. This process would include an opportunity for public review and comment. If additional feasible measures are available to reduce impacts, those will be imposed on the site-specific project.

NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 364
 SACRAMENTO, CA 95814
 (916) 653-4082
 Fax (916) 657-5390



March 10, 2011

Hector Rojas
 City of Richmond
 450 Civic Center Plaza
 Richmond, CA 94804

RE: SCH# 2008022018 – Richmond General Plan Update, Richmond, Contra Costa County

Dear Mr. Rojas:

The Native American Heritage Commission (NAHC) has reviewed the proposed General Plan update referenced above. Government Code §65352.3 requires that prior to the adoption or any amendment of a city or county's general plan, the city or county shall conduct consultations with California Native American tribes that are on the tribal consultation list maintained by the NAHC, see attached list. The purposes of these consultations are to preserve or mitigate impacts to Native American cultural places located within the city or county's jurisdiction. As part of the process, the NAHC also recommends the following actions:

- ✓ Contact the appropriate Information Center for a record search to determine:
 - If a part or all of the area of project effect (APE) has been previously surveyed for cultural resources.
 - If any known cultural resources have already been recorded on or adjacent to the APE.
 - If the probability is low, moderate, or high that cultural resources are located in the APE.
 - If a survey is required to determine whether previously unrecorded cultural resources are present.
- ✓ If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - The final report containing site forms, site significance, and mitigation measurers should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum, and not be made available for public disclosure.
 - The final written report should be submitted within 3 months after work has been completed to the appropriate regional archaeological Information Center.
- ✓ Contact the NAHC for a Sacred Lands File check, USGS quadrangle name, township, range, and section information regarding the APE is required for this search.
- ✓ Documents should also include:
 - Provisions for the identification and evaluation of accidentally discovered archeological resources, per CEQA Guidelines §15064.5(f);
 - Provisions for monitoring all ground-disturbing activities in areas of identified archaeological sensitivity by a archaeologist meeting the professional qualifications as defined in the in the *Secretary of the Interior's Standards and Guidelines* for archaeology and a culturally affiliated Native American cultural resource specialist;
 - Provisions for the curation of recovered non-burial associated artifacts in data recovery plans, per CEQA Guidelines 15126.4(5)(b)(3)(C), in consultation with culturally affiliated Native Americans;
 - Provisions for discovery of Native American human remains. Health and Safety Code §7050.5, CEQA; and Guidelines §15064.5(e), and Public Resources Code §5097.98 mandates the process to be followed in the event of an accidental discovery of any human remains and associated grave items.

1-1

Sincerely,

Rob Wood
 Associate Government Program Analyst

CC: State Clearinghouse

**Native American Tribal Consultation List
Contra Costa County
March 10, 2011**

Indian Canyon Mutsun Band of Costanoan
Ann Marie Sayers, Chairperson
P.O. Box 28 Ohlone/Costanoan
Hollister , CA 95024
ams@indlancanyon.org
831-637-4238

Amah/Mutsun Tribal Band
Irene Zwierlein, Chairperson
789 Canada Road Ohlone/Costanoan
Woodside , CA 94062
amah_mutsun@yahoo.com
(650) 851-7747 - Home

Muwekma Ohlone Indian Tribe of the SF Bay Area
Rosemary Cambra, Chairperson
PO Box 360791 Ohlone / Costanoan
Milpitas , CA 95036
muwekma@muwekma.org
408-434-1668

The Ohlone Indian Tribe
Andrew Galvan
PO Box 3152 Ohlone/Costanoan
Fremont , CA 94539 Bay Miwok
chochenyo@AOL.com Plains Miwok
(510) 882-0527 - Cell Patwin

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is applicable only for consultation with Native American tribes under Government Code Section 65352.3.

LETTER 1: Native American Heritage Commission, Rob Wood

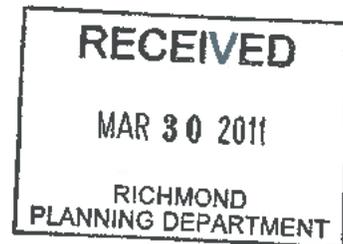
Response to Comment 1-1

The comment states that prior to adoption of a general plan, the City must conduct consultations with California Native American tribes. The City of Richmond contacted the Native American Heritage Commission (NAHC) on November 10, 2010 to request a list of tribal contacts, and the NAHC provided a list of tribal contacts on November 23, 2010. On December 7, 2010, the City sent letters of invitation to consult to each of the contacts provided by the NAHC. As of the publication of this Draft EIR, none of the tribal contacts has requested consultation. Please see section 3.5, Cultural Resources, of the Draft EIR for further discussion.



March 30, 2011

Hector Rojas
Associate Planner
City of Richmond Planning and Building Services
450 Civic Center Plaza
PO Box 4046, Richmond, CA 94804-1630



SUBJECT: Draft Environmental Impact Report on New General Plan for City of Richmond. SCH 2008022018. BCDC Inquiry File # CC.RH.7213.2

Dear Mr. Rojas,

The San Francisco Bay Conservation and Development Commission (BCDC) appreciates the opportunity to review and comment on the Draft Environmental Impact Report for the proposed General Plan for the City of Richmond (DEIR), dated February 11, 2011. Although our Commission has not had the opportunity to review the DEIR, these staff comments are based on BCDC's law, the McAteer-Petris Act, and the provisions of its *San Francisco Bay Plan* (Bay Plan), the *Richmond Special Area Plan*, the *San Francisco Seaport Plan* and staff review of the DEIR.

2-1

As a permitting authority along the San Francisco Bay shoreline, BCDC is responsible for granting or denying permits for any proposed fill (earth or any other substance or material, including pilings or structures placed on pilings, and floating structures moored for extended periods), extraction of materials or change in use of any water, land or structure within the Commission's jurisdiction. Generally, BCDC's jurisdiction over San Francisco Bay extends from the Golden Gate to the Sacramento River and includes tidal areas up to the mean high tide level, including all sloughs, and in marshlands up to five feet above mean sea level; a shoreline band consisting of territory located between the shoreline of the Bay and 100 feet landward and parallel to the shoreline; salt ponds; managed wetlands (areas diked from the Bay and managed as duck clubs); and certain waterways tributary to the Bay. The Commission can grant a permit for a project if it finds that the project is either (1) necessary to the health, safety or welfare of the public in the entire Bay Area, or (2) is consistent with the provisions of the McAteer-Petris Act and the Bay Plan. The McAteer-Petris Act provides for fill in the Bay for water-oriented uses where there is no alternative upland location and requires that any fill that is placed in the Bay is the minimum that is necessary for the project. The McAteer-Petris Act also requires that proposed projects include the maximum feasible public access consistent with the project to the Bay and its shoreline.

For BCDC's Bay jurisdiction, an essential part of BCDC's regulatory framework is the Commission's Bay Plan. Projects approved by BCDC must be consistent with the McAteer-Petris Act and the Bay Plan. The Bay Plan includes priority land use designations for certain areas around the Bay to ensure that sufficient areas around the Bay are reserved for important water-oriented uses such as ports, water-related industry, parks, and wildlife areas. Along the Richmond

Hector Rojas
March 30, 2011
Page 2

shoreline there are several priority land use area designations, including land designated for port use, water-related industry, and waterfront parks. The land uses designations depicted in Figure 2.6 (San Pablo Peninsula) and Figure 2.7 (Port Priority Use Area) appear to be inconsistent with the priority use areas identified in the Bay Plan Map 4. Projects within BCDC's jurisdiction that are inconsistent with these designations require an amendment to the Bay Plan. I have attached a copy of Bay Plan Map 4 for your review.

2-1
(cont.)

Public Access. If any projects identified in the DEIR may require bay fill or new shoreline development within BCDC's jurisdiction, then the DEIR should consider that BCDC policies on public access state, in part, "maximum feasible access to and along the waterfront and on any permitted fills should be provided in and through every new development in the Bay or on the shoreline." Section 66602 of the McAteer-Petris Act states in part that "existing public access to the shoreline and waters of the San Francisco Bay is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided." Furthermore, the McAteer-Petris Act authorizes the placement of fill in the Bay only for water-oriented uses or minor fill for improving shoreline appearance or public access. The DEIR should include policies that promote public access to and along the shoreline of the Bay.

2-2

Recreation. Following staff review of the DEIR it appears that some proposed uses of the shoreline may be inconsistent with Bay Plan priority use areas. In particular, Figure 2.6 (San Pablo Peninsula) depicts "Business/Light Industrial", "Low Density" and "Neighborhood Mixed-Use" in areas designated as Waterfront Park and Beach in Bay Plan Map 4. Bay Plan policies state, in part, that "Diverse and accessible water-oriented recreational facilities should be provided to meet the needs of a growing and diversifying population, and should be well distributed around the Bay and improved to accommodate a broad range water-oriented recreational activities for people of all races, cultures, ages and income levels." Therefore, the DEIR should include policies, consistent with the Bay Plan, that promote water-oriented recreational activities along the shoreline.

2-3

Transportation and Land Use. Because of the continuing vulnerability of the Bay to filling for transportation and development projects, the policies of the Bay Plan recognize that the Commission should continue to take an active role in Bay Area regional transportation and land use planning. The transportation findings of the Bay Plan state, in part, "pressure to fill the Bay for surface transportation projects can be reduced by improving the efficiency and increasing the capacity of existing transportation facilities and services, increasing access to public transit, providing safe and convenient public pathways for non-motorized forms of travel (e.g. bicycles, pedestrian)" and "transportation projects should be designed to maintain and enhance visual and physical access to the Bay and along the Bay shoreline."

2-4

The general goals described in the DEIR are goals that, if met in a way that protects the ecological resources along the shoreline, BCDC supports. The goals are described as developing vibrant waterfront areas that take advantage of the Bay waters and that improve shoreline neighborhoods, open space and recreational opportunities. Creating transit-oriented neighborhoods that integrate ferry terminals, as described by the DEIR for the Regatta/Marina Bay Area, are generally consistent with the transportation policies of the Bay Plan. These policies state that "ferry terminal should be sited at locations that are near navigable channels, would not rapidly fill with sediment and would significantly impact tidal marshes, tidal flats, or other valuable

Hector Rojas
March 30, 2011
Page 3

wildlife habitat. Wherever possible, terminals should be located near higher density, mixed-use development served by public transit. Terminal parking facilities should be set back from the shoreline to allow for public access and enjoyment of the Bay."

↑
2-4
(cont.)

Sea Level Rise and Safety of Fills. BCDC recently conducted an assessment of the region's vulnerability to sea level rise which is based on a projected 16-inch sea level rise at mid century (2050) and 55-inch sea level rise at the end of the century (2100). Bay Plan findings and policies anticipate the need for planning associated with safety of fills and sea level rise. The safety of fills findings state, in part, "structures on fill or near the shoreline should be above the highest expected water level during the expected life of the project... Bay water levels are likely to increase in the future because of a relative rise in sea level... Relative rise in sea level is the sum of: (1) a rise in global sea level and (2) land elevation change (lifting and subsidence) around the Bay." Bay Plan policies on safety of fills state, in part, "local governments and special districts with responsibilities for flood protection should assure that their requirements and criteria reflect future relative sea level rise and should assure that new structures and uses attracting people are not approved in flood prone areas or in areas that will become flood prone in the future, and that structures and uses that are approvable will be built at stable elevations to assure long-term protection from flood hazards." Projects in BCDC jurisdiction that involve bay fill must be consistent with the Bay Plan policies on the safety of fill and sea level rise.

↑
2-5

The City should be commended for focusing on climate change and its impacts. The latest research conducted by the California Energy Commission's Public Interest Energy Research (PIER) program indicates that sea levels could rise significantly more than reported by the DEIR. According to research, funded by the PIER program and conducted by Dr. Dan Cayan, mid-century sea-levels could range from 30 to 45 cm (11 to 18 inches) higher than in 2000, and end of century sea-levels could be 60 to 140 cm (23 to 55 inches) higher than in 2000. Therefore, the figure 3.9-2 "Potential for Sea Level Rise" should incorporate data that reflects these more recent sea level rise scenarios. Furthermore, Policy EC 6.3 which proposes that all projects proposed for construction within 300 feet of the existing shoreline (high tide) will include an evaluation of the impact of a one meter rise in sea level should incorporate the more recent sea level rise scenarios. Additionally, the DEIR should consider the potential impacts of sea level rise upon other components of the document such as the Transportation and Circulation, Visual Resources, Biological Resources, Hazards, Hydrology and Water Quality and Parks and Recreation sections. Finally, I have enclosed a BCDC sea level rise map which depicts areas potentially vulnerable to a 16 inch and 55 inch sea level rise.

↑
2-6

Thank you again for the opportunity to review and comment on the Draft Environmental Impact Report for the new General Plan for the City of Richmond. If you have any questions please contact me directly at (415) 352-3667.

Sincerely,

Timothy Doherty
Coastal Program Analyst

Plan Map 4

Central Bay North

PLAN MAP NOTES

Point Pinole Regional Shoreline to Wildcat Creek - Public access to the Bay for recreation is needed in this area, although existing shoreline conditions make this difficult. All development in this area should include provision for substantial public access. Additional land to expand Point Pinole Regional Park should be acquired if feasible.

San Pablo Peninsula - Significant potential for creating a permanently protected open space and park facility. Limited commercial development can be compatible with park.

Miller/Knox Regional Shoreline - Use and landscaping of the private lands adjacent to the park should be coordinated by owners and city for compatibility with park.

South Richmond Shoreline Special Area Plan - The South Richmond Shoreline Special Area Plan was adopted by the Commission (May 1977) and the City of Richmond to provide detailed planning and regulatory guidelines for the Richmond shoreline from the west side of Shinward Three to the southeastern border of the City, including Brooks and Bird Islands and all areas that are subject to tidal action. Refer to the maps, policies, and recommendations of the Special Area Plan for specific information for this area.

Oakland North Harbor Area - The Oakland North Harbor has not been included on the Seaport Plan maps as a port priority use area because need for it has not been substantiated and it has been found to be less desirable for port development than other sites based on environmental, land use, and access considerations. In addition, other uses having public benefits, such as conservation and recreation, have been proposed for this site. Additional studies will be necessary to determine the future use of this area.

San Francisco Waterfront Special Area Plan - The San Francisco Waterfront Special Area Plan was adopted by the Commission (April 3, 1975) to provide detailed planning and regulatory guidelines for the waterfront of San Francisco from east side of Hyde Street Pier to south side of India Basin. Refer to the maps and policies of the Special Area Plan for specific information for this area.

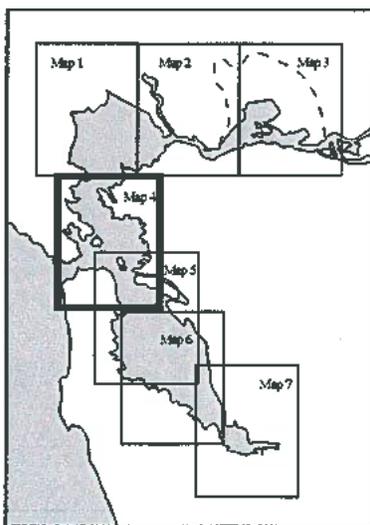
San Francisco Waterfront - A scenic transit system that incorporates pedestrian and bicycle pathways could be a major waterfront attraction and could eventually operate from Golden Gate Bridge (or even Ocean Beach) to Ferry Building (or south to China Basin).

Treasure and Yerba Buena Islands - The City and County of San Francisco is considering revisions to its plan for the redevelopment and reuse of Naval Station Treasure Island that would create a series of linked open spaces on Treasure and Yerba Buena Islands, including a large open space at the northern end of the island.

Jurisdiction Note - Along the shoreline in San Francisco and Marin Counties, Commission's jurisdiction extends 100 feet inland and does not include any area within the jurisdiction of the California Coastal Commission west of the line between Point Bonita and Point Lobos.

Appearance and Design - Housing density in hills of Sausalito, Tiburon, and Belvedere should respect the topography; cluster development appropriate in some areas.

Sausalito - Commuter Ferry Terminal - To minimize traffic and parking problem, should be served by mass transit or else designed to serve Sausalito and Mill Valley only with other terminals serving rest of Marin.



Amended September 2006

San Francisco Bay Plan
Reprinted January 2007

Plan Map 4

Central Bay North

PLAN MAP NOTES (CONT.)

Tiburon - Ferry Terminals - To minimize traffic and parking problems, terminals should be served by mass transit.

Golden Gate National Recreation Area - A complex of parklands, including Forts Baker, Barry, Point, Mason, and Miley, The Presidio of San Francisco, Lands End and Alcatraz Island within San Francisco Bay managed by the Golden Gate National Recreation Area and the Presidio Trust for recreational and other purposes consistent with National Park Service and Presidio Trust management policies. The Golden Gate National Recreation Area is the largest urban national park in the world. The total park area is 76,500 acres of land and water with approximately 28 miles of coastline. Within its boundaries are ocean and Bay beaches, dramatic headlands, redwood forest, lagoons, and historic military properties.

Alcatraz Island - Protect the integrity and resources of the Alcatraz Historic District. Access by boat only. Protect wildlife values. Preserve and interpret military, natural and cultural history of the island.

Fort Baker - Protect the integrity and resources of the Fort Baker National Register Historic District. Protect and preserve the coastal habitats, which support Bay-related endangered species, such as the California Brown Pelican, Mission Blue Butterfly and the least tern. Preserve offshore eelgrass beds and protect herring spawning zone. Encourage public environmental education facilities and programs. Encourage water-oriented recreation, including mooring facilities for transient recreational boats and small watercraft such as kayaks and sailboards. If the Coast Guard leaves Fort Baker, the buildings and land should be redeveloped for water-oriented recreation and public use.

Marin Headlands - Preserve and protect rugged character, especially on Golden Gate and Pacific Coast sides. Limit access to water (at coves) to foot trails.

Fort Mason - Continue to manage as National Park, consistent with its status as a National Historic Landmark. Maintain compatible use of buildings and provide continuous shoreline access.

The Presidio of San Francisco - Golden Gate National Recreation Area - Develop and manage the area within the jurisdiction of the National Park Service for open space and water-oriented recreation, as described in the National Park Service's general management plan. Protect Crissy Field marsh and evaluate the need for expansion and improvement of the marsh. If scientific studies indicate that the marsh should be expanded to improve its functions and habitat values within the jurisdiction of the National Park Service, the Crissy Field marsh expansion should be balanced with the protection of cultural resources and recreation uses. Preserve the existing beach for water-oriented recreation.

The Presidio of San Francisco - Golden Gate National Recreation Area - Develop the area of The Presidio of San Francisco within the jurisdiction of the Presidio Trust (Area B) as called for in the Trust's general management plan. If scientific studies indicate that Crissy Field marsh should be expanded to improve its functions and habitat values within the jurisdiction of the Presidio Trust, the marsh expansion should be balanced with the protection of cultural resources and recreation uses. Any alterations to Doyle Drive should preserve recreation opportunities within the waterfront park priority use area and preserve existing natural and cultural values or their restoration potential.

Fort Miley, Fort Point and Lands End - Preserve the Coastal and Bay Trail segments, protect dramatic vistas of the Golden Gate and allow appropriate visitor serving commercial uses. Preserve and interpret historic military structures.

Amended September 2006

Plan Map 4

Central Bay North

PLAN MAP NOTES (CONT.)

Shoreline Parks - Shoreline parks could be built in several areas between existing or proposed shoreline roads and the shore from Tiburon Peninsula to Point San Pedro. Further study needed.

San Quentin State Penitentiary - Possible Commuter Ferry Terminal - If and when not needed by the State of California for a prison facility, a portion of the site should be considered for a commuter ferry terminal.

Proposed Marin Baylands National Wildlife Refuge - The U.S. Fish and Wildlife Service proposes to include tidal marsh, seasonal marsh and uplands in a national wildlife refuge located on San Francisco Bay from the City of San Rafael to an area south of the city of Mill Valley in Marin County. The proposed wildlife refuge would be in accord with Bay Plan policies.

San Francisco Bay National Estuarine Research Reserve (China Camp State Park) - One of two sites in the Bay, the other being Rush Ranch Open Space Preserve, with one additional site in the Delta, named Browns Island Regional Shoreline. These sites are part of a federal-state cooperative scientific research and education program that is part of a national system of estuarine research reserves. The Commission supports the program as a member of the Management Advisory Board.

Proposed Alameda National Wildlife Refuge - The U.S. Fish and Wildlife Service proposes to include tidal marsh and a portion of the former Naval Air Station Alameda in a national wildlife refuge located at the western end of Alameda. The proposed national wildlife refuge would be in accord with Bay Plan policies.

Yerba Buena Island - If public trust ownership rights are exchanged between lands on Treasure Island and Yerba Buena Island, the lands thereby encumbered by the trust on Yerba Buena Island will have been found by the State Lands Commission to be useful for public trust purposes. In addition, substantial water-oriented recreation benefits should be provided.

San Francisco Bay Area Water Trail - Pursuant to state legislation, the Commission, in partnership with the State Coastal Conservancy, Association of Bay Area Governments and interested parties, is preparing a San Francisco Bay Area Water Trail plan. The Water Trail will provide a series of linked landing and launching sites around the Bay for human-powered boats and beachable sail craft, and provide for diverse, water-accessible overnight accommodations, including camping.

Amended September 2006

San Francisco Bay Plan
Reprinted January 2007

Plan Map 4

Bay Plan Policies and Commission Suggestions

BAY PLAN POLICIES

- 1 **Wilson Point Beach and Park** - Preserve rugged character of point. Provide safe, easy pedestrian access. Some fill may be needed. Protect and provide public access to shellfish areas.
- 2 **Point Pinole Regional Shoreline** - Preserve regional park, trails, fishing pier, picnic facilities, transit access, active play areas, historical and cultural resources and wetlands. Provide wildlife compatible recreation. Potential water trail campsite. Preserve and interpret natural features and cultural and historic resources. Allow improvement of Goodrick Avenue that is compatible with recreation and conservation for access to inland development.
- 3 **West Contra Costa Sanitary Landfill** - Proposed Park. Give consideration to beach development. Some fill may be needed. Preserve wildlife and habitat values. Complete Bay Trail.
- 4 **Point San Pablo Peninsula** - Create a regional open space and park facility. Limited commercial development at Point Molate should be compatible with proposed regional park.
- 5 **The Brothers** - Preserve islands and lighthouse. Access by boat only.
- 6 **Point San Pablo Yacht Harbor to Point Richmond** - Develop the Bay Trail as a multi-use trail.
- 7 **Former Naval Fuel Depot Point Molate** - Develop for park use. Landward of Western Drive should be developed consistent with recreation policy 4-b. Provide trail system linking shoreline park areas and vista points in hillside open space areas. Provide public access to historical district with interpretation of this resource. The Point Molate Pier should be re-used for water-oriented recreation and incidental commercial recreation. Encourage water-oriented recreation, including mooring facilities for transient recreational boats, excursion craft and small water craft. Protect existing eelgrass beds.
- 8 **Castro Rocks** - Protect harbor seal haul-out and pupping site where harbor seals rest, give birth and nurse their young.
- 9 **Red Rock** - Protect wildlife values.
- 10 **Miller/Knox Regional Shoreline** - Preserve vistas, picnic areas, trails, wildlife values, Ferry Point Pier and Keller Beach. Protect and provide public access to shellfish beds offshore. Provide signage regarding fish consumption advisories for anglers.
- 11 **Port of Richmond** - See Seaport Plan. Some fill may be needed.
- 12 **South Richmond Shoreline Special Area Plan** - See special area plan for detailed planning guidelines for the shoreline between Shipyard Three and the southeastern border of the City of Richmond.
- 13 **Brooks Island Regional Preserve** - Preserve island character. Access by boat only. Protect wildlife values. Protect and provide public access to shellfish areas offshore.
- 14 **Berkeley Waterfront - Cesar Chavez Park** - Preserve marina, beach, small boat launch, windsurfing access, fishing pier, interpretive center and multi-use trails. Possible ferry terminal. Allow if compatible with park and marina use; serve with bus public transit to reduce traffic and parking needs. Provide signage regarding fish consumption advisories for anglers.
- 15 **Eastshore State Park** - Develop park from Bay Bridge to Marina Bay in Richmond for multiple uses, including recreation, wildlife and aquatic life protection. Protect wildlife and aquatic life values at sites such as Emeryville Crescent, Hoffman Marsh and Albany Mudflats. Provide signage regarding fish consumption advisories for anglers.
- 17 No roadway in Bay west of present shoreline.
- 18 **Gateway Shoreline Park** - Develop gateway park at Bay Bridge touchdown with gracious access to the Bay Bridge. Incorporate viewing, picnicking, non-motorized small boat launching and interpretation of current and historic transportation infrastructure and natural and cultural factors. Protect eelgrass beds and nearby endangered species habitats. Provide signage regarding fish consumption advisories for anglers.
- 19 **Oakland Port Area** - See Seaport Plan. Redevelop Outer, Middle, and Inner Harbors for modern marine terminals. Some fill may be needed. No fill that would impair ship navigation should be allowed in any area needed for such navigation.
- 20 **Middle Harbor Shoreline Park** - Preserve industrial character of park. Preserve fishing access, picnic facilities, beach, historic features and community gathering and entertainment venues. Provide interpretation of port operations, historic and cultural factors. Provide non-motorized small boat access. Protect eelgrass beds. Provide health and safety information to anglers. Preserve vistas. Provide signage regarding fish consumption advisories for anglers.
- 21 **Harbor Seal Haul-Out** - Protect harbor seal haul-out and pupping site where harbor seals rest, give birth and nurse their young. Projects allowed only if protective of harbor seals and other sensitive wildlife.
- 22 **Treasure Island** - When no longer owned or controlled by the federal government, redevelop for public use. Provide continuous public access to Bay in a manner protective of sensitive wildlife. Provide parking and water access for users of non-motorized small boats, including at north end of the Island. Develop a system of linked open spaces, including a large open space at the northern end of the island.

Plan Map 4

Bay Plan Policies and Commission Suggestions

BAY PLAN POLICIES (cont.)

- 23 **Yerba Buena Island - South of Bay Bridge** - When no longer owned or controlled by the federal government, redevelop for recreational use. Protect harbor seal haul-out and pupping site where harbor seals rest, give birth and nurse their young. Projects allowed only if protective of harbor seals and other sensitive wildlife.
- 24 **Yerba Buena and Treasure Islands - Clipper Cove** - Expand marina and other water-oriented recreation uses, provide water access for small water craft, such as kayaks, and for swimming. Preserve beaches and eelgrass beds.
- 25 **Yerba Buena Island North of Bay Bridge** - Provide: (1) a large public open space at the center of Yerba Buena Island; (2) a large public open space on the plateau on the eastern peninsula, adjacent to and beneath the eastern span of the San Francisco-Oakland Bay Bridge; and (3) a linked system of trails near the shoreline and at the upper elevations that connect vista points and open spaces. Vista points should provide views of the Bay Bridge, San Francisco Skyline and other important Central Bay features. The remainder of the island upland of the shoreline band may be developed for other uses consistent with Bay Plan recreation policy 4-b, and with the applicable public trust provisions and statutes.
- 26 **San Francisco Waterfront Special Area Plan** - See special area plan for detailed planning guidelines for the shoreline between the east side of the Hyde Street Pier and the south side of India Basin.
- 27 **Fisherman's Wharf** - Improve and expand commercial fishing support facilities. Enhance public access to and economic value of Fisherman's Wharf area by encouraging development of a public fish market.
- 28 **Golden Gate Bridge** - Encourage improved public transportation. No second deck or new crossing for automobiles.
- 29 **Harbor Seal Haul-Out** - Protect harbor seal haul-out and pupping site where harbor seals rest, give birth and nurse their young. Projects allowed only if protective of harbor seals and other sensitive wildlife.
- 30 **Richardson Bay Special Area Plan** - See Special Area Plan for detailed planning policies for the water area and shoreline north of a line drawn between Cavallo Point and Point Tiburon.
- 31 **Angel Island State Park** - Use only for camping, picnicking, water-oriented recreation. Access by boat only. Preserve boat slips and mooring buoys at Ayala Cove. No commercial uses except for convenience needs of park visitors. Preserve and interpret cultural, historical and natural features of the island. Protect harbor seal haul-out and pupping site where harbor seals rest, give birth and nurse their young. Projects allowed only if protective of harbor seals and other sensitive wildlife.
- 32 **Romberg Tiburon Center for Environmental Studies** - If and when not needed by San Francisco State University, acquire and develop for park. Expansion of Romberg Tiburon Center should be compatible with park use. Romberg Tiburon Center lands outside of the shoreline band should be developed consistent with recreation policy 4-b. Provide public access through the site to the shoreline.
- 33 Protect and provide public access to shellfish areas offshore.
- 34 **Harbor Seal Haul-Out** - Protect harbor seal haul-out and pupping site where harbor seals rest, give birth and nurse their young. Projects allowed only if protective of harbor seals and other sensitive wildlife.
- 35 **Point San Quentin to Point San Pedro** - In connection with shoreline parks and scenic drives, develop system of riding and hiking trails.
- 36 **Marin Islands National Wildlife Refuge and State Ecological Reserve** - Protect wildlife values. Onshore development should be compatible with wildlife dependent uses. Avoid significant adverse impacts on wildlife, including the regionally significant black-crowned night heron rookery where herons nest and raise their young.
- 37 **The Sisters** - Protect harbor seal haul-out and pupping site where harbor seals rest, give birth and nurse their young. Projects allowed only if protective of harbor seals and other sensitive wildlife.
- 38 **Rat Rock** - Preserve island; no development. Protect wildlife values.
- 39 **China Camp State Park** - Preserve continuous shoreline recreational area, including beaches, windsurfing access, picnic areas, fishing piers, riding and hiking trails, camping, natural, historical and cultural resources and non-motorized small boat landing and launching. Provide wildlife-compatible recreational opportunities, including natural, historical and cultural interpretation and wildlife viewing.
- 40 **China Camp State Park, San Francisco Bay National Estuarine Research Reserve** - Continue federal-state scientific research and education program, part of the national system of estuarine research reserves.
- 41 Protect and provide public access to shellfish beds offshore.
- 42 **Regional Restoration Goal for Central Bay** - Protect and restore tidal marsh, seasonal wetlands, beaches, dunes and islands. Natural salt ponds should be restored on the East Bay shoreline. Shallow subtidal areas (including eelgrass beds) should be conserved and enhanced. Wherever possible tidal marsh habitats should be restored, particularly at the mouths of streams where they enter the Bay and at the upper reach of dead-end sloughs. Encourage tidal marsh restoration in urban areas. See the Baylands Ecosystem Habitat Goals report for more information.

Plan Map 4

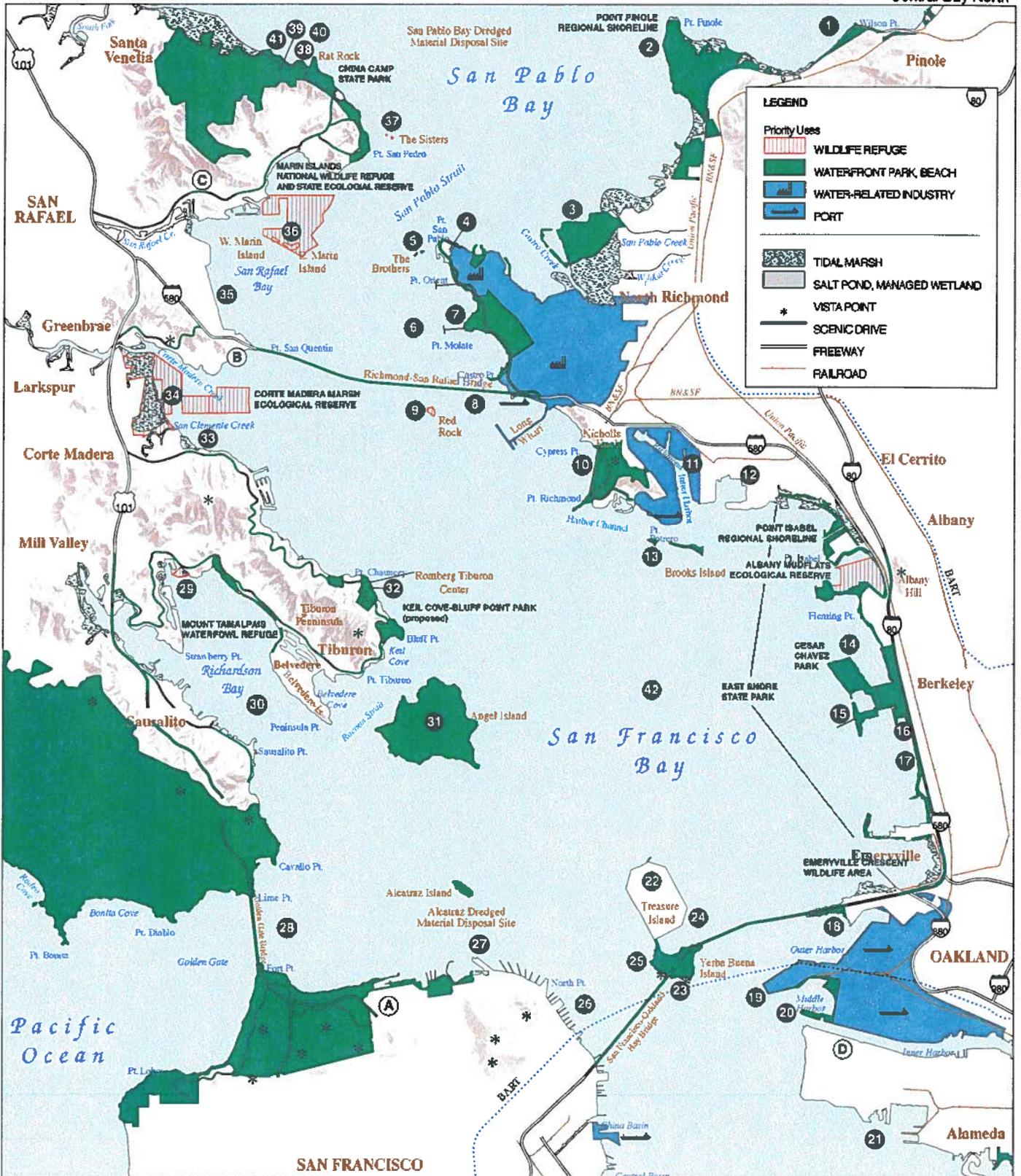
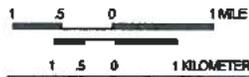
Bay Plan Policies and Commission Suggestions

COMMISSION SUGGESTIONS

- (A) Possible scenic transit system along waterfront from Ocean Beach to China Basin.
- (B) If and when not needed by the State of California for a prison facility, a portion of the site should be considered for a possible commuter ferry terminal.
- (C) San Pedro Mountain - Develop vista points along ridge.
- (D) Possible reuse of dredged material at former NAS Alameda.

Plan Map 4

Central Bay North



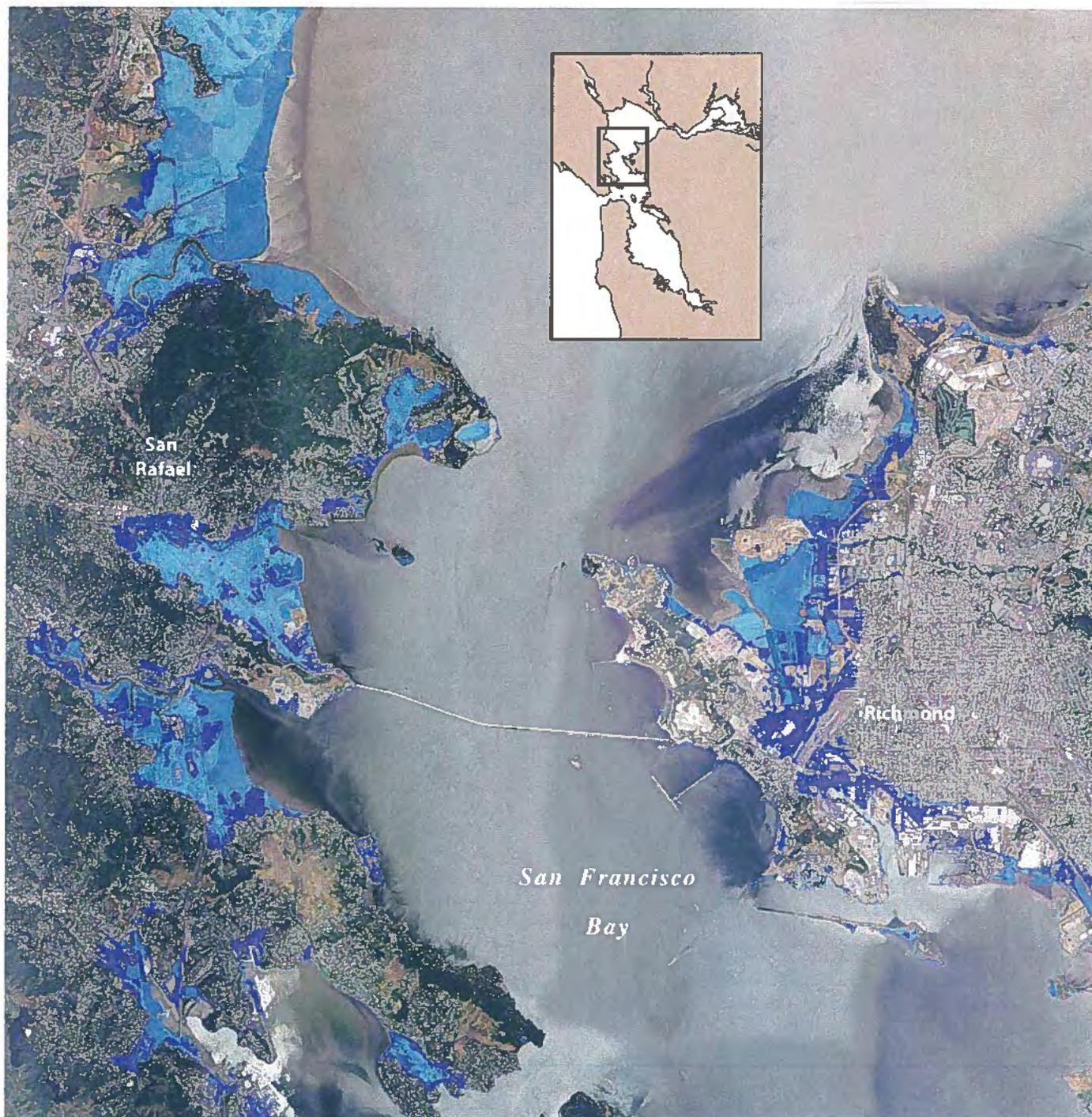


San Francisco Bay
Conservation and Development Commission

SHORELINE AREAS VULNERABLE TO SEA LEVEL RISE: CENTRAL BAY NORTH

-  Area vulnerable to an approximate 16 inch sea level rise
-  Area vulnerable to an approximate 55 inch sea level rise

0 1.5 3 MILES



SOURCE: Inundation data from Knowles, 2008. Additional salt pond elevation data by Siegel and Bachard, 2002. Aerial imagery is NAIP 2005 data.

DISCLAIMER: Inundation data does not account for existing shoreline protection or wave activity. These maps are for informational purposes only. Users, by their use, agree to hold harmless and blameless the State of California and its representatives and its agents for any liability associated with its use in any form. The maps and data shall not be used to assess actual coastal hazards, insurance requirements, or property values or be used in lieu of Flood Insurance Rate Maps issued by the Federal Emergency Management Agency (FEMA).

**LETTER 2: San Francisco Bay Conservation and Development Commission,
Timothy Doherty****Response to Comment 2-1**

This comment contains introductory material and describes the responsibilities of the BCDC. The comment does not address any environmental issues or the adequacy of the Draft EIR; therefore, the comment is noted without response.

Response to Comment 2-2

This comment pertains to the maintenance and improvement of public access to the shoreline and waters of the Bay. Numerous policies and actions in the draft General Plan promote enhanced access to and along the shoreline. Specific examples include Policy CR1.6 (Comprehensive Network of Multi-Use Trails) and Action CR1.C (Bicycle and Pedestrian Plans). Policy CR1.6 looks to develop a comprehensive network of multi-use trails to improve bicycle and pedestrian connections to various amenities located throughout the City and region. Shoreline amenities include Point Isabel, the San Francisco Bay Trail, Point San Pablo, and Point Pinole. Through Action CR1.C the City will develop and implement citywide bicycle and pedestrian master plans to connect the City's inland and shoreline areas.

This comment also references the *McAteer-Petris Act* which states that development projects should provide the maximum feasible public access to the shoreline and waters of the San Francisco Bay. Individual development projects that could result from implementation of the General Plan in shoreline areas are currently unknown. Those projects would be required to comply with the requirements of the *McAteer-Petris Act*. As individual development projects go through development review, consistency with all applicable land use policies would be evaluated.

Response to Comment 2-3

This comment pertains to potential inconsistent uses with Bay Plan priority use areas, citing Figure 2.6 (San Pablo Peninsula), which depicts "Business/Light Industrial", "Low Density", and "Neighborhood Mixed Use" in areas designated as "Waterfront Park" and "Beach" in Bay Plan Map 4. The comment also states that the General Plan should contain policies to promote water-oriented activities. The proposed General Plan land use designations in Richmond's shoreline areas would not preclude development of water-oriented recreational uses. General Plan goals include developing vibrant waterfront areas that take advantage of the Bay waters and improving shoreline neighborhoods, open space, and recreational opportunities. Open space areas, marinas, and beaches could be included under any of the proposed land use designations. Numerous General Plan policies promote public access to the shoreline (see Response to Comment 2-2). It should also be noted that several private water-oriented recreational facilities already exist in Richmond, including the Marina Bay Yacht Harbor, Richmond Yacht Club Harbor, and Red Rock Marina, as noted on page 3.11-6 of the Draft EIR. Consistency of individual development projects would require review for consistency with all applicable land use plans, including the San Francisco Bay Plan.

Response to Comment 2-4

This comment reiterates findings of the Bay Plan with regard to pressure to fill the Bay for surface transportation projects. The Circulation Element of the Richmond General Plan seeks to make conditions safer and more attractive for all modes of mobility, including travel by foot and bicycle, public transit, and automobiles. The draft General Plan's transportation policies encourage multiple modes of travel, enhance circulation linkages, support an enhanced and expanded public transit system to improve mobility options for all residents and visitors, and develop a comprehensive network of multi-use trails to enhance bicycle and pedestrian connectivity throughout the City and the region. As noted on page 4.47 of the draft General Plan, high-priority capital projects related to circulation include: railroad grade separations at Carlson and Cutting boulevards; Richmond Greenway Phases II and III; Marina Bay ferry terminal; Regatta Boulevard extension into Campus Bay; Downtown area and Macdonald Avenue improvements; 23rd Street streetscape improvements; San Pablo Avenue streetscape improvements; North Richmond streetscape improvements; Harbour Way streetscape improvements; and freeway interchange improvements.

Through implementing actions, the City will develop access and mobility criteria for capital improvement projects and new development to enhance physical access to community facilities, schools, parks, shoreline open spaces, historical destinations, commercial and employment centers, and transit hubs. These criteria would address access by walking, bicycling, and public transit as well as vehicular access (General Plan, p. 4.52). Numerous other policies and implementing actions further the General Plan's goals of improving circulation for pedestrians, bicyclists, and vehicles and encouraging multiple modes of travel. While General Plan policies do not specifically address the goal of reducing pressure to fill the Bay for surface transportation projects, all of these policies and implementing actions would "improve the efficiency and increase the capacity of existing transportation facilities and services, increasing access to public transit, providing safe and convenient public pathways for non-motorized forms of travel (e.g., bicycles, pedestrian)" and "maintain and enhance visual and physical access to the Bay and along the Bay shoreline," consistent with the transportation findings of the Bay Plan.

Response to Comment 2-5

This comment pertains to sea level rise and safety of fills, noting that recent data have shown that the increase in sea level rise is projected to be greater than previously forecast.

A memorandum prepared by the CALFED Independent Science Board (2007), a committee consisting of nine respected academics, examined the array of sea level rise projections available in published reports and, based on current scientific understanding, advised the CALFED Science Program about which projections are most appropriate for incorporating into ongoing planning for the California Delta. The report does not include any modeling or stand-alone analysis. However, as part of the Delta Vision strategy that is being developed as a guidance and policy document for the California Department of Water Resources, it has been widely quoted as a basis for flood planning in

the San Francisco Bay Area. The conclusions of the Independent Science Board are summarized as follows:¹

“The board recommends that planning efforts use three approaches to incorporate sea level rise uncertainty.

First, given the inability of current physical models to accurately simulate historic and future sea level rise, until future model refinements are available, it is prudent to use existing empirically based models for short to medium term planning purposes. The most recent empirical models project a midrange rise this century of 28 to 39 inches, with a full range of variability of 20 to 55 inches. It is important to acknowledge that these empirical models also do not include dynamical instability of ice sheets and likely underestimate long-term sea level rise.

Secondly, the Board recommends adopting a concept that the scientific and engineering community has been advocating for flood management for some time. This involves developing a system that cannot only withstand a design sea level rise, but also minimizes damage and loss of life for low-probability events or unforeseen circumstances that exceed design standards.

Finally, the Board recommends the specific incorporation of the potential for higher-than-expected sea level rise rates into long-term infrastructure planning and design. In this way, options that can be efficiently adapted to the potential for significantly higher sea level rise over the next century could be favored over those that use “fixed” targets for design.”

To address the recommended strategy, including the variability of potential sea level rise, text changes have been made to the Draft EIR to provide additional discussion and new mitigation measures, as follows:

Following page 3.9-9, a new Figure 3.9-2A has been inserted (see Chapter 2 of this Final EIR).

The following text is to be inserted on page 3.9-38, following the second paragraph:

The traditional approach to designing coastal developments is as specified by FEMA and local agency guidance policies, which is to set interior grades throughout a community such that finished floor elevations for buildings (e.g., the elevation of the first floor of inhabitable space) would be at or above the present-day Base Flood Elevation (BFE) (e.g., the water surface elevation that would occur during a 100-year flood event). Improvements along the shoreline are required only to protect nearby structures or facilities against storm wave run-up and overtopping during a flood event that has a one percent chance of occurring, as specified by FEMA (sometimes referred to as the “One Percent Annual Chance of Occurrence Event”).

1 Moffatt and Nichol, *Addressing Sea Level Rise for the Treasure Island Development Project*, July 2008.

The modest amount of sea level rise that has been estimated by the National Oceanic and Atmospheric Administration (NOAA) based on historical observations is about 8 inches over the past century, which is consistent with the estimates that traditional coastal developments have included in their design. However, based on climate change studies over the past two decades, the rate of sea level rise appears to be accelerating and climate change models are predicting greater rates of sea level rise in the future in response to warmer temperatures and melting ice caps.

Executive Order S-13-08, which was issued in November 2008, recognizes the impact that sea level rise may have on coastal development in California. The executive order directs the California Resources Agency to request that the National Academy of Sciences convene an independent panel to complete the first California Sea Level Rise Assessment report. The report, which is anticipated to be completed in 2012, would advise how California communities should plan for sea level rise.

The San Francisco Bay Conservation and Development Commission (BCDC), in a recently released study (BCDC 2009), is recommending that Bayfront developments consider a 16-inch sea level rise value by 2050 (mid-term) and a 55-inch sea level rise value by 2100 (long-term). The California State Coastal Conservancy (SCC) has issued a similar guidance policy (SCC 2009) with the same mid-term and long-term values. These values were based on work by the California Climate Change Center (CCCC 2006).

Although no specific design criteria related to sea level rise have been formally adopted by federal, state, or local agencies, any development projects in the potential inundation area must be designed to account for sea level rise as part of the planning process to prevent future flooding or loss of infrastructure resulting from shoreline erosion. For a long-term planning horizon (for example, beyond 50 years from now), the evolving nature of climate change and sea level rise science needs to be recognized, and no single sea level rise value should be relied upon at this point in time. Instead, an adaptive management strategy should be put in place such that improvements for sea level rise beyond the mid-term planning horizon can be designed and implemented as sea levels rise.

Development Areas

In accordance with MM 3.9-8(a), all buildings and entrances to subterranean parking and streets for projects that are located within the sea level rise inundation zone as identified on Map 8.1 in Chapter 8 of the General Plan would be set at an elevation that is 36 inches higher than the existing BFE. This 36-inch sea level rise allowance, plus a freeboard of 6 inches, would be used for finished floor elevations of all buildings. This would ensure that even if no shoreline protection improvements are undertaken, or in the event of a slope failure along the shoreline, neither buildings nor transportation infrastructure would be flooded when water levels rise 42 inches higher than current BFE. Additionally, this allowance provides subterranean parking a minimum of approximately 36 inches between parking finish floor and present groundwater levels. This increase in elevation would provide

flood protection beyond the 2080 time frame according to the most aggressive sea level rise, and well beyond 2100 according to the highest IPCC projection.

Adaptation Strategy

As a part of MM 3.9-8(b), a project-specific sea level rise adaptation strategy would be required for all development projects within the sea level rise inundation zone to provide guidance, identify relevant stakeholders, define appropriate management actions and triggers, and establish a project-specific funding mechanism. It would be administered by an entity created for the project that would have taxing authority and funding responsibility.

The strategy envisions incorporating ongoing measurements of sea level rise from the scientific community into a Monitoring Program that would guide the decision-making process for future improvements. The Monitoring Program would include protocols to compare observed changes in sea level with the as-built perimeter elevations, using updates of changes in sea level provided by the NOAA, National Geodetic Survey, or other appropriate agencies. The Monitoring Program would be administered by a public entity with similar funding responsibilities as a Community Facilities District (CFD). This entity would guide the decision-making process for implementation of future improvements, such as raising the perimeter.

The Adaptive Management Plan would define specific triggers for action, based on observed changes in sea level arising from ongoing measurements obtained during the Monitoring Program. The Plan would require 5- or 10-year updates based on observed changes in sea levels, as well as any other effects of climate change (i.e., more or less extreme storm wave conditions). The initial strategy, as well as any updates, would be coordinated with relevant stakeholders, including the City of Richmond and Contra Costa County, State Parks, FEMA, and BCDC.

Future improvements that may be needed to respond to sea level rise are as follows:

- When the mean sea level rises 16 inches above existing values, the crest elevation of the shoreline protection system would be raised 20 inches and storm drain system pumps would be installed; and
- When the mean sea level rises 36 inches above existing values, the shoreline protection system would be improved to act as a flood barrier

Potential Adaptation Measures

The proposed development setback distances would enable a variety of future perimeter modifications to accommodate at least 55 inches, with the ability to accommodate sea level rise even higher than 55 inches. The adaptive management strategy described above is based on elevation and structural characteristics of the shoreline along city boundaries. The varied nature of this shoreline, ranging from protected and unprotected slopes, beaches, seawalls, and wharves, results in a multitude of potential adaptive management measures.

Perimeter adaptations would likely include a combination of the following components in response to varying land uses and wave run-up characteristics at different locations around individual project sites:

- Raising the shoreline embankment in place to function as a storm surge or flood barrier;
- Constructing a series of embankments of increasing heights away from the water. Land between sets of embankments could hold periodic wave overtopping that “drain out” between high tides;
- Constructing sea walls; and
- Where feasible, “lay back” the shoreline to create cobblestone beaches or tidal marshes that limit wave run-up and overtopping, rather than increasing embankment heights

Mitigation measure MM 3.9-8(a) provides for the protection of individual project sites from sea level rise over the life of the project by requiring the design to be adaptable to higher levels of sea level rise by leaving a significant development setback such that future improvements can be made. A funding source to construct these improvements is required by MM 3.9-8(b) and would also be part of the Adaptation Plan.

Page 3.9-36, the following text has been amended:

Mitigation Measure

~~None required.~~

3.9-8 a. For all projects within the inundation zone for maximum sea level rise as identified in Map 8.1 of Chapter 8 of the General Plan, the project site shall be graded such that finished floor elevations are 3.5 feet above the Base Flood Elevation (BFE), and streets and pads are 3 feet above BFE to allow for future sea level rise, thereby elevating all structures above the existing and potential future flood hazard area.

3.9-8 b. For all projects within the inundation zone for maximum sea level rise as identified in Map 8.1 of the General Plan, shoreline and public access improvements shall be designed to allow future increases in elevation along the shoreline edge to keep up with higher sea level rise values, should they occur. Design elements shall include providing adequate setbacks to allow for future elevation increases of at least 3 feet from the existing elevation along the shoreline. Before a Small Lot Final Map is approved, the project Applicant must petition the appropriate governing body to form (or annex into if appropriate) and administer a special assessment district or other funding mechanism to finance and construct future improvements necessary to ensure that the shoreline, public facilities, and public access improvements will be protected should sea level rise

exceed 16 inches at the perimeter of the project. Prior to the sale of the first residential unit or lease of the first commercial or industrial space, the legislative body shall have acted upon the petition to include the property within the district boundary. The newly formed district shall also administer a Monitoring and Adaptive Management Plan to monitor sea level and implement and maintain the protective improvements. All improvements shall be subject to approval by the City of Richmond planning and public works staff prior to issuance of building or grading permits. These improvements shall include, but are not limited to, one or more of the following:

- Construction of a shoreline protection system that is initially built to accommodate a mid-term rise in sea level of 16 inches, with a design that is adaptable to meet higher than anticipated values in the mid-term, as well as for the long-term.
- Construction of a storm drainage system that is initially built to accommodate a mid-term rise in sea levels of 16 inches, with a design that is adaptable to meet higher than anticipated sea level rise values (similar to the first bullet).
- Construction of buildings and vital transportation infrastructure at elevations that would not be exceeded by flood waters, even if the shoreline protection does not function, for existing conditions and over a longer-term as compared to the two above.

Page 3.9-38, text at the end of the last paragraph has been amended as follows:

The proposed General Plan includes policies for preventing flood risks and adaptive management for future sea level rise that reduces potential impacts to less-than-significant levels. Project-specific mitigation measures are included for all projects that are within the 55-inch inundation zone identified on General Plan Map 8.1. The policies provide for an adaptive management strategy to accommodate potential sea level rise, protect future structures, and preserve public safety. As such, the proposed General Plan would not contribute considerably to cumulative sea level rise impacts.

Response to Comment 2-6

As noted in the comment, the San Francisco Bay Conservation and Development Commission (BCDC), in a recently released study (BCDC 2009), is recommending that Bayfront developments consider a 16-inch sea level rise value by 2050 (mid-term) and a 55-inch sea level rise value by 2100 (long-term). The California State Coastal Conservancy (SCC) has issued a similar guidance policy (SCC 2009) with the same mid-term and long-term values. These values were based on work by the California Climate Change Center (CCCC 2006).

The Draft EIR has been amended to include a more comprehensive description of the potential sea level rise to the 55 inches in 2100 that is conservatively predicted by recent data (see Response to Comment 2-5). The Draft EIR as revised also includes mitigation measures that would apply to all future development projects within the 55-inch potential inundation zone as depicted on new Figure

3.9-2A (Potential Sea Level Rise) in the EIR and Map 8.1 (Potential Sea Level Rise) in the General Plan. In addition, General Plan Policy EC6.3 (Adapting to Climate Change) has been amended as follows:

Prepare for and adapt to future impacts of changing weather patterns and sea level fluctuations. Develop a climate action plan and work with regional regulatory agencies and local property owners to develop strategies aimed at reducing the potential impacts of climate change and sea level fluctuations. All projects proposed for construction within 300 feet of the existing shoreline (high tide) will include an evaluation of the impact of a one meter rise in sea level. Protect neighborhoods, infrastructure and facilities, the shoreline and natural resources from the impacts of climate change. Require new developments to include an evaluation of climate change impacts in the project review process. Shoreline and public access improvements shall be designed to allow future increases in elevation along the shoreline edge to keep up with higher sea level rise, should it occur. Design elements shall include adequate setbacks to allow for future elevation increases of at least three feet from the existing elevation along the shoreline.

Action EC6.G (Adaptive Management Plan) has been added on page 8.55 of the General Plan:

The City shall develop an Adaptation Strategy that would include preparing an Adaptive Management Plan that outlines an institutional framework, monitoring triggers, and a decision-making process, that includes a funding mechanism for improvements necessary to adapt to higher-than-anticipated sea levels. Strategies could include, but would not be limited to:

- Construction of a shoreline protection system, including a storm drainage system, that is initially built to accommodate a mid-term rise in sea level of 16 inches, with a design that is adaptable to meet higher than anticipated values in the mid term, as well as for the long term;
- and
- Construction of buildings and vital transportation infrastructure at elevations that would not be exceeded by flood waters, even if the shoreline protection does not function, for existing conditions and over a longer term as compared to the two above.

The comment further states that the EIR should consider the potential impacts of sea level rise on other components of the document, such as the Transportation and Circulation, Visual Resources, Biological Resources, Hazards, Hydrology and Water Quality, and Parks and Recreation sections. Section 15121 of the CEQA Guidelines state that an EIR is an informational document to inform public agency decision makers and the general public of the significant environmental effects of a project. The environmental setting against which the project's effects are evaluated is existing conditions at the time the EIR is prepared (or the NOP published), not a speculative future condition. CEQA does not require an EIR to include an analysis of a project against potential, future conditions. However, the EIR has included an evaluation of potential sea level rise in Section 4.9 (Hydrology and Water Quality) and provided additional clarifying information in text changes and responses to comments, as well as mitigation measures to reduce the potential effect of sea level rise on future shoreline development. The General Plan and the EIR both address the potential for the effects of sea level rise, and provide for development of an Adaptive Management Plan to respond to new scientific information as it becomes available.

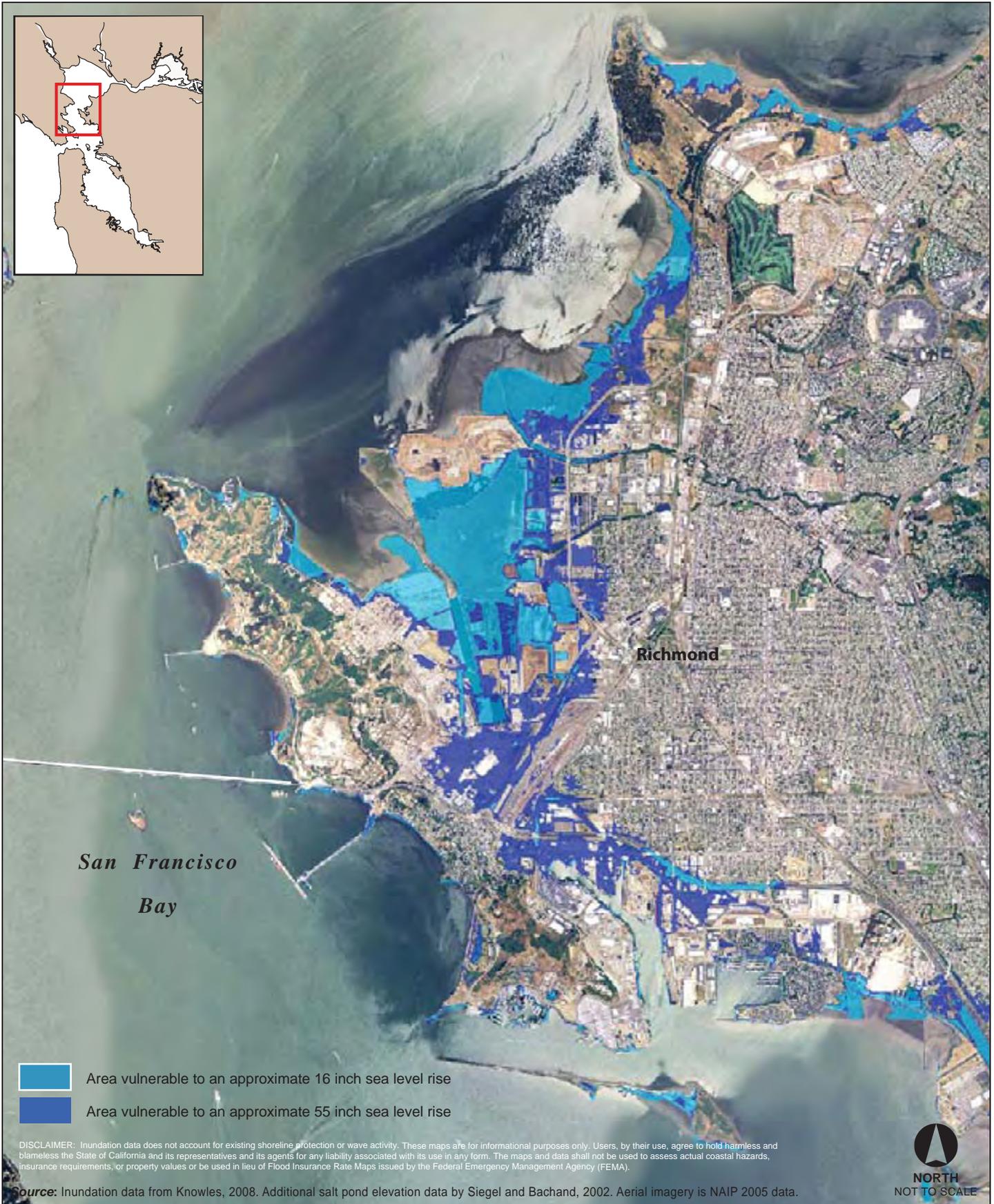


FIGURE 3.9-2A
Potential Sea Level Rise

100018268

Richmond GPU EIR

California Native Plant Society

East Bay Chapter

P O Box 5597, Elmwood Station, Berkeley, CA 94705

March 31, 2011

Hector Rojas, Associate Planner
 City of Richmond Planning and Building Services
 450 Civic Center Plaza
 P. O. Box 4046
 Richmond, CA 94804-1630



Re: The Draft General Plan and Draft EIR on the General Plan for the City of Richmond

Dear Mr. Rojas:

The East Bay Chapter of the California Native Plant Society appreciates the opportunity to comment on the Draft General Plan for the City of Richmond and the Draft EIR for the General Plan. The California Native Plant Society is a statewide non-profit organization. CNPS works hard to protect California's native plant heritage and preserve it for future generations. We promote native plant appreciation, research, education, and conservation through our 5 statewide programs and 33 regional chapters in California. The East Bay Chapter (EBCNPS) covers Alameda and Contra Costa Counties and represents some 1200 members.

3-1

GENERAL CONSIDERATIONS

EBCNPS has published a Guidebook to the Botanical Priority Protection Areas of the East Bay (1). These protection areas (BPPAs) have been selected as those areas within Alameda and Contra Costa Counties that contain high value botanical resources that should be protected. The guidebook was created with the expert advice of many professional botanists to aid city and county planners in locating important native plant species and communities. Two of the 15 BPPAs occur within Richmond: the Richmond Shoreline and Sobrante Ridge. We include as attachments the portions of the guidebook that refer to these areas and recommend that these be referred to in the General Plan. A copy of the guidebook will be delivered to the City Planning Department and should be kept on file for all future planning decisions.

EBCNPS finds that, in general, the Draft General Plan includes a good overall vision of areas of important natural resources within the city that are worthy of protection. These include the large stretches of the shoreline where important plant communities such as tidal marsh can be found. The document also refers to protection of ridgelines and hillsides—in particular, portions of the Sobrante Ridge area where Northern Maritime Chaparral can be found which contains the federally endangered Pallid Manzanita. Riparian zones are also to be protected. The document also contains a list of federal and state-listed protected plant species derived from the California Natural Diversity Database (CNDDDB) that have the potential to occur in the city as well as a list of known



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occurrences. We find these to be very good *starting points* for characterizing the important natural resources that should be protected in any good General Plan.

However, we note some critical deficiencies in the document. In part, these are due to the lack of inclusion of more recent resource plans and documents that should form the foundation for current planning decisions. These include our letter of September 30th, 2009 to the City of Richmond in comment to the GP update (1a). None of the technical information regarding important botanical resources that we included in our letter was incorporated into the current Draft GP. We have referenced these and other important omitted documents at the end of our letter.

Other deficiencies stem from a conflict between the intent and vision of the GP and contemplated decisions. We characterize these deficiencies with the following broad themes. Specific details are called out further below.

Failure to Include Important Biological Resources

The GP and DEIR are silent on the subject of a number of important biological resources that occur within the plan area. These include the following:

Coastal Prairie Grassland Community

Coastal Prairie grassland (also known as Coastal Terrace Prairie) is considered a rare statewide plant community, ranked S3 (2). Examples of good quality Coastal Prairie occur on the San Pablo Peninsula, including at Point Molate (3, see figure 3 on page 13 of document) and at the UC Richmond Field Station (4).

Eelgrass Beds

Another important plant community omitted is the eelgrass beds (*Zostera marina*) that lie in the subtidal zone off the San Pablo Peninsula. These beds constitute the largest remnant population of this important keystone species and support myriad species of fish and wildlife (5) and (6).

Oak Woodlands

Oak woodlands are mentioned in the Biological Resources sections of the document, but the discussion does not address the fact that Contra Costa County does not have on file an approved Oak Woodland Protection Plan—a requirement for receiving funds from the Wildlife Conservation Board of the California Department of Fish and Game for mitigation projects. Oak woodlands do not yet have state protection as native plant communities, but are nonetheless widely considered to be at severe risk for Sudden Oak Death, particularly in coastal areas, and for loss due to residential development. The documents should contain references to these facts and to the Oak Woodland Impacts Mitigation Matrix created by the UC Cooperative Extension which is designed to guide

3-1
(cont.)

3-2



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planners in determining how to mitigate for loss of oak woodlands from development projects (7)

Locally Rare Native Plants

Locally rare plants are also not included. The East Bay Chapter maintains a database of locally rare plants that occur within Richmond (8) (see Lake's list attached). Those that are A-listed are protected by CEQA under Sections 15380 and 15125(a) which address species of local concern and place special emphasis on environmental resources that are rare or unique to a region. These must therefore be included in the GP and the DEIR. Recent botanical surveys done for the FEIR of the Point Molate Mixed-Use Tribal Destination Resource and Casino show maps of those locally rare native plant species that occur on the project site (9, see figure 5 on page 26 of document).

3-2
(cont.)

While the documents call for protection of ridgeline and hillsides in general, there is no mention of protection of the ridgeline and hillsides on the San Pablo Peninsula which constitute some of the most visible and important ridgelines. The view of the San Pablo Peninsula from the Marin shoreline and from the eastern span of the Richmond-San Rafael Bridge affords thousands of people perhaps the finest views of Richmond that can be found.

3-3

There is also no mention of a key, rare natural resource feature—namely, the unbroken transect from the subtidal zone all the way to the ridgetop in portions of the San Pablo Peninsula, including portions of Point Molate. These headlands are one of the most unique features of the Richmond Shoreline and are worthy of protection.

The UC Richmond Field Station also contains some important locally rare plants that are CEQA-protected. We have attached another of Lake's lists specifically for Richmond Field Station. These should be incorporated into the General Plan in the Conservation Element and must be considered in light of any planned development there. (See Attachment #1)

3-4

California Audubon Designated Important Bird Area

Although the documents discuss some of the listed bird species that occur in the project area, they do not mention that the Richmond Shoreline, as part of San Pablo Bay, is a California Audubon designated Important Bird Area (10). Many aquatic birds are drawn to forage in the eelgrass beds, nest and take cover in the tidal marshes, and feed along the shoreline. The GP should include this designation and reference data collected by the Golden Gate Audubon Society (shorebirds censuses as well as the Christmas Bird Count are conducted each year). Finally, the GP should reference the Breeding Bird Atlas of Contra Costa County (11) since there are important data regarding nesting habitat in Richmond.

3-5



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Conflicts Between Planning Vision and Planning Action ation, Berkeley, CA 94705

A second broad theme that emerges in the two documents is a series of critical conflicts between the planning vision that endorses protection of key natural resources and the contemplation of planning action that would damage and destroy these resources. Nowhere is that conflict more apparent than in the portion of the GP that addresses the Change Area 13 for the Point Molate portion of the San Pablo Peninsula. The planning for a casino complex and/or mid-density residential development at Point Molate is in direct contradiction to the vision of the GP to protect shoreline, ridgeline, hillside areas as well as important natural resources that occur there. This change in planning designation would also violate the San Pablo Peninsula Open Space Plan, San Francisco Bay Plan, and the SF Subtidal Habitat Goals Plan.

3-6

In commenting upon the FEIR for the Point Molate Mixed-Use Tribal Destination Resort and Casino, attorneys for the East Bay Regional Park District made the following statements (12):

“In addition, the Project and the FEIR demonstrate a disturbing disregard for the City of Richmond’s General Plan and the Bay Plan administered by the San Francisco Bay Conservation and Development Commission (BCDC). Both of these plans aim to protect the City’s shorelands, especially Point Molate, and to provide for public access to those lands. The Project [and Alternatives A-D and B1] falls short of these goals. It provides only a limited amount of open space and recreation land, and it would place a major casino resort development in the middle of what open space and recreation land it does provide. This scheme is far from the vision of the General Plan and the Bay Plan. The Project’s proponents propose some amendments to the General Plan, but such changes—even if they were sufficient to resolve all of the Project’s inconsistencies—only serve to undermine the integrity of the City’s comprehensive planning efforts.”

The documents also do not call for protection of the Coastal Prairie community and locally rare plants at the UC Richmond Field Station, a significant contradiction between the vision of protecting important shoreline resources and plans for development.

SPECIFIC CONSIDERATIONS

Incomplete Listing of Special Status Species in Sensitive Areas

EBCNPS has significant concerns regarding two specific “Change Areas” designated in the General Plan: “Change Area 13: San Pablo Peninsula Area,” and “Change Area 16: Southern Gateway.” Both of these Change Areas contain sections of EBCNPS’s “Richmond Shoreline Botanical Priority Protection Area” (BPPA) (1). This priority protection area was designated by EBCNPS due to its extremely valuable plant communities, including sensitive coastal terrace prairie. It should therefore be given

3-7



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special consideration in order to protect the special status species and sensitive natural communities of each site.

Change Area 13 has been zoned for medium density residential, marine and waterfront commercial and business/light industrial use. EBCNPS finds that the biological resources located within the boundaries of Change Area 13 are too important to allow such broad language concerning zoning for future development. Instead all future development should be confined to the current development footprint, and the sensitive natural resources avoided. EBCNPS recommends the City review the UC Berkeley growth planning scenarios developed as input to Richmond’s General Plan (13). These scenarios identify 300 acres of infill opportunity that the City could use in lieu of proposed development at Change Area 13.

3-7
(cont.)

Change Area 16 includes the University of California Field Station which contains one of the remaining stands of coastal terrace prairie along the east shore of San Francisco Bay. It is also a site where locally rare plants occur. The General Plan has designated this area as the future site of “a large scale research and development campus” without considering possible impacts to this rare natural community. Development should be planned to avoid the areas with remnant coastal terrace prairie and locally rare plants.

Besides those listed above; the City of Richmond has not considered the myriad of other sensitive plant species and natural communities that occur on these sites. Many of these plant species were not covered in the DEIR, despite the City of Richmond having public records of the species in the Point Molate Mixed Use Tribal Destination Resort and Casino FEIR which was certified by the city on March 8, 2011 (3, see figure 3 on page 13 and figure 5 on page 26 of document). These existing documents which have direct bearing on the General Plan areas have been officially adopted by the City, and contain the most up to date information on biological resources available. Since this biological resource information has already been certified by the City of Richmond, it should be considered as part of the General Plan. EBCNPS requests that the plant communities listed above, and other sensitive plant species listed in the attached protected rare plants list, be added to the General Plan in order to prevent accidental take of rare California resources during future projects in the City of Richmond. EBCNPS would like to remind the City that these locally rare populations are covered in sections 15380 and 15125a of California Environmental Quality Act (CEQA), guidelines which address species of local concern and place special emphasis on environmental resources that are rare or unique to a region.

3-8

Policies vs. Proposed Projects

EBCNPS would also like to address specific discrepancies between policies laid out in the General Plan and proposed projects and land use, which are in direct conflict with those policies.

3-9

Policy LU4.1 on page 3.36 of the General Plan states: “Protect and restore wetlands, native habitats and open space; develop shoreline parks and trails to increase public

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access; encourage recreation and tourism activities; and enhance and showcase historic and cultural resources. Prepare plans that will protect natural and built environments from adverse potential impacts of sea level rise due to climate change.” EBCNPS argues that this policy is contradicted by “Change Area 13: San Pablo Peninsula Area” and “Change Area 16: Southern Gateway,” which have zoned some of the most sensitive and valuable plant communities in Richmond for development. The General Plan must make sense. It must bring contemplated development into compliance with the clear intent of its stated policies. Where other resource plans have given competent, thoughtful guidance (for instance, the San Pablo Peninsula Open Space Plan, the East Bay Regional Park District Master Plan, the San Francisco Bay Plan of BCDC, and the Subtidal Habitat Goals Report) as to how best to protect the region’s natural resources, these must be incorporated not contradicted.

3-9
(cont.)

Policy LU4.3 on page 3.64 of the General Plan states: “Natural habitat is essential to ensuring biodiversity and protecting sensitive biological resources. Protect these areas and work with the California Department of Fish and Game, the San Francisco Bay Regional Water Quality Control Board, the East Bay Regional Park District and other regional agencies to identify areas for special protection and establish appropriate protection measures for these areas.” EBCNPS is one of these regional organizations with specific expertise referred to under this policy and as such, we request that the sensitive plant communities listed in this letter be noted in the General Plan.

3-10

Page 7.11 lists “Key Findings and Recommendations” of the General Plan. Among them is *Finding 1* which states: “Many of the Natural resources in the City are preserved, but some sensitive areas such as wetlands, baylands, marshes, creeks and riparian areas need to be protected and restored.” This finding goes on to mention that shoreline areas and hills are of particular importance. *Finding 1* lists the means of protecting and restoring the City’s natural resources, one of them being “restricting development on sensitive natural resources.” The San Pablo Peninsula area and the UC Richmond Field Station covered under Change Area 13 and 16 respectively contain these sensitive areas, and development should be restricted in both Change Areas accordingly.

3-11

Policy CN1.2 “Local Native Plant Species” on page 7.16 contains a sentence stating: “promote and protect native plant species in natural areas as well as in public landscaping of parks, schools, medians and planter strips.” The plans for the Point Molate area covered in Change Area 13 and the UC Field Station under Change Area 16 neither promote nor protect native plant species. Again, Change Areas in the General Plan must be consistent with the policies already enunciated. These plans should be reconsidered with these sensitive species and communities in mind.

Page 3.4-33 in the DEIR states: “the proposed General Plan would not have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service. This is considered a *less-than-significant impact*.” EBCNPS objects to this evaluation of a *less-than-significant impact* due to the

3-12



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fact that the City did not consider impacts to “coastal terrace prairie” habitat, as described first in our letter to the City on the General Plan Update in 2009 (1a) and later on pages 12-14 of the “Point Molate Mixed Use Tribal Destination Resort and Casino Final Environmental Impact Report” certified by the City on March 8, 2011. All native grassland communities in California are considered rare and are ranked S3 and higher. Any major development contemplated at Point Molate would have significant impacts to coastal terrace prairie as a sensitive natural community, and the General Plan needs to be amended to reflect potential impacts to this overlooked community type. Furthermore, the findings of the Casino EIR noted above qualify any development of the Point Molate area as a “significant impact” under CEQA and therefore subject to the mandatory mitigation measures required. The General Plan must consider this existing information while revising the Biological Resources section of the DEIR.

3-12
(cont.)

The San Francisco Bay Conservation and Development Commission’s (BCDC) “San Francisco Bay Plan,” recommends two policies on page 108 directly relating to the Point San Pablo Peninsula (Change Area 13 under the General Plan), which the EBCNPS supports. Policy 4 refers to the entire Point San Pablo Peninsula stating: *“Create a regional open space and park facility. Limited commercial development at Point Molate should be compatible with the proposed regional park.”* Policy 7 refers to the former naval fuel depot and Point Molate stating: *“Develop for park use. Landward of Western Drive should be developed consistent with recreation policy 4-b. Provide trail system linking shoreline park areas and vista points in hillside open space areas. Provide public access to historical district with interpretation of this resource. The Point Molate Pier should be re-used for water-oriented recreation and incidental commercial recreation. Encourage water-oriented recreation, including mooring facilities for transient recreational boats, excursion craft and small water craft. Protect existing eelgrass beds.”* These Policies created in 2006 are contradicted by plans for development in Change Area 13 in the General Plan document. An effort should be made to align planned uses for the San Pablo Peninsula with the existing general plan of the BCDC.

3-13

The General Plan and DEIR do not mention eelgrass beds as natural resources of concern for the City of Richmond despite the fact that the largest remnant beds lie off the San Pablo Peninsula. The San Francisco Bay Subtidal Goals Report (7) focused on six subtidal habitats, including eelgrass beds. Here are some of the conclusions that are drawn from the report:

“Eelgrass has multiple stressors of concern, including ship traffic which creates wake action and turbidity and major construction which creates sedimentation, freshwater runoff, and turbidity. “

Eelgrass is the only habitat type that the report recommended protecting through habitat reserves, and it recommended that those beds off of San Pablo Peninsula (including Point Molate) be a potential reserve. In addition, the report recommended that new ferry routes, should be located away from existing eelgrass beds.

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Since one of the developments contemplated for Point Molate is a major casino complex with a ferry terminal, it is clear that there would be considerable conflict between planning for major development at Point Molate and the conclusions of such a science-based report. Such a report should be incorporated to guide planning in the General Plan.

↑
3-13
(cont.)

CONCLUSION

EBCNPS believes that Richmond residents value the natural resources of their city and want to develop and grow in ways that are sustainable without having to sacrifice the beauty and vitality of the shoreline and remaining open space. A good General Plan embraces the best hopes of a city's residents and shapes these hopes into achievable goals that can become a source of civic pride. In spite of heavy development and dense urban growth, Richmond remains a treasure trove of native plants and native plant communities that are the natural heritage of the people of Richmond and of the region. We urge the Planning Department to undertake the recommendations that we have offered in the spirit of making the best plan possible.

Please do not hesitate to contact us if you have any questions.

Sincerely,


Laura Baker, Conservation Committee Chair
(510-849-1409)
East Bay Chapter of the California Native Plant Society


Mack Casterman, Conservation Analyst
(510) 734-0335



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East Bay Chapter

P.O. Box 110000, Wood Station, Berkeley, CA 94705

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California Native Plant Society
East Bay Chapter
Conservation Committee

September 30, 2009

Mayor McLaughlin
And
Lori Reese-Brown, Planner
City of Richmond Planning Department
450 Civic Center Plaza
Richmond, CA 94804

RE: City of Richmond General Plan Review

Dear Mayor McLaughlin and the City of Richmond Planning Department:

We appreciate the opportunity to comment on the City of Richmond's General Plan update. The California Native Plant Society is a non-profit organization of more than 10,000 laypersons, professional botanists, and academics organized into 32 chapters throughout California. The Society's mission is to increase the understanding and appreciation of California's native plants and to preserve them in their natural habitat through scientific activities, education, and conservation.

Many of our local members reside in the City of Richmond, therefore the East Bay Chapter of CNPS (EBCNPS) has a long history of volunteerism, advocacy, and conservation in the City. This is our third letter pertaining to this General Plan update. We would like to share our appreciation of the City staff for coordinating a process that is accessible to all its residents and inclusive of all interests. We hope that the City will see the value of this collaborative process and model it in other significant projects such as the Point Molate Casino Resort.

General Considerations

In our experience, every City in the East Bay that has undergone a General Plan Update has simultaneously released an Environmental Impact Report (EIR) for two purposes: 1) the General Plan update is considered a "project" by CEQA standards and it may have associated impacts that require analysis, and 2) the result of analyzing impacts may produce additional, unforeseen constraints on the recommended General Plan. These



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 East Bay Chapter
 Conservation Committee

additional constraints may change the document and present a new set of alternatives that should be considered by the public. For instance, the Point Molate Resort Casino proposal is reflected in this General Plan Update and this represents a significant change to land use than in the previous General Plan. The existing Pt. Molate proposal does qualify as a project and the General Plan should serve as Programmatic Review which needs to be completed before any specific plan is enacted. We believe that the City is required to adhere to CEQA with regard to the correct procedure and review of a General Plan and subsequent specific projects.

Botanical Priority Protection Areas in Richmond

Since the inception of this General Plan update process, EBCNPS has nearly finished a project identifying fifteen (15) areas of outstanding botanical resources that we believe are deserving of regional recognition and protection. The two Botanical Priority Protection Areas (BPPA's) identified in Richmond are 1) the North Richmond shoreline, stretching from Pt. Molate to Point Pinole (with a small remnant area at the UC Richmond Field Station), and 2) remnant maritime chaparral habitat for the federally endangered Pallid manzanita (*Arctostaphylos pallida*) in the eastern portion of the City, near Wildcat Regional Park. Please see our BPPA map that we've attached presenting the outline of these unique conservation opportunities. We hope that the City will consider including a reference to these regionally and nationally important resources and also consider designating these habitat areas as "Conservation Hotspots". The City is free to use the provided map in a manner that will help it achieve its goals.

The Open Space, Recreation, and Agriculture map [Map 2] indicates that most of the area of the City that's mapped for agriculture is in the northern portion of the East Bay hills. These areas are predominantly north and east facing representing some of the cooler habitats where remnant stands of maritime chaparral may exist. We hope that if these lands ever go fallow, there would be equal consideration for restoring potential habitat here as there would be for development on these lands. Additionally, EBCNPS is encouraged that much of the land that we have designated as "Botanical Priority Protection Areas" has some form of protection according to the Priority Conservation Areas map [Map 7.1].

Specific Considerations on CHAPTER 7: Conservation and Open Space and Natural Resources

The City of Richmond is leading by example by adopting the Ahwanhee Principles for Resource-Efficient Communities as early as 2001. An excerpt from the General Plan [7.7] reads as follows:



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Underlying the [Ahwanhee] Principles is the premise that typical sprawling urban and suburban development patterns impair quality of life with impacts such as: traffic congestion, air pollution, automobile dependence, loss of open space, the need for costly improvements to road and public services, inequitable distribution of economic resources and a loss of a sense of community. The Ahwahnee Principles serve to guide community development that is compact, mixed use, walkable and transit-oriented.

EBCNPS supports the City's effort to continue to embrace these principles and to consider whether the proposed casino development of the Point Molate area (San Pablo peninsula), with its "destination resort" theme abides by these principles. This development clearly will increase traffic dramatically, increase automobile dependence, has few regional, or local public transit options, proposes a large-scale sprawling development that is essentially estranged from existing Richmond communities in both its values and its location. Since the Pt. Molate Plan is now publicly available for review, we would like to ask for a written report confirming how this proposal is inline with the promulgated and adopted Ahwanhee Principles.

how

Text Corrections

[7.11] – Suisun Marsh Aster should be spelled **Suisun Marsh Aster**.

We appreciate your consideration of our comments on conservation and planning in the City of Richmond. We would be happy to meet in person and provide technical comments as possible. Please feel free to call us at any time.

Sincerely,

Lech Naumovich
 Conservation Analyst
 California Native Plant Society
 East Bay Chapter
 PO Box 5597
 Berkeley, CA 94705
 510 734 0335
<http://www.ebcnps.org/conservation>



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Conservation Committee

CEQA-Protected Rare and Unusual Plants of the Molate Region 2005

(Statewide Rare Plants in Upper Case)

Rank in East Bay	Species	Common Name	Habitat
A2	<i>Ambrosia chamissonis</i>	beach-bur	Coastal Strand; Sand or Sandstone
*A1	ARABIS BLEPHAROPHYLLA	coast rock cress	Coastal Bluff; Rock, Tallus or Scree
A1	<i>Atriplex leucophylla</i>	beach saltbush	Coastal Strand; Sand or Sandstone
*A1x	CALYSTEGIA PURPURATA SSP. SAXICOLA (historical-1893) (ssp. <i>purpurata</i> is more common)	coastal bluff morning-glory	Scrub
A2	<i>Carex nebrascensis</i>	Nebraska sedge	Misc. Wetlands
A1	<i>Carex obnupta</i>	slough sedge	Misc. Wetlands
A1	<i>Castilleja ambigua</i> ssp. <i>ambigua</i>	Johnny-nip	Coastal Bluff; Grassland
A2	<i>Castilleja subinclusa</i> ssp. <i>franciscana</i>	Franciscan Indian paintbrush	Chaparral; Scrub
A2	<i>Ceanothus thyrsiflorus</i> var. <i>thyrsiflorus</i>	blue blossom; California-lilac	Misc. habitats
A1	<i>Centunculus minimus</i>	chaffweed	Vernal Pools; Misc. Wetlands
A2	<i>Cirsium quercetorum</i>	brownie thistle	Grassland; Woodland
A1	<i>Cirsium remotifolium</i>	remote-leaved thistle	Forest; Grassland; Serpentine; Woodland
A2	<i>Cryptantha muricata</i>	prickly cryptantha	Rock, Tallus or Scree; Sand or Sandstone areas
A2	<i>Deinandra corymbosa</i> ssp. <i>corymbosa</i> (<i>Hemizonia corymbosa</i> in Jepson Manual)	coast tarweed	Coastal Bluff
A1	<i>Dichelostemma multiflorum</i>	many-flowered brodiaea	Grassland; Scrub; Woodland
A1	<i>Dichondra donnelliana</i>	dichondra	Misc. habitats
A1	<i>Dudleya farinosa</i>	powdery dudleya	Rock, Tallus or Scree
A2	<i>Elymus elymoides</i> ssp. <i>elymoides</i>	squirreltail	Grassland
A1	<i>Elymus glaucus</i> ssp. <i>jepsonii</i> (ssp. <i>glaucus</i> is more common)	blue wildrye	Grassland
A2	<i>Elymus X hansenii</i>	Hansen squirreltail	Grassland
A1?	<i>Eriogonum latifolium</i> (?)	coast buckwheat	Coastal Bluff; Scrub
A2	<i>Eriophyllum staechadifolium</i>	seaside woolly-sunflower; lizard-tail	Coastal Bluff; Scrub
*A1	FRITILLARIA LILIACEA	fragrant fritillary	Grassland; Serpentine; Vernal Pools
A2	<i>Gnaphalium bicolor</i>	Bioletti's cudweed	Dry Open Slopes; Sand or Sandstone
A2	<i>Gnaphalium canescens</i> ssp. <i>microcephalum</i>	white everlasting	Chaparral; Dry Open Slopes
A1	<i>Grindelia stricta</i> var. <i>platyphylla</i> (var. <i>angustifolia</i> is more common)	Pacific grindelia	Coastal Bluff



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A1	<i>Lasthenia maritima</i>	Farallon weed	Rock, Tallus or Scree; Sand or Sandstone areas
A1	<i>Lupinus affinis</i>	lupine	Misc. habitats
A2	<i>Lupinus arboreus</i>	yellow bush lupine	Coastal Bluff; Coastal Strand; Sand or Sandstone
A1	<i>Lupinus bicolor</i> var. <i>tridentatus</i> (var. <i>umbellatus</i> is more common)	miniature lupine	Misc. habitats
*A1	PERIDERIDIA GAIRDNERI SSP. GAIRDNERI	Gairdner's yampah	Misc. Wetlands
A2	<i>Piperia elongata</i>	elongate piperia	Forest; Scrub
*A2	PIPERIA MICHAELII	Michael's rein orchid	Forest; Scrub; Woodland
A2	<i>Piperia transversa</i>	transverse piperia	Dry Open Slopes; Forest; Scrub; Woodland
A1	<i>Piperia unalascentis</i>	Alaska piperia	Forest; Scrub; Woodland
A1x	<i>Plantago maritima</i> (historical-1959)	Pacific seaside plantain	Salt Marsh
A1	<i>Romanzoffia californica</i>	Suksdorf's romanzoffia	Coastal Bluff; Rock, Tallus or Scree
A2	<i>Rumex maritimus</i>	golden dock	Brackish Marsh; Salt Marsh
A1	<i>Rumex salicifolius</i> var. <i>crassus</i>	willow dock	Coastal Bluff; Coastal Strand; Misc. Wetlands
A2	<i>Rumex salicifolius</i> var. <i>denticulatus</i>	willow dock	Misc. Wetlands
A2	<i>Spergularia macrotheca</i> var. <i>leucantha</i>	large-flowered sand spurry	Alkali areas; Vernal Pools
A2	<i>Spergularia macrotheca</i> var. <i>macrotheca</i>	large-flowered sand spurry	Alkali areas; Coastal Bluff; Rock, Tallus or Scree; Misc. Wetlands
*A1x	TRIPOLIUM DEPAUPERATUM VAR. HYDROPHILUM (vars. <i>amplectens</i> and <i>truncatum</i> are more common)	saline clover	Alkali areas; Salt Marsh
A2	<i>Vulpia microstachys</i> var. <i>microstachys</i> (var. <i>pauciflora</i> is more common)	Nuttall's fescue	Dry Open Slopes; Rock, Tallus or Scree; Sand or Sandstone; Serpentine; Woodland
A1x	<i>Vulpia octoflora</i> var. <i>octoflora</i> (historical-1936)	slender fescue	Chaparral; Dry Open Slopes; Dry Washes; Sand or Sandstone

NOTE: Plant species followed by "(?)" have taxonomic or distribution problems and it is not clear if they occur here.

Dates indicated for historical species refer to last known record in the Alameda-Contra Costa Counties area.

Explanation of Ranks

***A1 and *A2:** Species in Alameda and Contra Costa counties listed as rare, threatened or endangered statewide by federal or state agencies or by the state level of CNPS.

A1x: Species previously known from Alameda or Contra Costa Counties, but now believed to have been extirpated, and no longer occurring here.

A1: Species currently known from 2 or less regions in Alameda and Contra Costa Counties.



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A2: Species currently known from 3 to 5 regions in the two counties, or, if more, meeting other important criteria such as small populations, stressed or declining populations, small geographical range, limited or threatened habitat, etc.



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CEQA-Protected Rare and Unusual Plants of the Point Richmond Area 2005

(Statewide Rare Plants in Upper Case)

Rank in East Bay	Species	Common Name	Habitat
A2	<i>Ambrosia chamissonis</i>	beach-bur	Coastal Strand; Sand or Sandstone
A1	<i>Castilleja ambigua</i> ssp. <i>ambigua</i>	Johnny-nip	Coastal Bluff; Grassland
A2	<i>Castilleja subinclusa</i> ssp. <i>franciscana</i>	Franciscan Indian paintbrush	Chaparral; Scrub
A2	<i>Ceanothus thyrsiflorus</i> var. <i>thyrsiflorus</i>	blue blossom; California-lilac	Misc. habitats
A2	<i>Cirsium quercetorum</i>	brownie thistle	Grassland; Woodland
*A1x	CORDYLANTHUS MARITIMUS ssp. PALUSTRIS	Pt. Reyes birds beak	Salt Marsh
*A2	CORDYLANTHUS MOLLIS ssp. MOLLIS	soft birds beak	Brackish Marsh; Salt Marsh
A2	<i>Cryptantha muricata</i>	prickly cryptantha	Rock, Tallus or Scree; Sand or Sandstone areas
A2	<i>Deinandra corymbosa</i> ssp. <i>corymbosa</i> (<i>Hemizonia corymbosa</i> in Jepson Manual)	coast tarweed	Coastal Bluff
A1	<i>Dudleya farinosa</i>	powdery dudleya	Rock, Tallus or Scree
A2	<i>Eriophyllum staechadifolium</i>	seaside woolly-sunflower; lizard-tail	Coastal Bluff; Scrub
*A1	FRITILLARIA LILIACEA	fragrant fritillary	Grassland; Serpentine; Vernal Pools
*A2	LILAEOPSIS MASONII	Mason's lilaeopsis	Brackish Marsh; Salt Marsh
A2	<i>Lupinus arboreus</i>	yellow bush lupine	Coastal Bluff; Coastal Strand; Sand or Sandstone areas
A1	<i>Lupinus bicolor</i> var. <i>tridentatus</i> (var. <i>umbellatus</i> is more common)	miniature lupine	Misc. habitats
A1	<i>Romanzoffia californica</i>	Suksdorf's romanzoffia	Coastal Bluff; Rock, Tallus or Scree
A1	<i>Rumex salicifolius</i> var. <i>crassus</i>	willow dock	Coastal Bluff; Coastal Strand; Misc. Wetlands
A2	<i>Rumex salicifolius</i> var. <i>denticulatus</i>	willow dock	Misc. Wetlands
A2	<i>Spergularia macrotheca</i> var. <i>leucantha</i>	large-flowered sand spurry	Alkali areas; Vernal Pools
*A1x	TRIPOLIUM DEPAUPERATUM VAR. HYDROPHILUM (vars. <i>amplectens</i> and <i>truncatum</i> are more common)	saline clover	Alkali areas; Salt Marsh
A2	<i>Vulpia microstachys</i> var. <i>microstachys</i> (var. <i>pauciflora</i> is more common)	Nuttall's fescue	Dry Open Slopes; Rock, Tallus or Scree; Sand or Sandstone; Serpentine; Woodland

Explanation of Ranks

***A1 and *A2:** Species in Alameda and Contra Costa counties listed as rare, threatened or endangered statewide by federal or state agencies or by the state level of CNPS.

A1x: Species previously known from Alameda or Contra Costa Counties, but now believed to have been extirpated, and no longer occurring here.



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A1: Species currently known from 2 or less regions in Alameda and Contra Costa Counties.

A2: Species currently known from 3 to 5 regions in the two counties, or, if more, meeting other important criteria such as small populations, stressed or declining populations, small geographical range, limited or threatened habitat, etc.

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East CEQA-Protected Rare and Unusual Plants of Richmond, California 14705

(Current and Historical)

As Of January 2011

(Statewide Rare Plants Are In Upper Case)

East Bay Rarity Rank	Species	Common Name	Habitat
A1	<i>Agoseris apargioides</i> var. unknown	seaside agoseris	Misc. habitats
A2	<i>Agrostis hallii</i>	Hall's bent grass	Forest; Woodland
A2	<i>Ambrosia chamissonis</i>	beach-bur	Coastal Strand; Sand or Sandstone
A1	<i>Anagallis minima</i> (formerly <i>Centunculus minimus</i>)	chaffweed	Vernal Pools; Misc. Wetlands
*A1	ARABIS BLEPHAROPHYLLA	coast rock cress	Coastal Bluff; Rock, Tallus or Scree
*A1	ASTRAGALUS TENER VAR. TENER	alkali milk-vetch	Alkali areas; Grassland; Vernal Pools; Misc. Wetlands
A2	<i>Atriplex lentiformis</i>	big saltbush	Alkali areas; Scrub
A2	<i>Atriplex leucophylla</i>	beach saltbush	Coastal Strand; Sand or Sandstone
*A1x	CALYSTEGIA PURPURATA SSP. SAXICOLA (historical-1893) (ssp. <i>purpurata</i> is more common)	coastal bluff morning-glory	Scrub
A2	<i>Carex densa</i>	dense sedge	Misc. Wetlands; Misc. habitats
A2	<i>Carex obnupta</i>	slough sedge	Misc. Wetlands
*A1	CASTILLEJA AMBIGUA SSP. AMBIGUA	Johnny-nip	Coastal Bluff; Grassland
A2	<i>Castilleja subinclusa</i> ssp. <i>franciscana</i>	Franciscan Indian paintbrush	Chaparral; Scrub
A2	<i>Ceanothus thyrsiflorus</i>	blue blossom; California-lilac	Misc. habitats
A2	<i>Cirsium quercetorum</i>	brownie thistle	Grassland; Woodland
A1	<i>Cirsium remotifolium</i>	remote-leaved thistle	Forest; Grassland; Serpentine; Woodland
*A2	CORDYLANTHUS MOLLIS SSP. MOLLIS	soft bird's-beak	Brackish Marsh; Salt Marsh
A2	<i>Cryptantha muricata</i>	prickly cryptantha	Rock, Tallus or Scree; Sand or Sandstone areas
A2	<i>Deinandra corymbosa</i> ssp. <i>corymbosa</i> (formerly <i>Hemizonia corymbosa</i>)	coast tarweed	Coastal Bluff; Grassland
A1	<i>Dichelostemma multiflorum</i>	many-flowered brodiaea	Grassland; Scrub; Woodland
A1	<i>Dichondra donelliana</i>	dichondra	Misc. habitats
A1	<i>Dudleya farinosa</i>	powdery dudleya	Rock, Tallus or Scree
A2	<i>Echinodorus berteroi</i>	burhead	Freshwater Marsh
A2	<i>Elymus elymoides</i> ssp. <i>elymoides</i>	squirreltail	Grassland
A2	<i>Elymus glaucus</i> ssp. <i>jepsonii</i> (ssp. <i>glaucus</i> is more common)	blue wildrye	Grassland
A2	<i>Elymus X hansenii</i>	Hansen squirreltail	Grassland
A1?	<i>Eriogonum latifolium</i> (?)	coast buckwheat	Coastal Bluff; Scrub
A2	<i>Eriophyllum staechadifolium</i>	seaside woolly-sunflower; lizard-tail	Coastal Bluff; Scrub



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A2	East Eryngium armatum P O Box 5597.	coast coyote-thistle. Berkeley	Vernal Pools; Misc. Wetlands
A2	Eryngium vaseyi	Vasey's coyote-thistle	Alkali areas; Vernal Pools
*A1	FRITILLARIA LILIACEA	fragrant fritillary	Grassland; Serpentine; Vernal Pools
A1	Grindelia stricta var. platyphylla (var. angustifolia is more common)	Pacific grindelia	Coastal Bluff
*A1	HOLOCARPHA MACRADENIA	Santa Cruz tarplant	Grassland
A1	Horkelia californica ssp. californica	California horkelia	Grassland; Scrub
*A1	IRIS LONGIPETALA	coast iris	Misc. habitats
A2	Juncus oxymiris	pointed rush	Scrub; Misc. habitats
A1	Lasthenia maritima	Farallon weed	Rock, Tallus or Scree; Sand or Sandstone areas
A2	Layia chrysanthemoides	smooth layia	Grassland
A1	Lupinus affinis	lupine	Misc. habitats
A2	Lupinus arboreus	yellow bush lupine	Coastal Bluff; Coastal Strand; Sand or Sandstone
A1x	Lupinus chamissonis (historical-1963)	Chamisso's bush lupine	Coastal Strand; Sand or Sandstone
*A1	PERIDERIDIA GAIRDNERI SSP. GAIRDNERI	Gardner's yampah	Misc. Wetlands
A1x	Phalaris californica (historical-1943)	California canary grass	Grassland; Woodland
A2	Piperia elongata	elongate piperia	Forest; Scrub
*A2	PIPERIA MICHAELII	Michael's rein orchid	Forest; Scrub; Woodland
A1	Piperia unalascensis	Alaska piperia	Forest; Scrub; Woodland
A1	Plantago maritima	Pacific seaside plantain	Salt Marsh
A1x	Pogogyne douglasii (historical-1940)	Douglas pogogyne	Vernal Pools
A1	Prunella vulgaris ssp. lanceolata (var. vulgaris is more common)	selfheal	Forest; Riparian; Woodland; Misc. Wetlands
A2	Pseudognaphalium biolettii (formerly Gnaphalium bicolor)	Bioletti's cudweed	Dry Open Slopes; Sand or Sandstone
A1	Ranunculus orthorhynchus var. bloomeri	Bloomer's buttercup	Misc. Wetlands
A1	Romanzoffia californica	Suksdorf's romanzoffia	Coastal Bluff; Rock, Tallus or Scree
A2	Rumex californicus (formerly R. salicifolius var. denticulatus)	willow dock	Misc. Wetlands
A2	Rumex crassus (formerly R. salicifolius var. c.)	willow dock	Coastal Bluff; Coastal Strand; Misc. Wetlands
A2	Rumex maritimus	golden dock	Brackish Marsh; Salt Marsh
A1	Sagittaria latifolia	arrowhead	Freshwater Marsh
A2	Spergularia macrotheca var. leucantha	large-flowered sand spurry	Alkali areas; Vernal Pools
A2	Spergularia macrotheca var. macrotheca	large-flowered sand spurry	Alkali areas; Coastal Bluff; Rock, Tallus or Scree; Misc. Wetlands
A1	Spiranthes romanzoffiana	hooded ladies' tresses	Coastal Bluff, Freshwater Marsh
*A1	TRIFOLIUM DEPAUPERATUM VAR. HYDROPHILUM (vars amplexens and truncatum are more common)	saline clover	Alkali areas; Salt Marsh
A2	Trifolium macraei	double-headed clover	Sand or Sandstone; Misc. habitats
A2	Vulpia microstachys var. microstachys	Nuttall's fescue	Dry Open Slopes; Rock,



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East I	(var. pauciflora is more common) x 5597.	Elmwood Station, Berkeley	Tallus or Scree; Sand or Sandstone; Serpentine; Woodland
A1x	Vulpia octoflora var. octoflora (historical-1936)	slender fescue	Chaparral; Dry Open Slopes; Dry Washes; Sand or Sandstone
A1	Zeltnera trichantha (formerly Centaurium tricanthum)	alkali centaury	Alkali areas; Chaparral; Forest

Explanation of Ranks

***A1 or *A2:** Species in Alameda and Contra Costa counties listed as rare, threatened or endangered statewide by federal or state agencies or by the state level of CNPS.

A1x: Species previously known from Alameda or Contra Costa Counties, but now presumed extirpated here.

A1: Species currently known from 2 or less regions in Alameda and Contra Costa Counties.

A2: Species currently known from 3 to 5 regions in the two counties, or, if more, meeting other important criteria such as small populations, stressed or declining populations, small geographical range, limited or threatened habitat, etc.

A1?: Species with taxonomic or distribution problems that make it unclear if they actually occur here.



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East Bay Chapter

P.O. Box 5597, Elmwood Station, Berkeley, CA 94705

Table 1 from Appendix MM of Point Molate Mixed Use Tribal Destination Resort and Casino FEIR, listing locally rare, unusual and significant species with the potential to occur within Change Area 13 of the General Plan.

**TABLE 1
LOCALLY RARE, UNUSUAL AND SIGNIFICANT SPECIES WITH POTENTIAL TO OCCUR WITHIN THE PROJECT SITE**

Scientific Name Common name	CNPS Local Status	Local Distribution (botanical region, of the east bay)	Habitat Requirements
<i>Carex nebrascensis</i> Nebraska sedge	A2	Known from Berkeley Hills, Orinda area, Sausalito/Oakland Del Valle area, Point Molate Point Richmond area, and Antioch/Dunes/Pittsburg/Antioch	Wetlands
<i>Carex proterensis</i> Deer-bed sedge	B	Known from Berkeley Hills, Hayward Hills, Oakland Hills North, Oakland Hills South, Pissacron Ridge area, Mount Diablo area, Cedar Ridge and Nimitz Rd area, Point Molate Point Richmond area, and Concord/Clayton/Walnut Creek area	Alkali areas, freshwater marsh, wetlands
<i>Chamaecrista corylifolia</i> ssp. <i>corylifolia</i> Thyma-leaved spurge	B	Known from Brooks area, San Leandro/Pleasanton area, Mount Diablo area, Cedar Ridge and Nimitz Rd area, Sausalito/Oakland Del Valle area, Livermore Valley area, and Point Molate Point Richmond area	Dry habitats on bare ground
<i>Dichondra douglasii</i> Dichondras	A1	Known from the Potrero Hills only	Seasonally moist grassland slopes
<i>Dudleya viscidiflora</i> North coast dudleya	A1	Known from Berkeley Hills and Point Molate Point Richmond area	Rock, talus and scree
<i>Elymus glaucus</i> ssp. <i>sepoensis</i> Blue wildrye	A1	Known from Berkeley Hills, Morgan and Canyon area, Oakland Hills South, Morgan Territory area, and Point Molate Point Richmond area	Grassland
<i>Eriophorum macrochaetophorum</i> Seaside golden varren	A2	Known from Flatlands North, Flatlands Shore North, and Point Molate Point Richmond area	Coastal bluff and scrub
<i>Festuca rubra</i> ssp. <i>rubra</i> Red fescue	B	Known from Berkeley Hills, Brooks area, Las Trampas area, Orinda area, Oakland Hills North, Oakland Hills South, Flatlands Shore North, Flatlands Shore South, and Point Molate Point Richmond area	Coastal bluff, grassland, and sandy areas
<i>Immunum californicum</i> Sea-lavender	B	Known from Flatlands Central, Flatlands Shore Central, Flatlands Shore North, Flatlands Shore South, Point Molate Point Richmond area, Antioch/Dunes/Pittsburg/Antioch, and Concord/Clayton/Walnut Creek area	Coastal scrub and subshrubs
<i>Argemone arborescens</i> Coastal bush poppy	A1	Known from Flatlands Central, Flatlands Shore North, Point Molate Point Richmond area, and Antioch/Dunes/Pittsburg/Antioch	Coastal bluff, coastal strand, sand and sandstone areas
<i>Nitrophila occidentalis</i> Nitrophila	A1	Known from Livermore Valley area only	Alkali areas
<i>Piperia walatzensis</i> Ram-orchid	A1	Known from Mount Diablo, Morgan Territory area, and questionable identifications from Black Diamond, Oakland Hills South, and Point Molate Point Richmond areas	Forest, scrub, and woodland
<i>Elymus californicus</i> ssp. <i>cracrus</i> Willow dock	A1	Known from Morgan Canyon area, Flatlands Shore North, and Point Molate Point Richmond area	Coastal bluff, coastal strand, and wetlands
<i>Corylus cornuta</i> Low hazelnut	B	Known from Berkeley Hills, Orinda area, Oakland Hills North, Livermore Valley, Point Molate Point Richmond area, Antioch/Dunes/Pittsburg/Antioch, and Concord/Clayton/Walnut Creek area	Sand, sandstone, and wetlands
<i>Ipargolite maritima</i> var. <i>maritima</i> Large-coined sand spurn	A2	Known from Alameda Park area, Carquinez Basin area, Oakland Hills North, Flatlands Shore North, Flatlands Shore South, Point Molate Point Richmond area, and Bay Area	Alkali areas, coastal bluffs, rock, talus areas, and wetlands

- A1 Plants occurring in 1 region of both Alameda and Contra Costa Counties.
- A2 Plants occurring in 2 to 5 regions in the two counties, or otherwise threatened.
- B High-Priority Watch List - Plants occurring in 6 to 9 regions in the two counties, or otherwise limited or threatened.

SOURCE: Lase 2004, AES 2010



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3.4 BIOLOGICAL RESOURCES

Table 1 from Appendix MM of Point Molate Mixed Use Tribal Destination Resort and Casino FEIR, listing locally rare, unusual and significant species with the potential to occur within Change Area 13 of the General Plan.

**TABLE 1
LOCALLY RARE, UNUSUAL AND SIGNIFICANT SPECIES WITH POTENTIAL TO OCCUR WITHIN THE PROJECT SITE**

Scientific Name Common name	CNPS Local Status	Local Distribution (botanical region, of the area here)	Habitat Requirements
<i>Carex nebrascensis</i> Nebraska sedge	A2	Known from Berkeley Hills, Orinda area, Sunol Obispo Del Valle area, Point Molate Point Richmond area, and Anchoch Dunes Pittsburg Anchoch	Wetlands
<i>Carex proserpinaci</i> Deer-bed sedge	B	Known from Berkeley Hills, Hayward Hills, Oakland Hills North, Oakland Hills South, Pleasanton Ridge area, Mount Diablo area, Cedar Ridge and Mount Ed. area, Point Molate Point Richmond area, and Concord Clayton Walnut Creek area	Alkali areas, freshwater marsh, wetlands
<i>Chamaecrista corymbifera</i> ssp. <i>corymbifera</i> Thyme-leaved spurge	B	Known from Briones area, San Leandro Reservoir area, Mount Diablo area, Cedar Ridge and Mount Ed. area, Sunol Obispo Del Valle area, Livermore Valley area, and Point Molate Point Richmond area	Dry habitats on bare ground
<i>Dichondra densiflora</i> Ditchwax	A1	Known from the Portero Hills only	Seasonally moist grassland slopes
<i>Dudleya farinosa</i> Norb coat; dudleya	A1	Known from Berkeley Hills and Point Molate Point Richmond area	Rock, talus and scree
<i>Elymus glaucus</i> ssp. <i>jeffersonii</i> Bine wildrye	A1	Known from Berkeley Hills, Moraga and Canyon area, Oakland Hills South, Morgan Territory area, and Point Molate Point Richmond area	Grassland
<i>Eriophorum stachyoides</i> Seaside golden yarrow	A2	Known from Flatlands North, Flatlands Shore North, and Point Molate Point Richmond area	Coastal bluff and scrub
<i>Festuca rubra</i> ssp. <i>rubra</i> Red fescue	B	Known from Berkeley Hills, Briones area, Las Trampas area, Orinda area, Oakland Hills North, Oakland Hills South, Flatlands Shore North, Flatlands Shore South, and Point Molate Point Richmond area	Coastal bluff, grassland, and sandy areas
<i>Imperata californicum</i> Sea-lavender	B	Known from Flatlands Central, Flatlands Shore Central, Flatlands Shore North, Flatlands Shore South, Point Molate Point Richmond area, Anchoch Dunes Pittsburg Anchoch, and Concord Clayton Walnut Creek area	Coastal strand and salt marshes
<i>Lygus arborescens</i> Coastal bush lupine	A1	Known from Flatlands Central, Flatlands Shore North, Point Molate Point Richmond area, and Anchoch Dunes Pittsburg Anchoch	Coastal bluff, coastal strand, sand and sandstone areas
<i>Nitrophila occidentalis</i> Nitrophila	A1	Known from Livermore Valley area only	Alkali areas
<i>Piperia uncinata</i> Rain-orchid	A1	Known from Mount Diablo, Morgan Territory area, and questionable identifications from Black Diamond, Oakland Hills South, and Point Molate Point Richmond area	Forest, scrub, and woodland
<i>Rumex calycophyllus</i> ssp. <i>crucis</i> Willow dock	A1	Known from North Canyon area, Flatlands Shore North, and Point Molate Point Richmond area	Coastal bluff, coastal strand, and wetlands
<i>Sarcocolla</i> Lew bulrush	B	Known from Berkeley Hills, Orinda area, Oakland Hills North, Livermore Valley, Point Molate Point Richmond area, Anchoch Dunes Pittsburg Anchoch, and Concord Clayton Walnut Creek area	Sand, sandstone, and wetlands
<i>Spergularia macrochaeta</i> var. <i>macrochaeta</i> Large-covered sand spurry	A2	Known from Alameda Park area, Carquinez Straits area, Oakland Hills North, Flatlands Shore North, Flatlands Shore South, Point Molate Point Richmond area, and Berry area	Alkali areas, coastal bluff, rock, talus, scree, and wetlands

A1 - Plants occurring in 2 or more of both Alameda and Contra Costa Counties.
 A2 - Plants occurring in 3 to 5 regions in the two counties, or otherwise threatened.
 B - High-Priority Watch List - Plants occurring in 6 to 9 regions in the two counties, or otherwise limited or threatened.

SOURCE: Lane 2004, AES, 2010

A-Ranked Rare and Unusual Plants of Richmond Field Station, Richmond, California
(Current and Historical)
 As Of January 2011
 (Statewide Rare Plants Are In Upper Case)

East Bay			
Rarity Rank	Species	Common Name	Habitat
A1	<i>Anagallis minima</i> (formerly <i>Centunculus minimus</i>)	chaffweed	Vernal Pools; Misc. Wetlands
A2	<i>Carex densa</i>	dense sedge	Misc. Wetlands; Misc. habitats
A2	<i>Deinandra corymbosa</i> ssp. <i>corymbosa</i> (formerly <i>Hemizonia corymbosa</i>)	coast tarweed	Coastal Bluff; Grassland
A2	<i>Elymus X hansenii</i>	Hansen squirreltail	Grassland
A2	<i>Eryngium armatum</i>	coast coyote-thistle	Vernal Pools; Misc. Wetlands
A2	<i>Spergularia macrotheca</i> var. <i>macrotheca</i>	large-flowered sand spurry	Alkali areas; Coastal Bluff; Rock, Tallas or Scree; Misc. Wetlands
A1	<i>Spiranthes romanzoffiana</i>	hooded ladies' tresses	Coastal Bluff, Freshwater Marsh
A1	<i>Zeltnera trichantha</i> (formerly <i>Centaureum tricanthum</i>)	alkali centaury	Alkali areas; Chaparral; Forest

Explanation of Ranks

***A1 or *A2:** Species in Alameda and Contra Costa counties listed as rare, threatened or endangered statewide by federal or state agencies or by the state level of CNPS.

A1x: Species previously known from Alameda or Contra Costa Counties, but now presumed extirpated here.

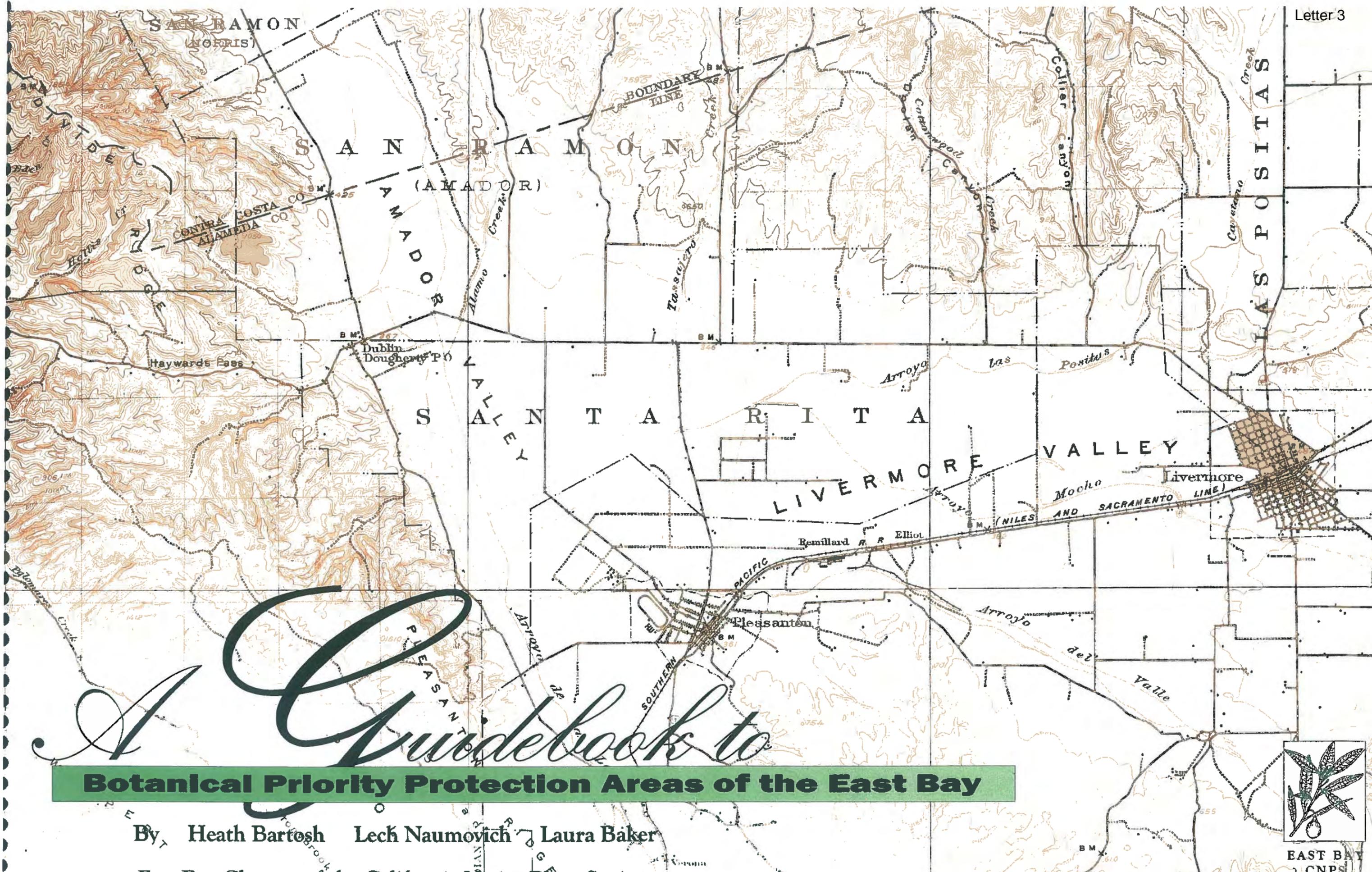
A1: Species currently known from 2 or less regions in Alameda and Contra Costa Counties.

A2: Species currently known from 3 to 5 regions in the two counties, or, if more, meeting other important criteria such as small populations, stressed or declining populations, small geographical range, limited or threatened habitat, etc.

A1?: Species with taxonomic or distribution problems that make it unclear if they actually occur here.

B: High-Priority Watch List: Plants occurring in 6 to 9 regions here or otherwise limited or threatened.

C: Second-Priority Watch List: Plants occurring in 10 to 15 regions here, but have potential threats.



A Guidebook to Botanical Priority Protection Areas of the East Bay

By Heath Bartosh Lech Naumovich & Laura Baker

East Bay Chapter of the California Native Plant Society



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A Guidebook to Botanical Priority Protection

Areas of the East Bay

Special Publication # 4 of the California Native Plant Society East Bay Chapter

Heath Bartosh Lech Naumovich Laura Baker

East Bay Chapter of the California Native Plant Society

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Botanical Priority Protection Areas

Alameda and Contra Costa Counties

Introduction

The lands that comprise the East Bay Chapter are located at the convergence of the San Francisco Bay, the North and South Coast Ranges, the Sacramento-San Joaquin Delta, and the San Joaquin Valley. The East Bay Chapter area supports a unique congregation of ecological conditions and native plants. Based on historic botanical collections, the pressures from growth-based Bay Area economies have buried many of the botanical treasures of the East Bay. The collision of floristic protection and economic growth conceived the Botanical Priority Protection Areas Project (BPPA), and fortified intra-chapter collaboration between the Plant Science and Conservation arms of the East Bay Chapter of the California Native Plant Society (CNPS).

In January of 2006, the Bay Area Open Space Council (BAOSC) requested that our chapter provide them a list of important botanical areas. Our botanical priorities were to be incorporated into BAOSC's Upland Habitat Goals Project which aims to increase the acreage of protected lands and develop an increased awareness of key habitats among land management agencies and local jurisdictions. We had only one day to accomplish the difficult task of choosing between many botanically rich areas of Alameda and Contra Costa counties. At the end of the day, after a flurry of emails, fifteen areas endowed with native plant diversity that are threatened by current and potential land-use decisions were hastily identified.

This inquiry and resulting cache of botanical areas begged another question: how can we look at these areas through a more objective lens utilizing existing information? To answer this initial question, the project began as a simple Geographic Information System (GIS) exercise. Heath Bartosh, the chapter's Rare Plant Committee Chairman, began by mapping primarily watershed-based boundaries of each protection area.

Overall, the 15 BPPAs comprise 238,225 acres (372 square miles) in Alameda (96,932 acres) and Contra Costa (141,293 acres) counties. The BPPAs occupying the western portion of the chapter are smaller in acreage due to the urbanization that has already occurred along the bayside flatlands leaving diminutive botanical refugia still in need of protection. In the east, vast expanses of undeveloped land containing a broader diversity of habitats and native plant species are still intact as characterized by the larger BPPAs found flanking the Diablo Range.

BPPA boundaries were drawn with the intention of excluding lands previously preserved, such as Mount Diablo State Park or lands owned and managed by

the East Bay Regional Park District. However, certain BPPAs include public parcels or properties with other conservation status. These are cases where land has been conserved since the creation of these boundaries or where potential management decisions have the potential to negatively affect an area's botanical resources. Additionally, each acre within these BPPAs represents a *potential* area of high priority. Both urban and natural settings are included within these boundaries, therefore, they are intended to be considered as areas warranting further scrutiny due to the abundance of nearby sensitive botanical resources supported by high quality habitat within each BPPA. Although a parcel, available for preservation through fee title purchase or conservation easement, may be located within the boundaries of a BPPA, this does not by default indicate that it contains sensitive botanical resources. Parcels within each BPPA should be floristically evaluated on a case-by-case basis to determine their botanical resource value before any conservation activity, land-use change, or development is undertaken.

From within these boundaries an analysis was executed of readily and freely available spatial datasets such as botanical resource occurrences, substrates (soils and geology), wetlands, urbanized areas, existing protected areas, and possible threats. From these analyses each of the 15 maps includes a summary table that provides information such as the size of the area, watershed information, relevant substrate information, and botanical resource attributes.

The graphic portion of each map showcases protection areas on a 2009 aerial photograph provided by the National Agriculture Inventory Program. Certain BPPAs include areas of edaphic substrates which strongly influence plant species composition and structure. The East Bay is bestowed with significant substrates such as alkaline soils, sandy soils, and serpentinitic habitats. Within a specific BPPA, edaphic substrates were spatially analyzed using Farmland Mapping and Monitoring Program (FMMP) data. The most useful component of the FMMP data locates areas of urbanization and irrigated agriculture. These aspects of the human environment including development and alteration of vegetative cover, soil structure and hydrology have eroded the natural habitat that native plants need to persist. Spatially analyzing edaphic substrate data against select FMMP data shows the amount of these substrates that have been lost due to post-industrial. For example, 17,280 acres of the alkaline soils have been mapped within all East Bay BPPAs. Of those acres, 21 percent containing alkaline soils within our BPPAs have been lost. Although sandy soils within our chapter area are restricted to Contra Costa County, at one time they represented 24,726 acres. To date, at least 33 percent of sandy soils no longer support healthy native communities of plants. Serpentine substrates manifest themselves in three of the 15 BPPAs: Cedar Mountain, Marsh Creek, and North of Mount Diablo. However, none of these habitats has been as significantly impacted as the large serpentine bodies of the Berkeley and Oakland



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Hills have been from residential development.

Following this initial mapping effort, the East Bay Chapter's Conservation Committee began to utilize the concept in draft form in key local planning efforts. Lech Naumovich, the chapter's Conservation Analyst staff person, showcased the map set in forums such as the BAOSC's Upland Habitat Goals Project and the Green Vision Group (in association with Greenbelt Alliance); East Bay Regional Park District's Master Plan Process; and local municipalities. In the near future we anticipate these BPPAs will be incorporated into the Eastern Alameda County Conservation Strategy, a regional planning effort currently being developed.

As a result of this collaboration our chapter also secured grant funding from the Tides and Rose Foundations to prepare this guidebook of these BPPAs. This guidebook includes maps of the 15 BPPAs, which appear opposite pictorial and narrative treatments. These treatments include a written contribution from a guest author, lists and photographs of sensitive botanical resources, a portrayal of the subject areas' botanical hot spots and noteworthy collection history, and a discussion of threats, opportunities, and constraints unique to each area. With the exception of the guest authors' contributions, the remaining text appearing in the green boxes was written by lead authors Mr. Bartosh, Mr. Naumovich, and Conservation Committee Chairperson, Laura Baker.

As an enticement to professionals and laypeople alike, our guest authors contributed their personal impressions of these areas and why they are important as native plant refugia. Their contributions appear at the top of the page to provide the reader "A Sense of Place" relative to each BPPA. The guest authors include a broad spectrum of individuals ranging from dedicated amateur botanists, established academics, and government regulators. They were provided a list of interview questions to elicit a connection to the BPPA that would appeal to both native plant neophytes and seasoned enthusiasts. These questions were formed into a short paragraph that portrays their impressions and importance of the BPPA. Due to layout restrictions, many of the guest authors' pieces appearing in this guidebook are abridged versions. Each of the guest author's entire narratives will be published separately in coming issues of the East Bay Chapter's newsletter, the *Bay Leaf*.

Botanical Priority Protection Areas

Alameda and Contra Costa Counties

Each BPPA includes a list of sensitive botanical resources that have been given listing status and comprise: one sensitive natural community; four plant species that are either statewide or locally rare and considered extant; and one historic occurrence that has not been seen for a minimum of 40 years. A section on the botanical hot spots within the BPPA is included that addresses the general locations of this list of botanical resources and colorful collection anecdotes. This list is also accompanied by photos of selected species within each BPPA.

An understanding of listing status in California and its regulatory significance is important to understanding the text below that deals with various rankings. Listing status is given for specific vegetation types and native plant species that meet a certain set of criteria. Within our chapter area we recognize three types of listing status: Sensitive Natural Communities; Special-Status Plant Species; and Locally Rare Plant Species. These designations support our labeling of the 15 botanical areas as priorities for protection.

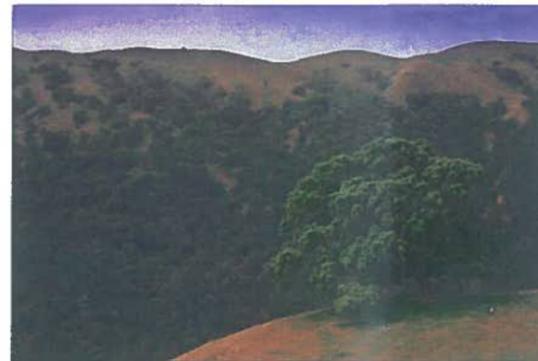
Typically, vegetation types that are given an elevated listing status are referred to as Sensitive Natural Communities. Sensitive Natural Communities are characterized as plant assemblages that are unique in constituent components, restricted in distribution, supported by distinctive edaphic conditions, considered locally rare, potentially support special-status plant or wildlife species and/or receive regulatory protection from municipal, county, state and/or federal entities. The California Natural Diversity Database treats a number of natural communities as rare, which are given the highest inventory priority. Current vegetation types treated as Sensitive Natural Communities appear in the California Department of Fish and Game (CDFG) Vegetation Mapping and Classification Program's *List of California Vegetation Alliances*.

Special-status plant species are those considered listed as Endangered, Threatened, or Rare by the U.S. Fish and Wildlife Service and/or by the CDFG. Regulatory statutes that have designated certain plant species as having special-status include: Federal Endangered Species Act (FESA), California Endangered Species Act (CESA), California Fish and Game Code, and the Native Plant Protection Act (NPPA) of 1977.

In addition, CNPS has developed and maintains a list of rare, Threatened and Endangered plants of California. This information is published in the *Inventory of Rare and Endangered Vascular Plants of California*. The CNPS list is endorsed by the CDFG and effectively serves as its list of "candidate" plant species. The following identifies the definitions of the CNPS listings:



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List 1A: Plants presumed to be extinct in California;

List 1B: Plants that are rare, Threatened, or Endangered in California and elsewhere;

List 2: Plants that are rare, Threatened, or Endangered in California, but are more numerous elsewhere;

List 3: Plants about which more information is needed (a review list); and

List 4: Plants of limited distribution (a watch list).

CNPS List 1B and List 2 species are considered eligible for state listing as Endangered or Threatened pursuant to the California Fish and Game Code. As part of the CEQA process, such species should be fully considered, as they meet the definition of Threatened or Endangered under the NPPA and Sections 2062 and 2067 of the California Fish and Game Code. CNPS List 3 and List 4 species are considered to be either plants about which more information is needed or are uncommon enough that their status should be regularly monitored. Such plants may be eligible or may become eligible for state listing, and CNPS and CDFG recommend that these species be evaluated for consideration during the preparation of California Environmental Quality Act (CEQA) documents, as some of these species may meet NPPA and CESA criteria as Threatened or Endangered.

Locally rare plant species are those considered to be: 1) at the outer limits of their known distribution; 2) a range extension; 3) a rediscovery; or 4) rare or uncommon in a local context. All of these are tracked in Alameda and Contra Costa counties by the East Bay chapter of CNPS and published in *Rare, Unusual, and Significant Plants of Alameda and Contra Costa Counties*. Through this program, the East Bay Chapter has been divided into 40 botanical regions based on vegetation, geology, habitats, soil types, climate, and other factors.

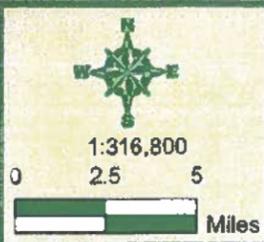
Although not regarded as special-status species by the USFWS or CDFG, locally rare plants can receive regulatory protection, through CEQA's Article 9 and Guidelines §15125(a) and §15380 which state that "special emphasis should be placed on environmental resources that are rare or unique to that region." CNPS also has the stated goal of "preserving plant biodiversity on a regional and local scale." Relying on these statements the East Bay Chapter of CNPS maintains a program, started in 1991, that tracks rare, unusual, and significant plants that occur within our chapter.

Anthropogenic and environmental threats are a common thread to each BPPA. The inclusion of a discussion of threats, opportunities, and constraints highlights current conservation issues and conveys why these areas need protection. We hope to highlight some of the current, relevant environmental impacts facing the BPPAs, as well as introduce some of the cooperative efforts that are helping bring attention and protection to the unique botanical values of the sites.

Our chapter is keenly aware of the challenge facing us as we try to cope with the push to accommodate a growing tide of population drawn to the beauty of our unique East Bay landscape. California's most enduring but ironically tragic character flaw is that it draws many people to a place of delicate and finite natural resources. With our guidebook, we hope to provide local governments and land managers enough information to make botanically conscious land-use decisions so that our beloved botanical treasure box will bend, not break, under the weight of its growing human population.

This project has been supported by funding from the Rose Foundation, the Tides Foundation, and the East Bay Chapter of CNPS.

For information on this project please contact Heath Bartosh, East Bay Chapter Rare Plant Botanist. hbartosh@nomadecology.com or Lech Naumovich, East Bay Chapter Conservation Analyst conservation@ebcnps.org.



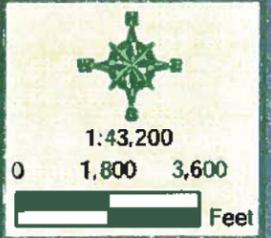
BOTANICAL PRIORITY PROTECTION AREA	
RICHMOND SHORELINE	
Size	1,723 Acres
Watershed Information	
Watershed Based	NO
Watersheds	San Pablo Bay Area
Significant Substrates	
Total Alkaline Soils	511 Acres
Alkaline Soils Extirpated	5%
Alkaline Soils Extant	95%
Botanical Attributes	
Locally Rare Plant Occurrences	41
CNDDB Plant Occurrences	1
State or Federally Listed Plant Populations	0
CNDDB Community Occurrences	3



Legend	
Botanical Priority Protection Area	Public Land and Conservation Easements
Richmond Shoreline	Access
Significant Substrates	Open Access
Alkaline Soils Extant	Restricted Access
Alkaline Soils Extirpated	No Access

Richmond Shoreline

Botanical Priority Protection Areas



Botanical Priority Protection Areas

Richmond, Contra Costa Co.

A Sense of Place

Guest Author
David Amme

Point Molate is one of the last large relatively undeveloped tracts of shoreline habitat in the East Bay where the hills come right down to the San Francisco Bay. Driving east across the Richmond-San Rafael bridge, you get the best view from a distance of the Potrero Hills and Point Molate looming north of the bridge. I was drawn to explore the grasslands there in the 1970s. I found native red fescue growing in the remnant coastal prairie, a special ecotype that I named "Molate fescue".

Point Molate is uniquely situated in the rain shadow of Mount Tamalpais, so it gets less rain than other areas of East Bay shoreline. Geologically and botanically, the point is related to the other highlands in this part of the Bay including the islands

"in the rain shadow of Mount Tamalpais"

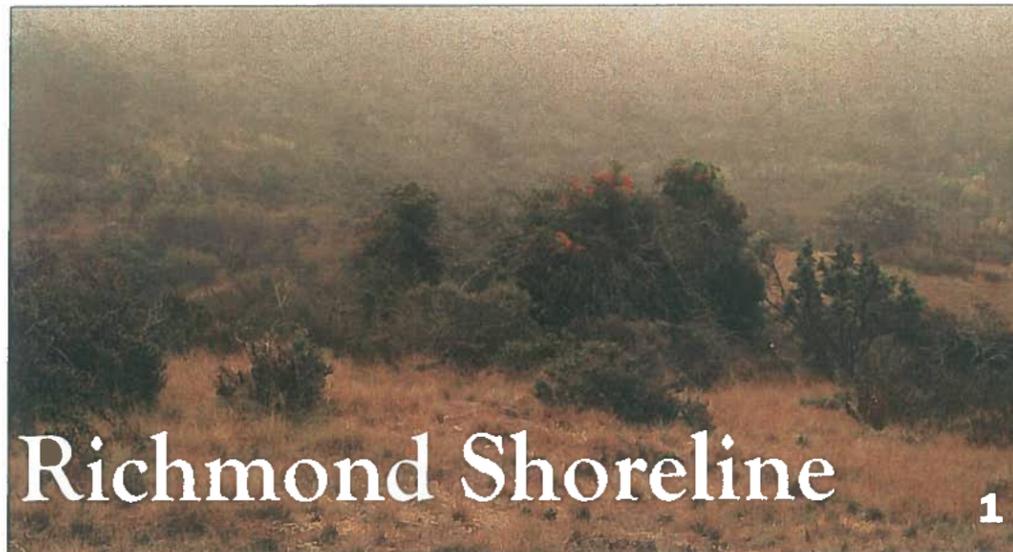
and China Camp. Today there are some native plants that occur only in China Camp on the west side and Point Molate on the east. The views are stunning and the sunsets are spectacular. The early summer is the best time to see the grasses. The special combination of climate and topography creates some rare plant communities. There's coastal bluff where you find the live forever, *Dudleya farinosa*, coastal prairie that contains oatgrass, red fescue, purple needlegrass, California melic, Junegrass, Diego bentgrass, and a wonderful array of forbs like narrow leaf mule's ears and pipevine. These and other terrestrial communities include coastal

scrub and oak woodland. In the subtidal zone there's one of the largest beds of eelgrass in the Bay, a critically important aquatic habitat.

It's disturbing to see how large the infestations of broom, eucalyptus and pampas grass have become, but for me the most depressing development is the proposal to build a huge casino. It makes no sense to turn a beautiful piece of shoreline property into something you'd find in Las Vegas. I find it hard to believe that Point Molate couldn't be preserved for its unique natural beauty, its abundant natural resources, and its value as open space.



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Richmond Shoreline 1



2



3



4



5

Botanical Hot Spots

At the westernmost tip of Contra Costa County, the mild climate of the coast shapes the inhabitants of the Richmond Shoreline BPPA. The Golden Gate helps usher in this Pacific infusion by providing its temperature and precipitation regimes to this once common habitat type that skirted the bay. The hot spots of this BPPA are areas where Coastal Terrace Prairie is still intact and native bunchgrasses such as California oatgrass (*Danthonia californica* var. *californica*) are co-dominant. Here other species commonly found in coastal environs make an appearance in the East Bay such as a diminutive member of the morning-glory family, California ponyfoot (*Dichondra donnelliana*) and the colorful and elegant stonecrop bluff lettuce (*Dudleya farinosa*). True to its name, Pacific gumplant (*Grindelia stricta* var. *platyphylla*) can also be found occupying the windswept coastal bluffs. Although no herbarium collections exist for California mistmaiden (*Romanzoffia californica*), which is more commonly found along the North Coast, there are observation records that indicate this plant species also calls the Richmond Shoreline home. Another coastal hugging species, fragrant fritillary (*Fritillaria liliacea*), was once known from this BPPA. However, it was last collected in 1900 near Point Richmond by Joseph Prince Tracy.

Sensitive Natural Community

Coastal Terrace Prairie (1)

Rare and Unusual Plant Species

California ponyfoot — *Dichondra donnelliana* (2)

Bluff lettuce — *Dudleya farinosa* (3)

Coast gumplant — *Grindelia stricta* var. *platyphylla* (4)

California mistmaiden — *Romanzoffia californica*

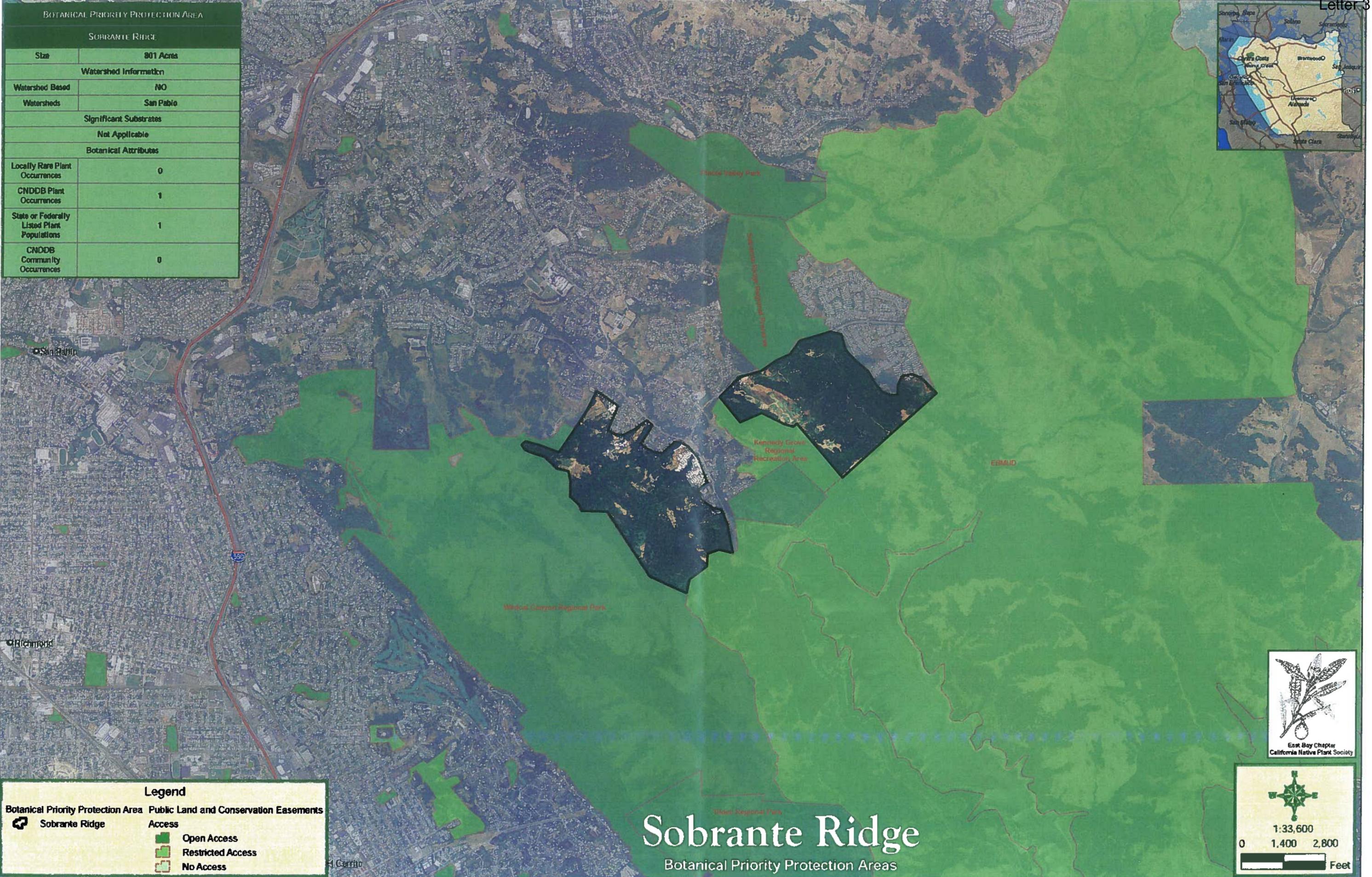
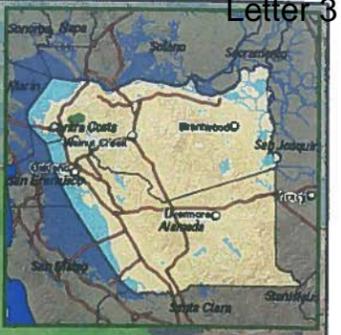
Historic Occurrence

Fragrant fritillary — *Fritillaria liliacea* (1900) (5)

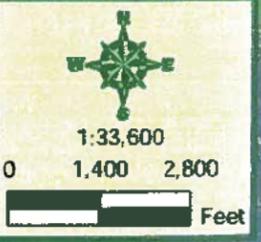
Threats, Opportunities and Constraints

Richmond's meandering shoreline is considered the longest of any city in the East Bay. Once the industrial stronghold for the East Bay, Richmond's shoreline factories and operations have faded, leaving behind poverty and pollution. Yet, the promise of environmental justice is still unfulfilled. Much of the shoreline is polluted or scarred, often obscuring the natural value and promise of this area. Thus shoreline development presents itself as a tool to recover prosperity in Richmond, but often at the cost of gentrifying a landscape once inhabited only by factory workers and local fishermen. A strong coalition of environmental and social justice groups are working with the City of Richmond, local labor unions, the East Bay Regional Park District, and local residents to develop a strategy that will protect the important natural resources of the area, which include remnant salt marsh, coastal bluff, and coastal prairie communities, now considered rare and unusual in the East Bay and much of California. Imminent threats to the shoreline include executive housing, another port, and the destruction of coastal prairie by the Campus Bay project at the University of California Richmond Field Station. However, the most potentially destructive project is the massive casino-hotel-ferry terminal complex proposed for Point Molate on the San Pablo Peninsula which may well be tied up in litigation for years to come. An alternative vision for Point Molate and its surroundings is outlined in the San Pablo Peninsula Open Space Study that calls for parks, open space and sustainable development of the historical portions of Point Molate. Visionary restoration and preservation of these areas might well transform a tortured landscape into a source of civic pride, ensuring that this unique stretch of shoreline will endure for generations to come.

BOTANICAL PRIORITY PROTECTION AREA	
SOBRANTE RIDGE	
Size	801 Acres
Watershed Information	
Watershed Based	NO
Watersheds	San Pablo
Significant Substrates	
Not Applicable	
Botanical Attributes	
Locally Rare Plant Occurrences	0
CNDDB Plant Occurrences	1
State or Federally Listed Plant Populations	1
CNDDB Community Occurrences	0



Legend	
Botanical Priority Protection Area	Public Land and Conservation Easements
Sobrante Ridge	Access
	Open Access
	Restricted Access
	No Access



Sobrante Ridge

Botanical Priority Protection Areas

All information created from the Natural Resource Conservation Service SSURGO data and the State of California's Farmland Mapping and Monitoring Program. Public land and easement data provided by the Bay Area Open Space Council.

Botanical Priority Protection Areas

Richmond, Contra Costa Co.

A Sense of Place

Guest Author
Gudrun Kleist

Although located at the northern end of the highly populated East Bay Hills and surrounded by residential subdivisions, the Sobrante Ridge BPPA is a great place to find solitude. I live within walking distance of this extraordinary example of Northern Maritime Chaparral and have visited it nearly every day for the past 22 years. To me the most appealing aspect of the ridge is the incredible views of Mount Diablo to the east, Mount Tamalpais to the west, San Pablo Bay to the north, and San Pablo Ridge to the south.

"manzanita trunks glisten burgundy"

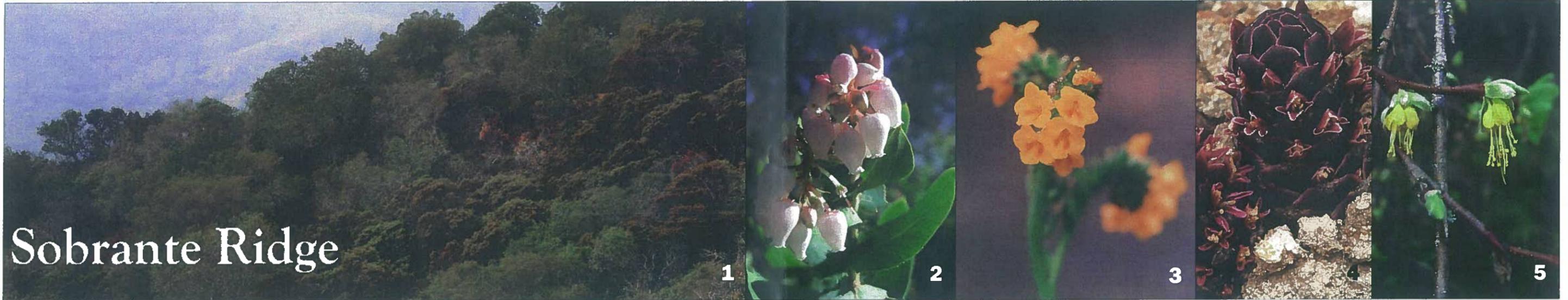
Regionally, this BPPA is significant as it supports the northernmost population of the federally listed pallid manzanita (*Arctostaphylos pallida*) whose worldwide distribution lies here and in the Oakland

hills to the south. Seasonally the best time to visit Sobrante Ridge is in December to see the pallid manzanita in bloom, especially on a morning after a rain storm, when the view from the top is breathtaking and Mount Diablo is covered in snow. Winter puts on a show of color: the manzanita trunks glisten burgundy, while those of the huge madrones reflect a warm orange hue, and the ground is covered in manzanita snow comprised of the small urn-shaped blossoms that have fallen to the ground. In full bloom these corollas attract droves of bumblebees who do their work to help these manzanitas produce the seeds of the next generation. However, during any season Sobrante Ridge provides delightful encounters. In the spring Indian warrior (*Pedicularis densi-*

flora) can blanket the oak understory with its deep red color complementing the vibrant blue of the hound's tongue (*Cynoglossum grande*). Out in the scrub, the bright yellow-orange of the bush monkeyflower (*Mimulus aurantiacus*) is appealing not only to the human eye but also to the energetic hummingbirds that drink the sweet nectar. Watching the fog roll over San Pablo Ridge in the summer reminds you of how close you are to the coast as it chills you to the bone. And during the fall months even the common native plants provide you with special treats to your senses such as the scent of coyote brush (*Baccharis pilularis*) in bloom.



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Sobrante Ridge

Botanical Hot Spots

Near the northern end of the Bay Hills lies the Sobrante Ridge BPPA. Here, sandstone from the Miocene provides the foundation of support for a community of plants known as Northern Maritime Chaparral. The combination of geology and plant associations equals a hot spot that is nearly unrivaled in diversity and rarity along this western corridor of relief. The most notable member of this community is the pallid manzanita (*Arctostaphylos pallida*). Sobrante Ridge is the northernmost station for this East Bay endemic. One of the earliest flowering shrubs in our chapter area, the beautifully distinctive western leatherwood (*Dirca occidentalis*), is known from nearby Wildcat Canyon. Another woody associate of this BPPA is Shreve's oak (*Quercus parvula* var. *shrevei*). Sobrante Ridge is the only place where this oak grows in the East Bay. Bent-flowered fiddleneck (*Amsinckia lunaris*) can be found on the ecotone of scrub and woodland communities. California groundcone (*Boschniakia strobilacea*), named after the Russian botanist, Boschniak, has also been observed here. California groundcone is a root parasite that uses *Arctostaphylos* or *Arbutus* species as its host.

Sensitive Natural Community

Northern Maritime Chaparral (1)

Rare and Unique Plant Species

Pallid manzanita — *Arctostaphylos pallida* (2)

Bent-flowered fiddleneck — *Amsinckia lunaris* (3)

Boschniakia — *Boschniakia strobilacea* (4)

Western leatherwood — *Dirca occidentalis* (5)

Shreve's oak — *Quercus parvula* var. *shrevei*

Threats, Opportunities and Constraints

Sobrante Ridge is tucked away in the northwestern part of the East Bay. Its Spanish name refers to its historical designation as surplus land by the Mexican government. Now the ridge and the surrounding area are under tremendous development pressure. Located on the rural boundary of Contra Costa County and the cities of Richmond and Pinole, this 288-acre preserve could be a cornerstone of a larger reserve network of important areas of native plant communities and floral diversity. Although these priority protection areas are located primarily on steep, undevelopable lands, urbanization is affecting the local environment. Many of the rare taxa are found in the maritime chaparral ecosystem, located on the cooler northern and eastern slopes. As more land becomes developed, local temperatures can increase significantly, producing an urban heat-island effect. Exposure to warmer temperatures and the shading effects of a rapidly intruding overstory put the plants of this system at greater risk of population decline. Although prescribed fire at the urban-wildland interface carries risks to public health and safety, many of the plants, including the pallid manzanita, require fire to germinate their seeds and maintain open exposure to sunlight. Additionally, a new *Phytophthora* pathogen (related to sudden oak death) has been found to infect and kill the pallid manzanita. In the past, well intentioned efforts have had detrimental effects on the vegetation. About ten years ago, grazing was introduced into this area and the goats managed to consume the only known patch of naked-stem buckwheat (*Eriogonum nudum* var. *auriculatum*), which has not reappeared since. In its place, yellow star thistle has exploded onto the ridge. This small but important patch of maritime chaparral serves as a critical repository for many endemic and unusual plants, but unless the site is actively managed, including preventing the alteration of the local climate by too much development, its botanic value may soon disappear.

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Botanical Priority Protection Areas

Alameda and Contra Costa Counties

About the Contributors and Authors

David Amme is the Wildlands Vegetation Program Manager for the East Bay Regional Park District. David has a MS degree in Range Management from U.C. Berkeley. He is a long time member of the California Native Plant Society (CNPS) and collector of many native plant cultivars. David is one of the founding members of the California Native Grass Association (CNGA), the California chapter of the Society for Ecological Restoration (SERCAL), and the California Invasive Plant Council (Cal-IPC).

Laura Baker is in her fifth year as chair of the Conservation committee of the East Bay Chapter of CNPS. After completing her MA in Biology at SFSU in 1976, she worked with Friends of the Earth to defeat a proposed petrochemical plant downstream from Suisun marsh in Solano County. Her experience there sparked a decades-long interest in volunteering with a variety of organizations to protect and preserve the East Bay's remaining natural resources.

Bruce Baldwin is Curator of the Jepson Herbarium and Professor of Integrative Biology at UC Berkeley, where he oversees the Jepson Flora Project and studies evolutionary diversification of California plants. Revision of The Jepson Manual has been one of his major priorities in recent years.

Heath Bartosh is acting chair of the Rare Plant Committee of East Bay CNPS and on the State Rare Plant Program Committee. He ensures these programs continue to develop current, accurate information on the distribution, ecology and conservation status of California's rare and endangered plants. He helps to promote the use of this information to influence plant conservation. He is Founding Principal and Senior Botanist at Nomad Ecology.

Peter Baye, Ph.D., is a coastal plant ecologist with 30 years professional experience in conservation and management of coastal vegetation. He currently works as an independent applied ecologist providing technical support for coastal vegetation and habitat restoration projects, endangered species recovery projects in the California coast region.

Stephen W. Edwards, Ph.D., has been director of the Regional Parks Botanic Garden of the East Bay Regional Park District since 1983. His interests include field botany, earth sciences, horticulture, and conservation.

John Game is associated with the UC and Jepson herbaria and is on the Board of Directors of Calflora. He was actively involved with CNPS for many years and is a noted plant photographer.

David Gowen is a self-trained botanist who has recently discovered a new species of *Navarretia* in the East Bay. He volunteers at the Jepson Herbarium regularly.

Gudrun Kleist is a native of Germany but has lived in the East Bay for many years where she has been transforming her back yard in El Sobrante into a native plant garden with wildlife habitat. She gets her inspiration from many hikes at Sobrante Ridge and our other beautiful East Bay Parks.

Dianne Lake is the Rare and Unusual Plant Committee Chair and East Bay CNPS board member of many years. Dianne published the "Locally Rare and Unusual Plants Guide to the East Bay", a publication that is heavily cited in the region.

Erin McDermott is a Principal, Botanist, Arborist, and Wetland Specialist with Nomad Ecology. Erin serves as Chairperson of the Vegetation Committee of the East Bay Chapter of CNPS and is on the Vegetation Committee at the state level of CNPS.

Lech Naumovich promotes community-driven conservation efforts as the Conservation Analyst for East Bay CNPS. By leading tours, meeting with stakeholders, and providing technical comments, Lech communicates important information to decision-makers. Lech is a Founding Director of Golden Hour Restoration Institute, a field-based biological conservation organization.

Brad Olson is Environmental Programs Manager at the East Bay Regional Park District. He has developed and managed ecological restoration projects for the past twenty years. Brad served for ten years as Rare Plant Chair for the East Bay Chapter of the California Native Plant Society and he has contributed to numerous botanical publications and conducted studies of the East Bay flora for more than twenty years.

Michael Park is a Ph.D. student at the University of California. He is interested in the evolution of leaf heteroblasty (seasonal heterophylly) in *Eryngium* (Apiaceae) of the New World and its consequences for adaptation to vernal pool habitats or other seasonally water inundated environments. He is working on the conservation and reintroduction of the Mount Diablo buckwheat.

Mike Preston is a retired horticulturalist/landscaper who got hooked on native plants through the many classes and workshops on their garden uses offered around the Bay Area. That gave increasing focus to his regular hikes in the wild areas over the years, motivating him to become a decent amateur botanist. He is still wandering the hills.

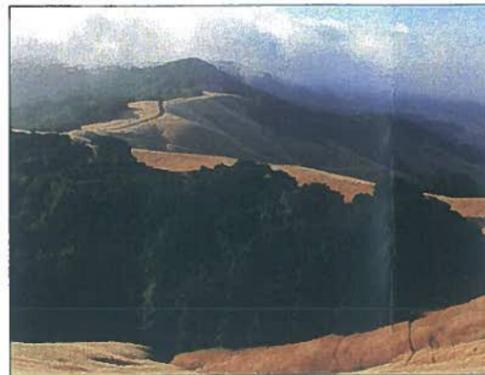
Mary Ann Showers serves as the lead botanist in the California Department of Fish and Game Rare Plant Program. In this role, Mary Ann works with botanists statewide to conserve listed plant species. Mary Ann has had a long interest in the conservation of palmate-bracted bird's-beak which occurs at Springtown Alkali Sink and several other locations in the Central Valley.

Christopher Thayer is a California botanist and naturalist based in the East Bay, where he has lived and explored for nearly half a century. He has a special interest in the unique ecological niches provided by isolated or unusual vegetation communities, in frequent association with locally noteworthy geological features. He works independently as a biological consultant, with an emphasis on field studies of rare plants, animals, wetlands, and other habitats.

Mike Wood is co-chair of the rare plant committee of the Yerba Buena Chapter (San Francisco) of CNPS and is currently developing the chapter's significant plant species list. He writes the regular feature "Focus on Rarities" for the chapter newsletter. He has worked as a professional botanist and vegetation ecologist in the Bay Area for over 20 years.

Elizabeth H. Zacharias, Ph.D., is the Vascular Plant Research and Curatorial Associate at the Harvard University Herbaria. She studies evolution and systematics with a particular focus on the California flora, plants in alkaline areas, and conservation.

The authors are thankful for the generous financial support from the Tides and Rose Foundations.



EAST BAY
CNPS

CNPS - Dedicated to the preservation of California native flora

Photography Credits

Aaron Schusteff - *California macrophyllum*, *Delphinium recurvatum*, *Trifolium depauperatum* var. *hydrophilum*, *Fraxinus dipetala*

A"Don" is Tate - *Atriplex serenana* var. *serenana*

Beatrice Howitt - *Caulanthus coulteri* var. *lemmonii*

Christopher Christie - *Delphinium hansenii*, *Downingia bella*

Carol Witham - *Microseris campestris*, *Navarretia leucocephala* var. *leucocephala*, *Triphysaria versicolor* var. *faucibarbata*, *Astragalus tener* var. *tener*, *Layia chrysanthemoides*

Doreen L. Smith - *Dichondra donnelliana*, *Amsinckia lunaris*

David Tharp - *Madia radiata*

George Hartwell - *Delphinium graciolentum*, *Atriplex cordulata*

Heath Bartosh - Credits page photo - Mt. Diablo

Ivette Loretto - *Navarretia prostrata*

John Game - All page 1 photos, *Calochortus invenustus*, *Fritillaria falcata*, *Navarretia nigelliformis* ssp. *nigelliformis*, *Fritillaria liliacea*

Laura Eliassen - *Tropidocarpum capparideum*, *Pentachaeta exilis* ssp. *exilis*

Lara Hartley - *Camissonia boothii* ssp. *decorticans*

Lech Naumovich - All page 2 photos, Valley Sink Scrub, Akali Meadow, *Fritillaria agrestis*, Desert Olive Scrub, *Cirsium fontinale* var. *campylon*, Northern Coastal Salt Marsh, Stabilized Interior Dunes, *Oenothera deltooides* ssp. *howelli*, Northern Claypan Vernal Pool, *Centromadia parryi* ssp. *congdonii*, Wildflower Field, *Streptanthus albidus* ssp. *peramoenus*, Serpentine Bunchgrass Grassland, Coastal Terrace Prairie, Northern Maritime Chaparral, *Arctostaphylos pallida*, Valley Needlegrass Grassland, Alkali Sacaton Grassland, *Cordylanthus palmatus*, Northern Claypan Vernal Pool (2)

Margaret Ely - *Aster lentus*

Mark Fogiel - *Lathyrus jepsonii* var. *jepsonii*

Marguerite Gregory - *Dudleya farinosa*

Neal Kramer - *Grindelia stricta* var. *platyphylla*, *Dirca occidentalis*, *Calochortus umbellatus*

Rob Preston - *Atriplex depressa*, *Blepharizonia plumosa*, *Cordylanthus mollis* ssp. *mollis*

Steve Edwards - Northern Interior Cypress Forest

Scott Hein - *Calochortus pulchellus*, *Delphinium californicum* ssp. *interius*, *Eriogonum truncatum*

Steve Matson - *Malacothrix coulteri*, *Nitrophilia occidentalis*, *Phacelia douglasii*, *Arctostaphylos auriculata*, *Boschniakia strobilacea*, *Carex multicosata*

Toni Corelli - Serpentine Chaparral

Yulan Tong - *Streptanthus breweri*

LETTER 3: California Native Plant Society, Laura Baker**Response to Comment 3-1**

The comment contains introductory material and describes the general overall impressions that CNPS has of the document, and refers to comments to come later in the letter. As it is not a specific or direct comment on environmental issues or the content or adequacy of the Draft EIR, the comment is noted without response.

Response to Comment 3-2

The comment notes three vegetation communities occurring in the General Plan area that were not specifically identified in the Draft EIR, including coastal prairie grassland, eelgrass beds, and oak woodland. Brief descriptions of these habitat types have been added to the setting in the Biological Resources section of the Draft EIR as shown below.

The following text is added on page 3.4-3 of the Draft EIR following the discussion of Tidal Marsh:

Eelgrass Beds

Eelgrass (*Zostera marina*), a submergent aquatic plant, forms beds in the subtidal zone off the San Pablo Peninsula. This aquatic plant community represents essential habitat for a wide variety of fish and shellfish species as it provides an abundance of food and cover. Additionally, this habitat acts as nursery beds to many common sport and game species. Once much more widespread, eelgrass beds are easily harmed by sedimentation, coastal runoff and pollution, and have declined due to dredging and pollution that promotes the growth of algae and phytoplankton, which limit the amount of sunlight reaching the beds. The loss of eelgrass beds has been tied to a loss of fish abundance and diversity.

The following text is added on page 3.4-5 of the Draft EIR under the heading Grasslands:

Coastal Prairie Grasslands

This vegetation community, which occurs in the coastal fog belt where summer evapotranspiration rates are low, is dominated by native perennial bunch grasses. These species include California oatgrass (*Danthonia californica*), California fescue (*Festuca californica*), coast fescue (*Festuca elmeri*), and Idaho fescue (*Festuca idahoensis*). Other plants that characterize this community include leafy reed grass (*Calamagrostis foliosa*), tufted hair grass (*Deschampsia cespitosa*), bracken fern (*Pteridium aquilinum*), Douglas' iris (*Iris douglasiana*), blue dicks (*Dichelostemma capitatum*), and blue-eyed grass (*Sisyrinchium bellum*). Within the boundaries of the Richmond General Plan area, this vegetation community is found in relatively undisturbed portions of the San Pablo Peninsula, such as Point Molate, and near the southern shoreline in the vicinity of the UC Richmond Field Station.

The following text is added on page 3.4-7 of the Draft EIR following the discussion of Eucalyptus/Monterey Pine Groves:

Oak Woodlands

Oak woodland is typically found along the ridges and sheltered hillsides of the General Plan area and varies from savanna-like to more forest-like stands with higher tree densities and partially closed canopies. This community intergrades with non-native annual grassland, that typically forms the herbaceous understory of this habitat. While coast live oak (*Quercus agrifolia*) is the dominant canopy species in this habitat, species such as California bay (*Umbellularia californica*), California buckeye (*Aesculus californicus*), toyon (*Heteromeles arbutifolia*), coyote brush (*Baccharis pilularis*), and poison oak (*Toxicodendron diversilobum*), are also common in the General Plan boundaries.

Oak woodlands provide food, shelter, and nesting opportunities for a wide variety of wildlife species. Bird species typically found in this habitat include acorn woodpecker (*Melanerpes formicivorus*), Nuttall's woodpecker (*Picoides nuttallii*), northern flicker (*Colaptes auratus*), white breasted nuthatch (*Sitta carolinensis*) and house wren (*Troglodytes aedon*). Other birds occurring in woodland communities include red-shouldered hawk (*Buteo lineatus*), and great horned owl (*Bubo virginianus*). Common mammals in this community include bobcat, coyote, gray fox, striped skunk, western gray squirrel (*Sciurus griseus*), deer mice (*Peromyscus* sp.), dusky woodrat (*Neotoma fuscipes*), and mule deer.

The following text is added on page 3.4-33 of the Draft EIR under Impact 3.4-3:

Sensitive natural communities identified in the CNDDDB, and by EBCNPS in from the vicinity of the City of Richmond include Eelgrass Beds, Northern Coastal Salt Marsh, Northern Maritime Chaparral, Oak Woodlands, Coastal Prairie Grassland, and Valley Needlegrass Grassland.

This comment also refers to lists of locally rare plant species kept by EBCNPS provided as a series of attachments to the letter. The comment is noted. As discussed on page 3.4-8 of the Draft EIR, the species list in the EIR (Table 3.4-1 on pages 3.4-9 through 3.4-16) is based on data from the CNDDDB database (information dated November, 2007), USFWS automated species list (information dated November, 2007), and the CNPS Electronic Inventory of Rare and Endangered Vascular Plants of California, as reported at the time the EIR was prepared. As future development projects under the General Plan could occur at any time over the next 20 years, the list of species may go through changes (both additions and deletions) in the list of species that need to be addressed. As development of specific areas occurs, each project would need to go through its own separate environmental review, which would require addressing potential impacts on special-status species, if any, at the time of the proposal. To the extent that other species on other lists qualify for protection under the Public Resources Code, potential impacts on those species would also be required to be evaluated at a project level at the time of the development application. Inclusion of additional species would not change the conclusions of the General Plan EIR, as existing regulations regarding

the protection of special-status species provide adequate protection during project-level review, regardless of the number of species identified in the programmatic document.

Response to Comment 3-3

This comment notes that the value of natural habitats along the San Pablo Ridgeline was not identified in the EIR or General Plan. Additional descriptions of ridgelines on the San Pablo Peninsula have been added to the setting section. The following text is added to the first paragraph under the heading Significant Ecological Areas on Draft EIR page 3.4-7:

The Contra Costa County General Plan⁴ designated Significant Ecological Areas throughout the County. Significant Ecological Areas in general proximity or, including those within or in the vicinity of the City include those shown below (the numbering below corresponds to General Plan listing)-⁵ Additional significant ecological areas have been identified by the East Bay Chapter of the California Native Plant Society and California Audubon Society.

The following text is added to the description of the San Pablo Ridge on page 3.4-8:

San Pablo Ridge. The grassland areas on clay and clay loam soils on San Pablo Ridge support a population of Santa Cruz tarweed (*Holocarpha macradenia*) which was transplanted from a hillside in Pinole. San Pablo Ridge also represents part of an unbroken transect of natural habitat from the subtidal zone, through portions of Point Molate to the ridge top.

The following descriptions of the UC Richmond Field Station and Richmond Shoreline are added on page 3.4-8 following the description of the Sobrante Ridge Manzanita Grove.

UC Richmond Field Station. The UC Richmond Field Station contains some of the last undisturbed coastal terrace grassland adjacent to the San Francisco Bay shoreline, and includes a very rare patch of slender wheatgrass (*Elymus trachycaulus*). This site also includes a variety of other sensitive habitats such as seasonal wetlands, a large native cordgrass (*Spartina foliosa*) marsh that provides habitat for the federally listed as endangered California Clapper Rail (*Rallus longirostris obsoletus*), tidal mudflats and eelgrass beds. These resources have been identified as areas of Unique Restoration Opportunities in the Baylands Ecosystem Habitat Goals Report.

Richmond Shoreline. The Richmond shoreline is a part of the San Pablo Bay, and has been designated by the California Audubon Society as an Important Bird Area due to the important foraging habitat provided by the tidal marshes and eelgrass beds in the area.

As mentioned under Response to Comment 3-2, each future project would go through its own environmental review, at which time potential effects on resources along the San Pablo Peninsula would be addressed.

Response to Comment 3-4

The comment notes that the value of natural habitats at the UC Richmond Field Station was not identified in the EIR or General Plan. The following description of the UC Richmond Field Station is added on page 3.4-8 following the description of the Sobrante Ridge Manzanita Grove.

UC Richmond Field Station. The UC Richmond Field Station contains some of the last undisturbed coastal terrace grassland adjacent to the San Francisco Bay shoreline, and includes a very rare patch of slender wheatgrass (*Elymus trachycaulus*). This site also includes a variety of other sensitive habitats such as seasonal wetlands, a large native cordgrass (*Spartina foliosa*) marsh that provides habitat for the federally listed as endangered California Clapper Rail (*Rallus longirostris obsoletus*), tidal mudflats and eelgrass beds. These resources have been identified as areas of Unique Restoration Opportunities in the Baylands Ecosystem Habitat Goals Report.

As mentioned under Response to Comment 3-2, each future project would go through its own environmental review, at which time potential effects on biological resources at the UC Richmond Field Station would be addressed.

Response to Comment 3-5

This comment notes that the value of natural habitats along the California Audubon Designated Important Bird Area was not identified in the EIR or General Plan. The following description of the Richmond Shoreline is added on page 3.4-8 following the description of the Sobrante Ridge Manzanita Grove.

Richmond Shoreline. The Richmond shoreline is a part of the San Pablo Bay, and has been designated by the California Audubon Society as an Important Bird Area due to the important foraging habitat provided by the tidal marshes and eelgrass beds in the area.

As mentioned under Response to Comment 3-2, each future project would go through its own environmental review, at which time potential effects on biological resources at the California Audubon Designated Important Bird Area would be addressed.

Response to Comment 3-6

This comment refers to conflicts between the planning vision that protects natural resources and planning actions that could result in the destruction of those resources. General Plan policies allow for development in areas that contain natural resources. However, the General Plan does not authorize future development without project-specific environmental review and the imposition of measures to avoid or mitigate impacts on sensitive resources. The General Plan calls for preservation of sensitive natural resources, including special-status species and their habitat, wetlands, and sensitive natural communities.

Response to Comment 3-7

This comment states concerns about Change Area 13: San Pablo Peninsula and Change Area 16: Southern Gateway. Both of these change areas contain portions of EBCNPS's Richmond Shoreline Botanical Priority Protection Areas due to the value of vegetation communities present and the presence of special-status plant species. While these areas contain sensitive natural communities, as discussed in Response to Comment 3-6, future projects in these areas would be subject to CEQA review, which would consider special-status species and sensitive habitats. Future projects would be required to comply with all existing regulations regarding the protection of sensitive species. The land use designation within these areas does not override the requirements of project-level environmental review and the use of design features that avoid or mitigate impacts on sensitive resources.

Response to Comment 3-8

The comment notes that information on biological resources associated with the Point Molate area was not identified in the EIR or General Plan. Refer to Responses to Comments 3-2 through 3-5 for additional habitat types described in the Draft EIR. Two habitats addressed in the Point Molate EIR, but not addressed in the Richmond General Plan Draft EIR are Invasive Scrub, and Beach Strand. Invasive scrub habitat is a scrub habitat typically occurring in disturbed areas and comprised of non-native invasive plant species, and Beach Strand is a habitat that forms the intergrade zone between terrestrial habitats and the Bay. This habitat is comprised mostly of sand, and occasionally rip-rap with a sparse combination coastal and non-native plant species. The Point Molate EIR does not indicate that these habitats support any special-status species. However, any future projects proposed in the Point Molate area would be required to evaluate these habitats for special-status species in compliance with General Plan policies described in the Draft EIR and would be required to comply with regulations regarding the protection of sensitive species.

Response to Comment 3-9

This comment states that General Plan Policy LU 3.1 is in direct conflict with Change Area 13: San Pablo Peninsula and Change Area 16: Southern Gateway, as the land use designations within these change areas could allow development in some of the most sensitive natural communities in Richmond. The comment further states that the General Plan must align contemplated development with the intent of its preservation policies. While the General Plan has designated portions of the two change areas for development, the land use designations are not necessarily in conflict with the policies protecting natural resources. Such resources do not occur throughout the entire change areas. Future projects are required to assess the presence of sensitive natural resources, and identify avoidance and mitigation measures through the project-level CEQA review process.

Response to Comment 3-10

The comment states that the EBCNPS is one of the regional agencies identified (though not specifically identified by name) in Policy LU 4.3. As one of those agencies, they request that sensitive plant communities identified in their letter are included in the General Plan. Sensitive

natural communities listed in this comment letter have been incorporated into the Draft EIR (see Responses to Comments 3-2, 3-2, 3-3, 3-4 and 3-5). The East Bay Chapter of CNPS is also added to Action CN1.A (Habitat Conservation Plans) as a coordinating agency with regard to habitat plans. The text on page 3.4-30 is amended as follows:

Work closely with Contra Costa County, the East Bay Chapter of California Native Plant Society (CNPS), and the East Bay Regional Park District to develop habitat conservation plans. Ensure that these plans identify locations and protect sensitive habitat including wetlands, marshes, baylands, creeks and open space. The plans should also establish clear mitigation criteria including no net losses in natural resource acreage, functions or values. The plan should provide for safe wildlife movement by limiting roadways within habitat areas, creating wildlife passable fencing for existing roadways, incorporating design features and by creating habitat preserves that are immediately adjacent to each other.

Response to Comment 3-11

The comment recognizes that General Plan findings and policies identify the need to protect sensitive natural communities and local native plant species, further stating that these resources are found in Change Areas 13 and 16. It further states that the General Plan does not provide protection for these resources. As previously discussed, existing laws protect sensitive habitats and natural resources through project-level environmental review and the imposition of measures to prevent or mitigate impacts. The specific sensitive natural communities referenced in the comment have been added to the setting section of the Draft EIR to highlight their importance (see Responses to Comments 3-2 through 3-5).

Response to Comment 3-12

This comment disagrees with the conclusion that the General Plan effects on sensitive natural communities will be less than significant because coastal terrace prairie (aka: coastal prairie grasslands) were not considered in the analysis. As stated under Response to Comment 3-2, coastal prairie grassland has been added to the setting section of the Draft EIR as a sensitive natural community that must be addressed on any future projects. Additionally, specific areas containing this habitat, such as Point Molate, and the UC Richmond Field Station, have also been identified in the EIR as containing this vegetation community.

Response to Comment 3-13

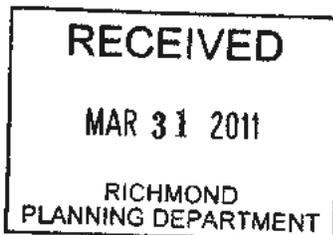
This comment refers to policies in the BCDC San Francisco Bay Plan that call for the creation of a regional open space and park facility at the Point San Pablo Peninsula that would restrict development to uses compatible with the proposed park, and would protect eelgrass beds by restricting use of existing piers and dock to small recreational craft. It further states that eelgrass beds were not identified in the Draft EIR. As stated under Response to Comment 3-2, eelgrass beds have been added to the setting section of the Draft EIR as a sensitive natural community that must be addressed through project-level review of any proposed future development.

DEPARTMENT OF TRANSPORTATION

111 GRAND AVENUE
 P. O. BOX 23660
 OAKLAND, CA 94623-0660
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March 30, 2011

CCGEN003
 SCH#2008022018

Mr. Hector Rojas
 City of Richmond
 450 Civic Center Plaza
 Richmond, CA 94804

Dear Mr. Rojas:

Richmond General Plan Update – Draft Environmental Impact Report

Thank you for continuing to include the California Department of Transportation (Department) in the environmental review process for the Richmond General Plan Update. The following comments are based on the Draft Environmental Impact Report (DEIR).

Highway Operations

- On page 3.14-11, Table 3.14-3: The levels of service (LOS) for freeway facilities shown in the table appear to be based on daily volume. For basic freeway segments, ramps, and multi-lane highways, LOS estimated in this manner generally does not reflect real conditions. It would be more appropriate to use the Highway Capacity Manual criteria for LOS based on peak hour density. The LOS analysis should be revised accordingly.

4-1
- On page 3.14-30: An additional high-occupancy vehicle lane (HOV) lane in both directions on Interstate 580 (I) 580 was assumed to be in place for the roadway network in the 2030 model. There is no plan for such a HOV lane. Accordingly, this assumption is not valid. Travel demand forecasts should be based on a model that does not include the HOV lane on I-580.

4-2
- On page 3.14-45: The proposed mitigation measures 3.14-1 and 3.14-2 reference planned roadway improvements shown on Figure 3.14-7 at the Western Drive interchange on I-580 and at the Solano Avenue and McBryde Avenue interchanges on I-80. The Department is not aware of any planned improvements at these interchanges. Please provide more details on the future projects and explain how the LOS for this section of freeway would be improved as a result.

4-3
- Please provide a brief description of the “Place-Based Street Classification and Multi-Modal Level of Service Standards.”

4-4

Mr. Hector Rojas/City of Richmond
 March 30, 2011
 Page 2

Parking Strategies

The Department recommends that the City refer to, "Reforming Parking Policies to Support Smart Growth"ⁱ, a Metropolitan Transportation Commission (MTC) study funded by the Department, for sample parking ratios and strategies that support compact growth and Transit Oriented Development. Doing so will encourage alternate forms of transportation, reduce regional vehicle miles traveled, and lessen future traffic impacts on the state highways.

4-5

Encroachment Permit

Please be advised that any work or traffic control that encroaches onto the State right-of-way (ROW) requires an encroachment permit that is issued by the Department. To apply, a completed encroachment permit application, environmental documentation, and five (5) sets of plans clearly indicating State ROW must be submitted to the address below. Traffic-related mitigation measures should be incorporated into the construction plans during the encroachment permit process. See the website link below for more information.

4-6

<http://www.dot.ca.gov/hq/traffops/developserv/permits/>

Michael Condie, District Office Chief
 Office of Permits
 California DOT, District 4
 P.O. Box 23660
 Oakland, CA 94623-0660

Please feel free to call or email Luis Melendez of my staff at (510) 286-5606 or Luis_Melendez@dot.ca.gov with any questions regarding this letter.

Sincerely,



LISA CARBONI
 District Branch Chief
 Local Development – Intergovernmental Review

c: State Clearinghouse

ⁱ http://www.mtc.ca.gov/planning/smart_growth/parking_study.htm
 "Caltrans improves mobility across California"

LETTER 4: State of California, Department of Transportation, Lisa Carboni**Response to Comment 4-1**

The comment states that Table 3.14-3 on page 3.14-11 of the Draft EIR should show peak hour level of service (LOS) instead of daily volume. The LOS criteria for the freeway segments, and all roadway segments studied in the Draft EIR were developed using HCM methodologies, then factored up from peak hour-based thresholds to daily thresholds to correspond to the daily volumes projected by the Contra Costa Countywide Travel Demand Model. The capacity evaluation was performed using daily forecasts because the transportation consultant's review of the model validation within and near the City of Richmond indicated that the model was better-validated on a daily basis than on a peak-hour basis.

Response to Comment 4-2

The comment states that there is no plan for an additional high-occupancy vehicle lane (HOV) on Interstate 580. The commenter is correct. The reference to the extra HOV lane assumption on Draft EIR page 3.14-30 is incorrect. The forecasting and capacity assumptions for I-580, however, did not assume the HOV lane and, therefore, does not change the conclusions of the Draft EIR. The text reference was I from an early draft in which the City and transportation consultant contemplated including the HOV lane because it was mentioned as a second-tier priority in MTC's *2002 HOV Lane Master Plan Update*, the guiding document at the time the General Plan Update and EIR process initiated. The text on page 3.14-30 is revised as follows:

... In addition, assumptions were made regarding the following planned roadway projects in the City of Richmond:

- Interstate 580 will have an additional HOV lane in both directions throughout the City
- 23rd Street was narrowed to a two lane bi-directional facility between Carlson Avenue and San Pablo Avenue, consistent with the current 23rd Street planning effort
- Barrett Avenue was narrowed to a four lane facility between 23rd Street and Harbour Way, to provide for the construction of bicycle lanes

Response to Comment 4-3

The comment requests more information regarding planned improvements discussed in Mitigation Measure 3.14-2. The reference on Draft EIR page 3.14-45 and in Figure 3.14-7 (Draft General Plan Update Map 4.3) to planned interchange improvements at I-80/Solano Avenue, I-80/McBryde Avenue, and I-580/Western Drive arose from City of Richmond expectations that improvements would be programmed jointly by the City, CCTA, and Caltrans, at some point within the life of the General Plan Update. Since no improvements have yet been programmed, these three locations will be changed on the maps, and in the Draft EIR reference, to "Potential Roadway Improvements". It is noted that the Draft EIR's freeway segment LOS analysis did not reflect any improvements at these interchanges and, therefore, does not change the conclusions of the Draft EIR.

Response to Comment 4-4

The comment requests a description of “Place-Based Street Classification and Multi-Modal Level of Service Standards.” This is provided in the Draft General Plan Update Circulation Element on pages 4.14 through 4.21 and in Policies CR1.8, CR1.9, and CR1.11.

Response to Comment 4-5

The comment recommends the “Reforming Parking Policies to Support Smart Growth” for strategies to encourage alternate forms of transportation. This is not a direct comment on environmental issues or the content or adequacy of the Draft EIR; therefore, the comment is noted without response. The comment is forwarded to the decision-makers.

Response to Comment 4-6

The comment notes that an encroachment permit is required prior to any work in the State right-of-way. This is not a direct comment on environmental issues or the content or adequacy of the Draft EIR; therefore, the comment is noted without response. The comment is forwarded to the decision-makers.

WCCTAC

West Contra Costa Transportation Advisory Committee

El Cerrito

March 31, 2011

Hercules

Via Electronic Mail

Pineole

Mr. Hector Rojas, Associate Planner
City of Richmond Planning Department
450 Civic Center Plaza
Richmond, CA 94804-1630



Richmond

RE: Comments on Richmond General Plan DEIR

Dear Mr. Rojas:

San Pablo

Thank you for the opportunity to review the Draft EIR for the Richmond General Plan.

Richmond is the largest city in West Contra Costa and its General Plan may impact a number of WCCTAC partner agencies. We respectfully requested that before the adoption of the General Plan, you meet with the TAC or a subset of the members including El Cerrito, San Pablo, the County, and AC Transit.

Contra Costa
County

Please feel free to contact me if you have any questions.

Sincerely,

Christina M. Atienza
Executive Director

AC Transit

BART

WestCAT

5-1

**LETTER 5: West Contra Costa Transportation Advisory Committee,
Christina Atienza**

Response to Comment 5-1

The comment recommends coordination with the West Contra Costa Transportation Advisory Committee (WCCTAC) before the adoption of the General Plan. Planning staff discussed the proposed General Plan with the WCCTAC during its June 9, 2011 Technical Advisory Committee meeting. The WCCTAC expressed concern over the apparent inconsistency between the level of service (LOS) standards listed in the proposed General Plan and the West County Action Plan for Routes of Regional Significance – 2009 Update. Based on its discussion with WCCTAC, staff has revised General Plan Circulation Policy CR1.10 (Interim Level of Service Standards for West County Routes of Regional Significance) to be consistent with the levels of service standards for routes of regional significance that are listed in the West County Action Plan for Routes of Regional Significance – 2009 Update. The City will continue to work with the WCCTAC to promote the use of multi-modal level of service standards in Richmond and other WCCTAC member jurisdictions.

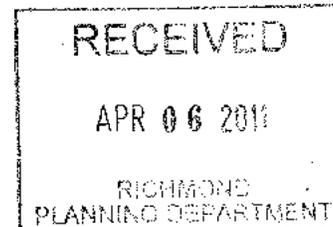


STATE OF CALIFORNIA
GOVERNOR'S OFFICE of PLANNING AND RESEARCH
STATE CLEARINGHOUSE AND PLANNING UNIT



JERRY BROWN
GOVERNOR

April 1, 2011



Hector Rojas
City of Richmond
450 Civic Center Plaza
Richmond, CA 94804

Subject: City of Richmond General Plan and Zoning Code Update
SCH#: 2008022018

Dear Hector Rojas:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on March 30, 2011, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,

Scott Morgan
Director, State Clearinghouse

Enclosures
cc: Resources Agency

6-1

Document Details Report
State Clearinghouse Data Base

Letter 6

SCH# 2008022018
Project Title City of Richmond General Plan and Zoning Code Update
Lead Agency Richmond, City of

Type EIR Draft EIR
Description Update the City's General Plan to establish the framework for population and job growth and provision of public services and facilities for the next 20 years. Includes updates and land use designations in 16 change areas as the focus of change in the City.

Lead Agency Contact

Name Hector Rojas
Agency City of Richmond
Phone (510) 620-6662 **Fax**
email
Address 450 Civic Center Plaza
City Richmond **State** CA **Zip** 94804

Project Location

County Contra Costa
City Richmond
Region
Lat / Long
Cross Streets I-80 & I-580
Parcel No. Multiple
Township

Range **Section** **Base**

Proximity to:

Highways I-80, I-580
Airports
Railways Amtrack, UPRR, BNSF, RPRR
Waterways Wildcat Creek
Schools Multiple
Land Use Residential, Open Space, Commercial, Industrial

Project Issues Aesthetic/Visual; Agricultural Land; Air Quality; Archaeologic-Historic; Biological Resources; Drainage/Absorption; Flood Plain/Flooding; Geologic/Seismic; Minerals; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Schools/Universities; Septic System; Sewer Capacity; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Wildlife; Growth Inducing; Landuse

Reviewing Agencies Resources Agency; Department of Conservation; Department of Fish and Game, Region 3; Cal Fire; Office of Historic Preservation; Department of Parks and Recreation; San Francisco Bay Conservation and Development Commission; Department of Water Resources; Office of Emergency Management Agency, California; California Highway Patrol; Caltrans, District 4; Department of Housing and Community Development; Regional Water Quality Control Board, Region 2; Native American Heritage Commission; Public Utilities Commission

Date Received 02/11/2011 **Start of Review** 02/14/2011 **End of Review** 03/30/2011

NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-4082
Fax (916) 657-5390



March 10, 2011

c/824
3/30/11
e



Hector Rojas
City of Richmond
450 Civic Center Plaza
Richmond, CA 94804

RE: SCH# 2008022018 – Richmond General Plan Update, Richmond, Contra Costa County

Dear Mr. Rojas:

The Native American Heritage Commission (NAHC) has reviewed the proposed General Plan update referenced above. Government Code §65352.3 requires that prior to the adoption or any amendment of a city or county's general plan, the city or county shall conduct consultations with California Native American tribes that are on the tribal consultation list maintained by the NAHC, see attached list. The purposes of these consultations are to preserve or mitigate impacts to Native American cultural places located within the city or county's jurisdiction. As part of the process, the NAHC also recommends the following actions:

- ✓ Contact the appropriate Information Center for a record search to determine:
 - If a part or all of the area of project effect (APE) has been previously surveyed for cultural resources.
 - If any known cultural resources have already been recorded on or adjacent to the APE.
 - If the probability is low, moderate, or high that cultural resources are located in the APE.
 - If a survey is required to determine whether previously unrecorded cultural resources are present.
- ✓ If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum, and not be made available for public disclosure.
 - The final written report should be submitted within 3 months after work has been completed to the appropriate regional archaeological Information Center.
- ✓ Contact the NAHC for a Sacred Lands File check, USGS quadrangle name, township, range, and section information regarding the APE is required for this search.
- ✓ Documents should also include:
 - Provisions for the identification and evaluation of accidentally discovered archeological resources, per CEQA Guidelines §15064.5(f);
 - Provisions for monitoring all ground-disturbing activities in areas of identified archaeological sensitivity by a archaeologist meeting the professional qualifications as defined in the in the *Secretary of the Interior's Standards and Guidelines* for archaeology and a culturally affiliated Native American cultural resource specialist;
 - Provisions for the curation of recovered non-burial associated artifacts in data recovery plans, per CEQA Guidelines 15126.4(5)(b)(3)(C), in consultation with culturally affiliated Native Americans;
 - Provisions for discovery of Native American human remains. Health and Safety Code §7050.5, CEQA; and Guidelines §15064.5(e), and Public Resources Code §5097.98 mandates the process to be followed in the event of an accidental discovery of any human remains and associated grave items.

Sincerely,

Rob Wood
Associate Government Program Analyst

CC: State Clearinghouse

STATE OF CALIFORNIA — BUSINESS, TRANSPORTATION AND HOUSING AGENCY

Edmund G. Brown Jr., Governor

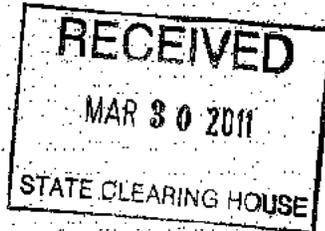
DEPARTMENT OF TRANSPORTATION
111 GRAND AVENUE
P. O. BOX 23660
OAKLAND, CA 94623-0660
PHONE (510) 622-5491
FAX (510) 286-3559
TTY 711



*Flex your power!
Be energy efficient!*

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3/30/11
e

March 30, 2011



CCGEN003
SCH#2008022018

Mr. Hector Rojas
City of Richmond
450 Civic Center Plaza
Richmond, CA 94804

Dear Mr. Rojas:

Richmond General Plan Update – Draft Environmental Impact Report

Thank you for continuing to include the California Department of Transportation (Department) in the environmental review process for the Richmond General Plan Update. The following comments are based on the Draft Environmental Impact Report (DEIR).

Highway Operations

- On page 3.14-11, Table 3.14-3: The levels of service (LOS) for freeway facilities shown in the table appear to be based on daily volume. For basic freeway segments, ramps, and multi-lane highways, LOS estimated in this manner generally does not reflect real conditions. It would be more appropriate to use the Highway Capacity Manual criteria for LOS based on peak hour density. The LOS analysis should be revised accordingly.
- On page 3.14-30: An additional high-occupancy vehicle lane (HOV) lane in both directions on Interstate 580 (I-580) was assumed to be in place for the roadway network in the 2030 model. There is no plan for such a HOV lane. Accordingly, this assumption is not valid. Travel demand forecasts should be based on a model that does not include the HOV lane on I-580.
- On page 3.14-45: The proposed mitigation measures 3.14-1 and 3.14-2 reference planned roadway improvements shown on Figure 3.14-7 at the Western Drive interchange on I-580 and at the Solano Avenue and McBryde Avenue interchanges on I-80. The Department is not aware of any planned improvements at these interchanges. Please provide more details on the future projects and explain how the LOS for this section of freeway would be improved as a result.
- Please provide a brief description of the "Place-Based Street Classification and Multi-Modal Level of Service Standards."

Mr. Hector Rojas/City of Richmond
March 30, 2011
Page 2

Parking Strategies

The Department recommends that the City refer to, "Reforming Parking Policies to Support Smart Growth", a Metropolitan Transportation Commission (MTC) study funded by the Department, for sample parking ratios and strategies that support compact growth and Transit Oriented Development. Doing so will encourage alternate forms of transportation, reduce regional vehicle miles traveled, and lessen future traffic impacts on the state highways.

Encroachment Permit

Please be advised that any work or traffic control that encroaches onto the State right-of-way (ROW) requires an encroachment permit that is issued by the Department. To apply, a completed encroachment permit application, environmental documentation, and five (5) sets of plans clearly indicating State ROW must be submitted to the address below. Traffic-related mitigation measures should be incorporated into the construction plans during the encroachment permit process. See the website link below for more information.

<http://www.dot.ca.gov/hq/traffops/developserv/permits/>

Michael Condie, District Office Chief
Office of Permits
California DOT, District 4
P.O. Box 23660
Oakland, CA 94623-0660

Please feel free to call or email Luis Melendez of my staff at (510) 286-5606 or Luis_Melendez@dot.ca.gov with any questions regarding this letter.

Sincerely,



LISA CARBONI
District Branch Chief
Local Development – Intergovernmental Review

c: State Clearinghouse

LETTER 6: Governor's Office of Planning and Research, Scott Morgan

Response to Comment 6-1

The letter acknowledges receipt of the Draft EIR by the State Clearinghouse. Attached to the letter are comments received from the Native American Heritage Commission and California Department of Transportation. See Responses to Letters 1 and 4, respectively, for responses to those letters. No response is required.



March 30, 2011



Hector Rojas, Associate Planner
City of Richmond Planning and Building Services
450 Civic Center Plaza
PO Box 4046
Richmond, CA 94804-1630

Dear Mr. Rojas; *Hector,*

I appreciated the opportunity to review the Draft Richmond General Plan (GP) and Environmental Impact Report (EIR), and to speak with you on the phone several times over the past few weeks to ask questions and discuss my comments. Per your suggestion, I am forwarding those comments to you in writing. We look forward to adoption of the GP by Richmond soon, as well as to adoption by Richmond and El Cerrito of the San Pablo Avenue Specific Plan (SP).

GP Comments:

1. There are a number of positive references in the Land Use and Economic Development Elements of the GP to collaboration with the City of El Cerrito on adoption and implementation of the San Pablo Avenue SP that will help knit together both sides of the street. It is appreciated that the GP also calls for the provision of new development that fosters a more vibrant, job creating, higher density, transit oriented, reduced parking, walkable, mixed use, sustainable, well designed, affordable built environment, centered around BART stations and key intersections in the San Pablo Avenue Corridor.

2. The GP Land Use and Design Element contains land use classifications, locations, and development standards that are relevant to the SP as shown in several places in the GP. On Page 3.15, Table 3.2 lists the Medium-Intensity Mixed Use (Commercial Emphasis) land use classification (noted on page 3.87, Map 3.6.b as applying to Change Area 4 San Pablo Corridor (South)) that constitutes most of the San Pablo Avenue Specific Plan Corridor Area in Richmond. Page 3.17, Table 3.3, lists the Medium-Intensity Mixed-Use (Community Nodes and Gateways) classification (noted on page 3.86, Map 3.6.a as applying to Change Area 4 San Pablo Corridor (North), and on page 3.83, Map 3.3 as applying to Change Area 1 (Downtown/Macdonald Avenue)) that includes the Macdonald Avenue Node portion of Specific Plan Area (SPA) 1 in the SP. As a note, the Draft SP has portions of three SPAs - 1, 4 and 5 that cover areas within Richmond. The following chart shows how the GP and SP compare in terms of three significant development standards:

7-1

	GP Change Area 1	GP Change Area 4	SP SPA 1	SP SPA 4	SP SPA 5
Density	Up to 75 du/ac	Up to 50 du/ac	Avg. 30-50 du/ac	Avg. 25-45 du/ac	Avg. 20-45 du/ac
Intensity-FAR	0.5 to 2.0	0.25 to 1.0	Max. avg. 2.0	Max. avg. 2.0	Max. avg. 2.0
Height	15 to 55 feet	15 to 55 feet	Up to 55 feet	Up to 35 feet	Up to 35 feet

Richmond GP and EIR Comments
March 30, 2011
Page 2

As shown in the above chart, there appear to be some inconsistencies in density and maximum FAR between the GP areas and the three SPAs. For example, GP Change Area 1 goes beyond SPA 1 in density. Also the SPAs exceed GP Change Area 4 in FAR. It is understood, as noted in the GP text that the SP will be more specific than the GP, and that the SP standards mostly fall within the bounds of the GP. However, please review these potentially conflicting standards and adjust the GP as may be appropriate.



7-1
(cont.)

3. Page 3.28, 2nd bullet states that development should be three stories or less, while the relevant ranges on page 3.15 allow heights of 55 feet that would typically exceed three stories. Please also review the text later in this bullet regarding setbacks as they relate to consistency with the SP standards.

4. The last line on page 3.28 should have the word "to" inserted between "order" and "maximize."

5. Page 3.78, Plans and Ordinances section refers to a number of items including specific plans, and it should also reference and discuss the San Pablo Avenue SP.

EIR Comments:

1. It is informative and appreciated that the text on page 3.3-7 states: "Higher density communities often mix residential uses with, or very near commercial, business, and employment uses, thus reducing people's reliance on motor vehicles or the distance of vehicle trips. Compact, higher density uses also produce less air emissions on a per unit basis from the use of natural gas for space and water heating."



7-2

2. Figure 3.14-7, Proposed GP Circulation Element Map 4.3: Planned Roadway Improvements shows the southern portion of San Pablo Avenue that is within the SP area as being designated dark green in the map legend meaning that Streetscape improvements in that area are by Richmond. However, the full width of the Avenue and the public sidewalk through the SP area are within El Cerrito, and we have already done streetscape improvements in that area including signage, lighting, sidewalks, street furniture, accessibility and landscaping. Therefore the map designation should be changed to light green for Streetscape (Surrounding Jurisdictions), meaning it is within the purview of El Cerrito. That would then appropriately match the map designation for the northern portion of the Avenue within the SP area.



7-3

Please let me know if you have any questions or comments. Thanks for your attention to these matters.

Sincerely,

Mitch Oshinsky, AICP
Economic Development Director

LETTER 7: El Cerrito Community Development Department, Mitch Oshinsky

Response to Comment 7-1

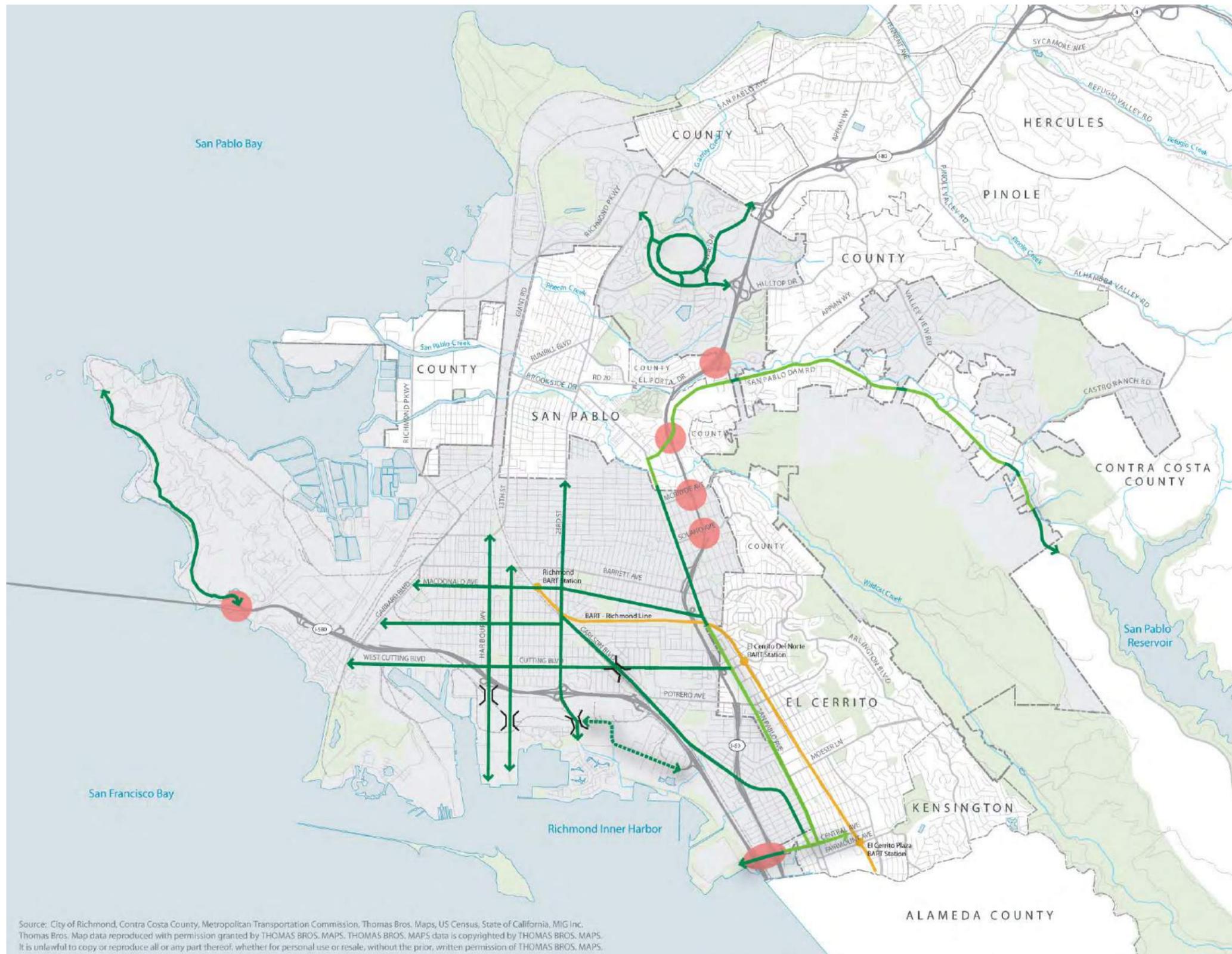
The comment suggests revisions to the General Plan Land Use and Urban Design Element. This is not a comment on the adequacy of the analysis contained in the Draft EIR, but on the draft General Plan. The comment is forwarded to the decision-makers for their consideration.

Response to Comment 7-2

The comment notes that on page 3.3-7 of the Draft EIR states that higher density communities often reduce the number and distance of vehicle trips. The comment is noted. Please see section 3.3, Air Quality, of the Draft EIR for a discussion of vehicle trips and emissions.

Response to Comment 7-3

The comment states that Figure 3.14-7, Proposed General Plan Circulation Element Map 4.3: Planned Roadway Improvements, on page 3.14-31 of the Draft EIR, should be revised to reflect that the southern portion of San Pablo Avenue is in the City of El Cerrito. The southern portion of San Pablo Avenue is currently shown in dark green, indicating a streetscape improvement by the City of Richmond. This portion of the street is actually located in El Cerrito and, therefore, should be designated light green instead. Figure 3.14-7, Proposed General Plan Circulation Element Map 4.3: Planned Roadway Improvements, on page 3.14-31 of the Draft EIR, is amended as shown on the following page.



LEGEND:

- Streetscape *
- New Roadway Alignment
- Streetscape (Surrounding Jurisdictions)
- Grade Separation
- Freeway Interchange



*Streetscape improvements may include pedestrian and bicycle amenities such as sidewalks, street lights, street furniture, signage, crosswalks and trees.



NORTH
SCALE IN MILES

Source: City of Richmond, Contra Costa County, Metropolitan Transportation Commission, Thomas Bros. Maps, US Census, State of California, MIG Inc. Thomas Bros. Map data reproduced with permission granted by THOMAS BROS. MAPS. THOMAS BROS. MAPS data is copyrighted by THOMAS BROS. MAPS. It is unlawful to copy or reproduce all or any part thereof, whether for personal use or resale, without the prior, written permission of THOMAS BROS. MAPS.

Fehr & Peers, 2009.

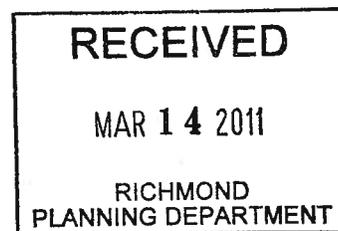


FIGURE 3.14-7
Proposed General Plan Circulation Element Map 4.3: Planned Roadway Improvements

100018268

Richmond GPU EIR

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



March 14, 2011

Mr. Hector Rojas, Associate Planner
Planning and Building Services
City of Richmond
450 Civic Center Plaza, 2nd Floor
Richmond, CA 94804

RE: City of Richmond General Plan and Draft Environmental Impact Report.

Dear Mr. Rojas,

I am writing to comment on the above-referenced documents on behalf of the twenty-four Tiscornia Estates residents and others (beginning with Mr. John Mengshol) who signed the comment letter dated September 1, 2009 regarding the Tiscornia Estates Specific Plan ("TESP") and the draft general plan. (This group will hereinafter be referred to as "Clients".) This letter follows up on my earlier letters on behalf of my Clients commenting on earlier drafts of the new Richmond General Plan. However, the focus of this letter is not only on the new general plan but also on the Draft Environmental Impact Report ("DEIR") for that plan.

8-1

As I had indicated in my previous letters, the Clients support many of the proposed changes that the new general plan makes. However, one specific item alarms my Clients. That is the proposal made in the Land Use and Urban Design Element ("LUUDE") to rescind the Tiscornia Estates Specific Plan and replace it by conventional zoning. Not only would that proposal potentially adversely affect the Tiscornia Estates area, but the proposal would violate CEQA, because there are associated significant adverse environmental impacts that have neither been disclosed nor discussed in the Draft EIR for the revised general plan.

As the revised general plan and its DEIR both acknowledge (GP at P. 3.79, 3.158, 7.45; DEIR at 3.1-4), in 1982, the City, in cooperation with residents of the Tiscornia Estates area, prepared and adopted the TESP. However, neither the general plan nor the DEIR disclose or discuss the fact that the TESP, as allowed under state law, included within itself its own integrated EIR to identify, discuss, and mitigate potential environmental impacts that might occur through development under the TESP. The TESP specifically identified potentially significant open space, visual, and vegetation impacts that would be associated with allowing additional development under the TESP. (TESP at pp. 78, 95, 104, 121-122, and 114.) Portions of the TESP, and specifically its open space component, were identified and adopted as mitigation measures to reduce the identified impacts to less than significant.

8-2

Both the analysis of impacts and the identified mitigation measures are now irrebuttably presumed legally valid. (Public Resources Code §21167.2.) Having allowed development to occur in the plan area in accordance with the TESP, The City is now legally bound to enforce those mitigation measures, and specifically the open space requirements of the TESP. (See, e.g., *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 358-359.)

However, the LUUDE, at page 3.71, calls for the City to rescind the City's existing specific plans, including the TESP, "... in order to develop new zoning districts and regulations consistent with the General Plan Update." Perhaps significantly, the



Mr. Hector Rojas, Associate Planner
3/14/2011
Page 2

general plan does not discuss any of the TESP's provisions; nor does it identify anything within the TESP that would be inconsistent with the new general plan. While it goes on to state, "Incorporate beneficial policies and regulations from the rescinded specific plans into the new Zoning Ordinance," (*Id.*) it fails to identify specifically what those "beneficial policies and regulations" are. In short, the proposed general plan attempts to rescind binding mitigation measure that the City adopted as part of the TESP, for no obvious reason and with no assurance that those mitigation measures will be incorporated into the new replacement zoning that would be adopted for the Tiscornia Estates area. Not only that, but the DEIR for the revised general plan fails to even mention the potentially significant open space, visual, and vegetation impacts that would result from rescinding the TESP without retaining its incorporated mitigation measures.

↑
8-2
(cont.)

My Clients believe it is incumbent upon the City to either retain the TESP in place, or, alternatively, commit itself in the new general plan to incorporating the provisions of the TESP's open space component, or equivalently protective policies and provisions, into the new zoning proposed to replace the TESP.

If the revised general plan is to continue to recommend rescission of the TESP, the City will also need to revise the DEIR to identify and discuss the potentially significant impacts that would accompany that rescission and potential mitigation measures to reduce or avoid those impacts. The revised EIR should then be recirculated in accordance with Public Resources Code §21092.1 and CEQA Guidelines §15088.5 to allow the public to comment on the significant new information that has been added.

8-3

CONCLUSION

The new Richmond General Plan includes many positive changes. There is an emphasis on environmental sensitivity and respect for open space and natural resources that well befits a city with as many important environmental areas as Richmond contains. However, that does not excuse the City from its continuing responsibility to implement mitigation measures it has committed itself to in adopting and implementing the TESP. Given the importance the City now attaches to environmental responsibility, my Clients trust that the City will carry through on its responsibilities related to the Tiscornia Estates area.

Most sincerely,



Stuart M. Flashman

LETTER 8: Stuart Flashman, March 4, 2011

Response to Comment 8-1

The comment expresses disagreement with the text in General Plan Land Use Action LU5.A (Zoning Ordinance Update) as it relates to rescinding the Tiscornia Estates Specific Plan. The City has since revised the text in General Plan Land Use Action LU5.A (Zoning Ordinance Update) to read as follows:

Update the Zoning Ordinance to establish development standards and guidelines for all land uses in accordance with the land use classification system described in the Land Use and Urban Design Element. Promote a place-based approach to encourage mixed-use, pedestrian and transit-oriented development and interface between the public and private realm.

Incorporate reasonable building height and siting adjustments into the comprehensive update of the Zoning Ordinance in order to protect existing view corridors of the Bay and other features of the regional landscape. Require new development to preserve the unique opportunities of the shoreline and ridgelines in order to maximize their availability to the public.

~~Rescind the City's North Richmond Shoreline Specific Plan, Knox Freeway/Cutting Boulevard Corridor Specific Plan, City Center Specific Plan, and Tiscornia Estates Specific Plan in order to develop new zoning districts and regulations consistent with the General Plan Update. Incorporate beneficial policies and regulations from the rescinded specific plans into the new Zoning Ordinance.~~

This change does not affect the adequacy of the analysis contained in the Draft EIR. No change to the Draft EIR is necessary.

Response to Comment 8-2

The comment notes that the draft General Plan intends to rescind the Tiscornia Estates Specific Plan and that the resulting potentially significant impacts need to be discussed. Please refer to Response to Comment 8-1.

Response to Comment 8-3

The comment contains a summary of matters previously discussed in this letter. See Response to Comment 8-1.

City Clerk

March 16, 2011



Planning Commissioners
Bill Lindsay, City Manager
Richard Mitchell, Planning Department
Hector Rojas, Planning Department
Mary Renfro, Assistant City Attorney

Re: Richmond General Plan -- Draft Environmental Impact Report (DEIR)

Given that a vast majority of the draft General Plan policies and action items are included in the DEIR, COI will provide some overall comments, but will defer more in depth comments on the individual policies and action items to our review of the draft General Plan. However, our comments on the draft General Plan apply to the same action items noted in the DEIR.

9-1

- According to the DEIR (pg1-1), The EIR provides the City of Richmond with a
- ❖ programmatic evaluation of the physical impacts associated with the proposed General Plan
 - ❖ informs the City of Richmond City Council, Planning Commission, and the general public about the physical environmental impacts associated with the goals and policies of the General Plan.
 - ❖ provides the local decision makers with information necessary to make informed decisions about appropriate amendments to goals, policies, and implementing actions
 - ❖ and, prescribes effective and feasible mitigation.

When reviewing the Executive Summary, specifically, TABLE ES-2 SUMMARY OF IMPACTS AND MITIGATION MEASURES, we see that many of the mitigation measures listed are more than recommendations or overviews – they include specific implementation plans, some of which are not “feasible mitigation” measures.

9-2

The attached list delves into the detail, however in general, many mitigation measures:

- Note specific percentage reductions in waste, noise, traffic, etc., and/or dates by which certain reductions must be made by, but do not go into detail as to how those percentages or dates were determined therefore the feasibility of these benchmarks are unclear.
- Provide finite distances between industrial and sensitive land uses – which we support, however, there is no reference as to how these distances were determined.
- Speak to moving sensitive land uses either upwind or downwind from refineries and existing port businesses. The City should refocus the mitigation measures on locating sensitive land uses outside of the buffer area surrounding these industrial sites.

9-3

- State that the location of port developments or refineries "should be done in consultation with the BAAQMD." This is outside of the regulatory agency's purview.
- Require mitigation of noise, demolition of historic sites, diesel truck idling, however the report does not note that the City is refining it's Noise Ordinance, implemented an Historic Structure Demolition Ordinance, and that there are regulations regarding truck idling.

9-4

9-5

Regarding the 16 proposed change areas discussed in Chapter 2. Project Description, certain zoning issues have arisen, specifically:

- Figure 2-3 Proposed General Plan Land Use Diagram &
- Figure 2-6 Change Area 3 – Ford Peninsula in Marina Bay
 - The "Transitional/Buffer Zone (Ord. No. 1808) shows inclusion of Live-Work and Medium Density MixedUse (Residential Emphasis.) which is not in compliance with the Buffer Zone Ordinance. This needs to be changed.
 - Within the "Transitional/Buffer Zone" there currently are industrial-based businesses. It appears that some areas are now being rezoned from industrial to "Regional Commercial Mixed-Use and High Intensity Mixed Use (Major Activity Center)." This would result in some of the industrial businesses becoming non-conforming uses.
- Change Area 16: Southern Gateway This currently is a mixed use area with a crescent of industrial businesses in the south/western area. The Council requested that the Planning Director meet with the businesses located in the Harbor Tract area and discuss the vision for the area. The collaboration has been ongoing and a summary of acceptable uses for the area is being drawn up, which will include industry (specific), commercial, R&D, etc The DEIR states: "The entire area would be designated Business/Light Industrial in order to achieve this vision." THIS NEEDS TO BE CHANGED as the plan is to create and Industrial/Business/Light Industrial area. We also hope that the Lawrence Berkeley Lab will view the area as the best fit for their expansion and that incubator companies spinning off from the Lab (biotech, biofuel, solar, etc.) could move into this area and complement the current businesses.

9-6

9-7

Regarding Chapter 3.2 Demographics, the statistics used in this chapter, which are the basis for many of the mitigation measures, date back to 2000-2006. Given the economic downturn that occurred from 2007 on, these should be revisited and the resulting policies and actions reviewed to ensure that they are inline with current economic situations. We need accurate, current information in order to make "informed decisions."

9-8

Throughout the DEIR there is a concern for siting sensitive land uses immediately downwind, or near industrial facilities, port facilities or refineries. The COI supports buffer zones around these industrial areas to ensure this

9-9

transition. In addition, bike paths, bay trail, pedestrian access needs to be redirected around port businesses due to issues with safety and homeland security. We suggest that the City implement overlay zones surrounding the industrial and port areas to divert residential, pedestrian and bicycle traffic to outside of this area.

↑
9-9
(cont.)

3.6 Climate Change Chapter goes into a great deal of detail describing percentages of reduction of Title 24 standards or for new construction to reduce energy use, waste and water usages by certain percentages. It is unclear if these numbers are arbitrary or based upon regulation requirements. They are very aggressive and could have an impact on future developments if contrary to what other cities are doing.

9-10

3.10 Noise The city, in collaboration with business and industry is in process of updating their Noise Ordinance, and is in discussion regarding train horn noise. The recommendations in the EIR may not be compatible with the direction the city is moving in with the ordinance.

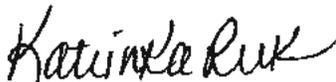
9-11

3.6 Climate Change The DEIR needs to include the Bay Planning Coalition reports on sea level rise which are not as drastic as those presented by the Bay Planning Coalition.

9-12

We are looking forward to working with the city on resolving these concerns.

Sincerely,



Katrinka Ruk
Executive Director

Cc: COI Board of Directors

March 16, 2011

Planning Commissioners
Bill Lindsay, City Manager
Richard Mitchell, Planning Department
Hector Rojas, Planning Department
Mary Renfro, Assistant City Attorney

Re: Richmond General Plan – Draft Environmental Impact Report

The Council of Industries is requesting that the following issues be addressed and/or responded to.

EXECUTIVE SUMMARY

Noise (pg ES-8): "Rail operations could expose sensitive receptors under the cumulative condition to noise levels above established standards and some of the exposure to rail noise would be attributable to the proposed General Plan. This impact would be significant."

- **COI:** *It does not appear that the city has factored in the implementation of various quiet zones within the city which would decrease train horn issues. Secondly, industry has supported the need for buffer zones between industry, rail traffic and sensitive receptors. Buffers should be a high priority in order to address this.*

9-13

TABLE ES-2 SUMMARY OF IMPACTS AND MITIGATION MEASURES

3.3 Air Quality

3.3-2 Operational (pg ES-12) "c. The City of Richmond shall continue to require individual developers to implement applicable new stationary source control measures as proposed in the most recent CAP..."

- **COI:** *"CAP" should be spelled out. Is it clear that developers have been educated as the requirements of the recent CAP?*

9-14

3.3-3 a. (pg ES 13) "The City of Richmond shall implement special overlay zones around all planned sources of TACs to minimize the potential impacts to sensitive receptors."

- **COI:** *"TAC's" need to be defined (Toxic Air Contaminants). To accomplish the overlay zones, the city needs to strengthen buffers.*

9-15

3.3-3 b. (pg ES 13): The City of Richmond shall require all new industrial and commercial development projects that have the potential to emit TACs to be located an adequate distance from existing and proposed development used by sensitive receptors..."

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- COI: *This is supported by industry and we would like to add that new developments for sensitive receptors be located an adequate buffer distance from existing industrial businesses and areas.*

3.3-3 b (pg ES14) "Proposed distribution centers with more than 100 trucks per day; more than 40 trucks with operating transport refrigeration units per day; or where transport refrigeration unit operations cumulatively exceed 300 hours per week should not be sited within 1000 feet of sensitive land uses."

- COI: *The City needs to site the source of this conclusion. How were the number of trips and distance determined?*

3.3-3 a, b (pg ES-13, 14)

- COI: *The City needs to site the source of their determination for establishment of the various "adequate distances" noted in these two paragraphs. (300', 500', 1,000'.)*

3.3-3b (pg ES-14) "Proposed port developments should not site the heavily impacted areas immediately upwind of sensitive land uses. Siting of port developments should be done in consultation with the BAAQMD."

- COI: *Port businesses are located within the industrial zoned area and have supported buffer zones between the industrial area and sensitive land uses. What does "upwind" mean? At what distance? Is this based on monitoring? Regarding the BAAQMD, they do not determine what industry should go where, they regulate air emissions. ~~DELETE THIS MITIGATING STATEMENT AS IT IS NOT IMPLEMENTABLE.~~ ADD: "The city will support buffer zones between industrial areas and sensitive land uses."*

9-15
(cont.)

3.3-3b (pg ES-14) "Proposed petroleum refineries should not site the heavily impacted areas immediately upwind of sensitive land uses. Siting of port developments should be done in consultation with the BAAQMD."

- COI: *petroleum refineries are located within the industrial zoned area and have supported buffer zones between the industrial area and sensitive land uses. What does "upwind" mean? At what distance? Is this based on monitoring? Regarding the BAAQMD, they do not determine what industry should go where, they regulate air emissions. ~~DELETE THIS MITIGATING STATEMENT AS IT IS NOT IMPLEMENTABLE.~~ ADD: "The city will support buffer zones between industrial areas and sensitive land uses."*

3.3-3c (pg ES-15) Proposed sensitive land uses including schools, daycare...

- COI: *The City needs to site the source of their determination for establishment of the various "adequate distances" noted in these two*

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paragraphs. (50,' 1,000'.)

3.3-3 c (pg ES-15) "Proposed sensitive land uses....at least 1000 feet from distribution centers with more than 100 trucks per day; more than 40 trucks with operating transport refrigeration units per day; or where transport refrigeration unit operations cumulatively exceed 300 hours per week . . ."

- **COI:** *The City needs to site the source of this conclusion. Does the number of trips/trucks per day matter, if the sensitive land uses are an appropriate distance from the distribution center.*

9-15
(cont.)

3.3-3c (pg ES-15) "Avoid siting sensitive land uses immediately downwind from the most heavily impacted areas of existing port facilities."

- **COI:** *port facilities are located within the industrial zoned area and have supported buffer zones between the industrial area and sensitive land uses. What does "downwind" mean? At what distance? Is this based on monitoring? DELETE THIS MITIGATING STATEMENT AS IT IS NOT IMPLEMENTABLE. ADD: "The city will support buffer zones between industrial areas and sensitive land uses."*

3.3-3c (pg ES-15) "Avoid siting sensitive land uses immediately downwind from petroleum refineries."

- **COI:** *Zoning provides that petroleum refineries be located within the industrial zoned area. COI supports a buffer zone between industrial uses and sensitive land uses. What does "downwind" mean? At what distance? Is this based on monitoring? DELETE THIS MITIGATING STATEMENT AS IT IS NOT IMPLEMENTABLE. ADD: "The city will support buffer zones between industrial areas and sensitive land uses."*

3.5 Cultural Resources

3.5-1 (pg ES-18) "Future projects shall implement the City's Historic Structures Code to minimize impacts on historical resources by requiring thorough scrutiny before any resource may be demolished and ensuring that alteration conforms to the Secretary of the Interior's Standards for the Treatment of Historic Properties."

- **COI:** *The City collaborated with the COI and Historic Preservation Commission, and, has approved an Historic Demolition Ordinance."*
- **DELETE THIS MITIGATING STATEMENT AND ADD:** *"The City will follow the Historic Demolition Ordinance to minimize impacts on historical resources."*

9-16

3.6 Climate Change

3.6-1 b(pg ES-20) "All new development and all retrofits of single-family

9-17

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developments, multi-family developments of over 10 units and all commercial/industrial remodels of over 10,000 square feet shall be required to exceed Title 24 standards by 20% by 2020 and 30% by 2030. This mitigation measure enhances General Plan Action EC3.C).

- *COI: Where did these percentages derive from? Are they attainable? Or will they create an unfriendly business atmosphere for potential developers? This should be a recommendation and should be discussed with developers, businesses, etc. Is it consistent with what similar cities are doing?*

3.6-1 c (pg ES-21) "Require all new City-owned and operated facilities and 50% of all new development to generate at least 10 % of their energy use from renewable sources. Enhances General Plan Action EC3.B"

- *COI: Is this realistic? The City might consider incentives for residents and businesses to move toward using more renewable sources. Is this consistent with what similar cities are doing?*

3.6-1 f (pg ES-21) "Develop a program that requires all construction and demolition activities to evaluate energy use and waste and to reduce or mitigate construction-related impacts by 75%. Enhances General Plan Actions EC3.E."

- *COI: Is this realistic? How will the City assist with this? Will they work with Republic Services to establish a program for recycling construction waste? Without the infrastructure, the reduction is impossible.*

3.6-1 g (pg ES-21) "Implement an Anti-Idling Policy for heavy-duty diesel trucks including local delivery trucks and long-haul truck transport within the City. This policy would prohibit idling of on and off-road heavy duty diesel vehicles for more than 5 minutes. Enhances General Plan Policy EC5.3

- *COI: We recommend working with business on this policy, there may be situations whereby 5 minutes may not be adequate (e.g. for refrigeration), and, there are federal and state laws that should be consulted.*

3.6-1 h (pg ES-22) "Provide tax and development incentives for employers with more than 100 employees within the City to establish a trip reduction plan..."

- *COI: We would support the tax and development incentives to promote this. We suggest that the examples given be merely suggested, e.g. "showers and lockers," may not be plausible for some business sites.*

3.6-1 o. (pg ES-23) "Require new development to incorporate water-saving measures demonstrating a minimum reduction of 20 percent in water use over a similar project completed with the previous five years. This measure enhances General Plan Action EC3.F. This measure would be enhanced by General Plan Action EC3.G."

9-17
(cont.)

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- **COI:** *Is 20% a realistic and attainable? How was the number calculated? Is it consistent with what similar cities are doing?*

↑ 9-17
(cont.)

3.10 Noise

3.10-1 (ES-29) "Future projects shall incorporate project-specific mitigation measures to reduce the impact of construction noise."

- **COI:** *We have recommended to and would be very interested in collaborating with the City on a Construction Noise Ordinance.*

3.10-2 (pg ES-29) "Future projects shall incorporate project-specific mitigation measures to reduce the impact of construction-related groundborne vibration."

- **COI:** *We would be very interested in collaborating on this with the City.*

9-18

3.10-5 (pgES-30) Future projects shall incorporate project-specific mitigation measures to promote non-motorized transportation to reduce the impact of traffic noise."

- **COI:** *To require such a program could very well determine whether or not developers would consider Richmond as a site for their project, or expansions.*
- **CHANGE** "SHALL INCORPORATE" to "MAY CONSIDER" — *"Future projects shall- may consider incorporate-ing project-specific mitigation measures to promote non-motorized transportation to reduce the impact of traffic noise."*

3.13 Public Utilities

3.13-5 (pg ES-33) "Implementation of the proposed General Plan could result in the generation of additional solid waste, but there is sufficient landfill capacity to accommodate the increased demand for solid waste service. This is considered a less-than-significant impact."

- **COI:** *This impact statement lacks one thing – a date. How long will the landfill capacity be able to accommodate the increased demand?*

9-19

3.14 Transportation and Circulation

3.14-1 (pg ES-34) "Future Projects shall incorporate project-specific mitigation measures to reduce traffic impacts."

- **COI:** *To require this does not seem feasible. Growth – both in population and economy – is what the city supports. This growth will result in traffic congestion – unless the city planning department looks at the congested areas and plans around this, e.g. add more lanes, shorter lights, new roads, etc.*

9-20

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- **COI: DELETE:** "Future Projects shall incorporate project-specific mitigation measures to reduce traffic impacts."
- **COI: ADD:** *The city will determine key areas of current and potential traffic congestion and establish a plan to enhance the roadway infrastructure to manage this." "The City will provide residents and businesses with information regarding ride-sharing, bus lines, bicycle programs, etc. providing education on alternative transportation resources."*

↑
9-20
(cont.)

2. PROJECT DESCRIPTION

Figure 2-3 Proposed General Plan Land Use Diagram

Figure 2-6 Change Area 3 – Ford Peninsula in Marina Bay

- **COI:** *The map depicts the "Transitional/Buffer Zone (Ord. No. 1808). The Ordinance agreed to with the industrial businesses, COI and the City provides for no residential in that buffer zone. The map clearly shows inclusion of Live-Work and Medium Density MixedUse (Residential Emphasis.)*
- **COI:** *Within the "Transitional/Buffer Zone" are currently industrial-based businesses. It appears as there are areas that are now being rezoned from industrial to "Regional Commercial Mixed-Use and High Intensity Mixed Use (Major Activity Center). This would result in some of the industrial businesses becoming non-conforming uses.*

↑
9-21

Change Area 16: Southern Gateway (pg 2-31)

- **COI:** *This currently is a mixed use area with a crescent of industrial businesses in the south/western area. The DEIR states: "The entire area would be designated Business/Light Industrial in order to achieve this vision." THIS NEEDS TO BE CHANGED. The Council requested that the Planning Director meet with the business located in the Harbor Tract area and discuss the vision for the area. The collaboration has been ongoing and a summary of acceptable uses for the area is being drawn up, which will include industry (specific), commercial, R&D, etc Therefore it WILL NOT be designated Business/Light Industrial ONLY, but a mix of that and INDUSTRIAL. We also hope that the Lawrence Berkeley Lab will view the area as the best fit for their expansion and that incubator companies spinning off from the Lab could move into this area and complement the current businesses.*

↑
9-22

3.2 DEMOGRAPHIC

Employment (pg 3.2-4)

- **COI:** *The statistics used are from 2001 – 2006. These are dated and do*

↓
9-23

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not depict a true picture of rise in unemployment that happened after 2007. These should be updated, as the response to the high unemployment must be addressed

Regional Housing Supply & City of Richmond Housing Supply (pg 3.2-5)

- *COI: Housing stock stats are from 2005. Does not show the impact of the 2007 foreclosures issues which hit the City very hard. Stats need to be updated and resulting policies and action plans reviewed and updated.*

Job Housing Balance (pg 3.2-6)

- *COI: Statistics used are based on 2000 and 2004 figures. The City was impacted to a greater degree than the County, therefore this should be re-examined.*

9-23
(cont.)

3.3 AIR QUALITY

Local Community Risk and Hazards (pg 3.3-12)

"Toxic air contaminants of potential concern with the City of Richmond include diesel particulate matter emitted mostly from diesel-powered equipment during construction activities, and chemicals emitted from the industrial uses with the City."

- *COI: These contaminants and specific chemicals are a concern if they are beyond acceptable limits. This report does not indicate whether monitoring was done, and if we have results above recommended limits. It does not define what the chemicals are. BAAQMD approves and monitors air permits. This section does not make reference to that Nor does it comment that there are regulations regarding emissions from diesel engines.. It notes there is a concern, the question is whether the concern is justified. DELETE SENTENCE.*

9-24

3.10 NOISE

Section 9.52.090- Prohibited Noises (pg 3.10-16)

COI: #4 addresses Construction Activities. The City of Richmond is in process of developing a Noise Ordinance which includes residential, construction and industrial noise issues. This recommendation may not be in agreement with the ordinance that is being developed. We have recommended that a separate construction and industrial ordinance be developed and will continue to collaborate with the city on this.

9-25

Policies (pg 3.10-26)

SN4.2 *"In particular, existing industrial and residential uses can successfully coexist through well-conceived circulation and urban design strategies including*

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buffers (which may be in the form of sound walls and/or enclosed buildings) and transitional uses..”

COI: We support the use of buffers between industrial and residential.

Action (pg 3.10-27)

SN4.D “Quiet Zone Feasibility Study. Study the feasibility of obtaining Federal Rail Administration Quiet Zone status limiting the use of train horns which are a major source of noise pollution in Richmond.”

COI: We recommend that the City continue to work with the railroads in discussion of this. Currently a group is discussing Train Horn Noise.

9-25
(cont.)

3.6 CLIMATE CHANGE

COI: One of the most detailed chapters it comprises thirty (30) policies and forty-four (44) action items. The DEIR seems to incorporate all the related policies and action items pertaining to this topic. Should the DEIR go into such detail? It appears to be replacing the General Plan. Secondly, the amount of policies and action items beg the question as to whether the city has the resources to implement such a vast plan?

9-26

Potential Effects of Global Climate Change (pg 3.6-3)

Sea Level Rise and Flooding (3.6-4)

“The San Francisco Bay Conservation and Development Commission (BCDC) has prepared maps to identify the areas that might be inundated if sea levels were to increase by 1 meter (3.26 feet), which is more than the amount predicted by the California Climate Change Center.”

COI: The Bay Planning Commission (BPC) does not agree with the BCDC’s analysis and their information should also be included in this report and in the analysis.

9-27

Regulatory – Local – Bay Area Air Quality Management District (pg.3.6-11)

“The BAAQMD has not adopted a threshold with respect to construction emissions associated with plan level or individual development projects. However the BAAQMD recommends that the Lead Agency quantify construction emissions and make a significance determination of these emissions in relation to meeting the AB 32 GHG reduction goals.

COI: Firstly, the BAAQMD has not established construction emission thresholds, so that any action items the city develops in regard to this area can only be recommendations. The action items listed do not include the BAAQMD’s recommendation to first quantify the construction emissions. There is no analysis of what the city’s concerns are, what monitoring has been done, etc. The city has incorporated action items requiring Best Management Practices – which the BCDC only “encourages”. The city needs to revisit this action items.

9-28

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Regulatory – Local – Construction (pg.3.6-12)

"The BAAQMD has not established plan-level analysis methodology for construction activities."

COI: The BAAQMD "recommends" and "suggests". The action items for the city need to "recommend" and "suggest".

9-28
(cont.)

IMPACTS AND MITIGATION MEASURES – Standards of Significance – Construction Related Thresholds (pg3.6-13)

"The BAAQMD has not adopted a threshold with respect to construction emissions associated with plan level or individual development projects."

COI: The BAAQMD "recommends" and "suggests". The action items for the city need to "recommend" and "suggest".

Operational Thresholds

(pg 3.6-14) "According to the BAAQMD, the General Plan impact would not be considered cumulatively considerable if it would meet at least one of the following thresholds: - be consistent with the policies of a qualified Climate Action Plan, or - produce emissions of no more that 6.6MTCO₂-e per service population annually.

COI: Where does the city stand with the Climate Action Plan, and what constitutes a "qualified" plan? Does it require BAAQMD review and approval? The COI would like to work with the city on this.

9-29

COI: From page 3.6-14 to 3.6-26 we see a series of policies and action items listed from the General Plan. Since the General Plan is being reviewed separately and can be amended, those changes and amendments need to be rolled back into this DEIR, or, the specific policies and action items should be removed and replaced with a summary of more general mitigation measures, e.g. 'the city should consider review of: climate friendly vehicles, climate friendly fuels, etc.'

Given that the policies and action items are in the DEIR, COI will provide some overall comments, but will defer more in depth comments on policies and action items on review of the General Plan, however our comments on the General Plan apply to the same action items noted in the DEIR.

Project-Specific Impacts and Mitigation Measures - Construction – Policies – EC2.2 Climate –Friendly Fuels –

Action EC2.K (pg 3.6-15)

"Construction and Demolition Ordinance: Develop an ordinance covering all construction and demolition activities that meets and exceeds minimal state building code diversion for beneficial reuse standards. Encourage preservation

9-30

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and readaptation of existing structures over replacement and deconstruction and reuse of building materials over demolition.”

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COI: Business/Industry/Historic Preservation Commission collaborated on a demolition ordinance for Historic Resources. We would like to continue to work with the city on a Construction and Demolition Ordinance.

9-30
(cont.)

Policy EC4.3 (pg 3.6-15) “Require energy and resource efficient buildings and landscaping in all public and private development projects.

COI: CHANGE TO: “Require- Encourage energy and resource efficient buildings and landscaping in all public and private development projects.”

Mitigation Measure (pg. 23.6-16)

3.6-1 a. “All construction projects shall incorporate the most recent Best Management Practices for Greenhouse Gas Emissions as indicated by the BAAQMD.”

9-31

COI: See pg.3.6-14, Construction: “the BAAQMD recommends quantification of emissions and the implementation BMP’s to reduce those emissions.” CHANGE THIS SENTENCE TO: “All construction projects shall CONSIDER incorporating the most recent Best Management Practices for Greenhouse Gas Emissions as indicated by the BAAQMD.”

Policies - EC1.2 Public Awareness and Support
EC1A Climate Action Plan (3.6-17)

COI: Where does the city stand with the Climate Action Plan, and what constitutes a “qualified” plan? Does it require BAAQMD review and approval? The COI would like to work with the city on this. It is recommended that the city also work with Bay Planning Coalition (BPC) regarding sea level rise issues.

9-32

EC1B Public Awareness and Education Program (pg 3.6-18)

COI: We would like to work with the city to educate the businesses as to “climate change challenges and potential solutions.”

EC2.4 Safe and Convenient Walking and Bicycling (pg 3.6-19) AND
EC2.e Bicycle and Pedestrian Plans (pg 3.6-20)

COI: To ensure bicyclists and pedestrian safety, the city needs to re-examine the bike paths that are being considered through the industrial area on Harbor and along the port areas. Bicyclists and pedestrians should be directed away from those areas as there is truck and rail traffic.

9-33

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EC2.J Port Emissions Reduction Plan (pg 3.6-20)

“Collaborate with the Port, local industry and regulatory agencies to develop a comprehensive emissions reduction plan for ship-operated emissions. Include strategies to reduce emissions from trucks, ships, locomotives and equipment. Enforce existing laws and strengthen regulations to protect human and environmental health and access to available funds for clean air projects. Explore use of low-emission vehicles, short-sea shipping service, ‘cold ironing’ and other strategies to reduce emissions. Consider the San Pedro Bay Ports Clean Air Action Plan, developed by the ports of Los Angeles and Long Beach as a model.”

9-34

COI: AMMEND THIS ACTION ITEM. It contains strong language that the city cannot enforce nor do they have jurisdiction over. Secondly, for two years the Clean Air Action Committee has been working on and completed and presented to City Council a Clean Air Action Plan for the public port area. DELETE THIS ACTION ITEM AND REPLACE IT WITH: Continue to monitor the public port Clean Air Action Plan.

Policies (pg. 3.6-25)

EC5.1 Green Business and Jobs

COI: What is the city’s definition of “Green” businesses?

9-35

Policies (pg. 3.6-26)

EC6.3 Adapting to Climate Change “All projects proposed for construction within 300 feet of the exiting shoreline (high tied) will include an evaluation of the impact of a one meter rise in sea level.

9-36

COI: The Bay Planning Coalition doesn’t agree with the BCDC that the sea level rise will be that high. Reduce the one meter rise requirement.

3.8 HAZARDOUS MATERIALS

Hazardous Materials Near Schools (pg 3.8-17)

(pg. 3.8-18) “The Plan could also result in siting sensitive land uses near facilities that use hazardous materials. As a result, people could be exposed to potential health and safety risks associated with hazardous materials use, storage, transport, and waste through routine uses, or through accidental releases”

9-37

COI: If the City understands this risk, it is not understood why sensitive land uses would be sited near facilities that use hazardous materials. The COI supports the industrial buffer zone in the Ford Peninsula and around the port businesses for this very reason. Sensitive land use developments should be excluded from being sited near these facilities if proper zoning and buffers are adhered to by the city.

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Policy – SN1.3 Hazardous Materials Operations (pg. 3.8-18)

“Protect Richmond’s shoreline and other natural resources from accidental occurrences by controlling the location of new hazardous waste facilities and by limiting the expansion of existing hazardous waste facilities adjacent to the shoreline and along streams or creeks.”

9-38

COI: DEFINE “HAZARDOUS WASTE FACILITY.” It is unclear what this describes. Any business or facility can generate hazardous waste (CFR light bulbs, solvents, computers, etc) Is the city saying that NO BUSINESS can be located along the shoreline – what about the port area? along the Santa Fe Channel? The Lawrence Berkeley National Lab expansion and associated incubator companies would not be able to locate there given this language. DELETE. All new developments and expansions require permit review by the city of Richmond. At this time the city can review the developer’s plans as to what if any hazardous materials will be present, and the programs the business has in place to address waste removal.

CN6.1 Toxic and Contaminated Sites (3.8-19)

Policy

CN6.1 Toxic and Contaminated Sites.

“...Work with property owners and regional agencies to prevent, reduce or eliminate soil and water contamination from industrial operations, the Port and other activities that use, produce or dispose of hazardous or toxic substances. Implement appropriate mitigation measures and clean-up of sites that are know to contain toxic materials as a condition of reuse.”

9-39

COI: What constitutes soil and water contamination? To totally eliminate soil or water contamination is not reasonable or feasible as any site including residential developments will incur some “contamination”, e.g. leaking gasoline or oil from a car, or water runoff from the streets. Current regulations require that sites are responsible for control, containment, maintenance and monitoring of their hazardous materials, as well as spill cleanup. CHANGE LANGUAGE TO: Work with businesses to ensure that they have in place an up-to-date Hazardous Materials Plan.

CN6.C Pollution Prevention Program.

“Continue to implement the City’s pollution prevention program for residents, businesses and industry to provide information on pollution prevention, disposal of hazardous waste and chemicals, liability and clean-up.”

9-40

COI: We are not unaware of the city’s Pollution Prevention Program, nor are we aware that it has been implemented. We will be requesting a copy of this from the city.

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3.14 TRANSPORTATION AND CIRCULATION

**CR1.8 Place-Based Circulation Approach – Actions –
CR1.C Bicycle and Pedestrian Plans.**

COI: ADD: Bicycle and pedestrian paths will not be allowed through industrial areas to ensure the safety of these individuals.

9-41

COI: We request that the City establish an overlay zone surrounding the industrial areas and divert pedestrian and bicycle traffic to outside of this overlay area.

CR1D Bicycle, Pedestrian, and Trail Standards.

“Require all new commercial, industrial and residential development to provide access for construction and operation of a trail where a local or regional trail is designated or planned. Include provisions that require owners of property along the shoreline to provide maximum feasible public access to the shoreline and to complete the Bay Trail as part of any project approval process.”

9-42

COI: REMOVE INDUSTRIAL FROM FIRST SENTENCE/ CHANGE AS FOLLOWS - “Require Recommend all new commercial, industrial and residential development to provide access for construction and operation of a trail where a local or regional trail is designated or planned if feasible.” Although a trail may have been designated, issues may have arisen that would not make it possible (e.g. ingress/egress to a development).

COI: We will not support the last sentence for industrial properties due to safety issues and concerns for pedestrians, and homeland security issues. CHANGE TO:” Include provisions that require owners of property along the shoreline to provide maximum feasible public access to the shoreline and to complete the Bay Trail as part of any project approval process.”

PLEASE ADD “in appropriate, non industrial areas.”

” ~~Include provisions that require owners of property along the shoreline to provide maximum feasible public access to the shoreline and to complete the Bay Trail as part of any project approval process~~ in appropriate areas, outside of areas that could impact public safety or compromise homeland security issues.

Mitigation Measures

3.14-4 – Policy

CR2D (pg 3.14-49) “Evaluate the feasibility of reducing the number or width of travel lanes on key mixed-use streets that have excess capacity such as Cutting Boulevard, and using the capacity and/or regained width for wider sidewalks and bicycle lanes.”

9-43

COI: We are asking that the city define the specific areas of Cutting Boulevard that this policy refers to. The boulevard which runs along the industrial area requires the number of lanes due to truck traffic and their turning radius’ as well as the train service that runs along that portion.

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3.14-5 – Policy

CR3.A At-Grade Railroad Crossings Improvements

COI: *The recommendations included in this policy are infeasible due to the cost. However, the COI recommends that the City work with the railroad companies on issues of concern and would be happy to participate in those conversations.*

9-44

As previously noted, the COI will be submitting more in depth comments regarding issues raised herein in its review of the Draft General Plan.

Katrinka Ruk

Katrinka Ruk

Executive Director

Council of Industries

Cc: COI Board of Directors

LETTER 9: Council of Industries, Katrinka Ruk**Response to Comment 9-1**

The comment states the general purpose of the Draft EIR. The comment is noted. No response is required.

Response to Comment 9-2

The comment states that the mitigation measures in the Executive Summary are more than just recommendations or overviews. The intent of mitigation measures in an EIR is to provide enforceable methods to reduce significant adverse effects of a project (CEQA Guidelines Section 15126.4). As such, mitigation measures need to be more than recommendations.

Response to Comment 9-3

The comment refers to specifics, such as targets for reductions in noise, traffic, and buffer distances, within the mitigation measures in the Draft EIR. As noted in Response to Comment 9-2, such specifics are required to ensure that potential adverse effects would be reduced. Please also refer to responses to the following comments where the commenter has provided additional comments regarding mitigation measures in the Draft EIR.

Response to Comment 9-4

The comment states that the location of port developments and refineries is outside the regulatory purview of the Bay Area Air Quality Management District (BAAQMD). The comment is referring to Mitigation Measure 3.3-3b (Draft EIR 3.3-26 – 3.3-28), which states, in part:

- *Proposed port developments should not site the heavily impacted areas immediately upwind of sensitive land uses. Siting of port developments should be done in consultation with the BAAQMD.*
- *Proposed petroleum refineries should not site the heavily impacted areas immediately upwind of sensitive land uses. Siting of refineries should be done in consultation with the BAAQMD.*

These measures do not intend to confer regulatory control over the placement of port developments or refineries to the BAAQMD. Instead, these measures are meant to inform the siting of toxic air contaminant emitting facilities near residential uses and other land uses with sensitive receptors. The BAAQMD would continue to have no regulatory authority with regard to approval of development projects in Richmond. Also refer to Response to Comment 9-15 for clarification to the text of this mitigation measure.

Response to Comment 9-5

The comment notes that the EIR requires mitigation for noise, demolition of historic sites and diesel truck idling, and refers to existing ordinances for those potential effects. The comment does not,

however, demonstrate inconsistency between EIR measures and existing ordinances. In fact, where applicable, the requirements in the mitigation measures would include compliance with ordinances to reduce physical effects in these areas.

Response to Comment 9-6

The comment refers to the potential inclusion of residential uses in the Transitional/Buffer Zone in Change Area 2 – Ford Peninsula in Marina Bay. The comment refers to Figure 2-6 on page 2-13 of the Draft EIR, which includes Medium Density Mixed-Use (Commercial Emphasis) – not residential as stated in the comment – and High Intensity Mixed-Use (Major Activity Center) designations within the Transitional/Buffer Zone. These areas are designated for mixed use because the General Plan does not contain a land use designation addressing strictly commercial development. However, as discussed on page 3.26 in the General Plan where the Ford Peninsula in Marina Bay is described, the eastern portion of the change area is envisioned for residential mixed use and the western portion is intended for employment-generating uses. It should also be noted that Draft EIR Figure 2-6 notes that residential uses are not allowed in the Transitional/Buffer Zone and the General Plan specifically states that the Transitional/Buffer Zone (Ord. No. 1805) would continue to apply (see General Plan pages 3.15 and 3.17 for Medium Density Mixed-Use (Commercial Emphasis) and High Intensity Mixed-Use (Major Activity Center), respectively).

Response to Comment 9-7

The comment notes that the land use designation for Change Area 16 should be changed from Business/Light Industrial. This is not a comment on the adequacy of the analysis contained in the Draft EIR, but on the draft General Plan; therefore, the comment is noted without response.

Response to Comment 9-8

The comment states the demographic data, on which the mitigation measures in the Draft EIR are based, is outdated and that the measures should reflect the current economic situation. Please see Response to Comment 28-14 regarding the data used in the EIR. Regarding the need to update mitigation measures, the EIR measures are based upon potential physical impacts of development and are not dependent upon the economic conditions under which development would occur. Physical effects of the construction and operation of projects would be the same, irrespective of economic conditions, although it is acknowledged that there would likely be less development given more depressed economic conditions.

Response to Comment 9-9

The comment supports the continued enforcement of the Transitional/Buffer Zone Ordinance on the Ford Peninsula at Marina Bay. As discussed in Response to Comment 9-6, the City would continue to apply the land use restrictions of the Transitional/Buffer Zone Ordinance. The comment also suggests overlay zones to divert residential, pedestrian, and bicycle traffic outside the port areas. This comment is noted and forwarded to the decision-makers for their consideration.

Response to Comment 9-10

The comment asks whether the energy reductions beyond Title 24 standards and the reduction of energy use, waste, and water are consistent with regulations. The reductions indicated in the Draft EIR are consistent with the measures that other cities are implementing and current regulations, as described below.

Mitigation Measure 3.6-1b refers to a 20% energy use reduction beyond Title 24 standards by 2020 and a 30% reduction beyond Title 24 standards by 2030. The 2010 California Green Building Standards (CALGreen) requires compliance with Title 24 Part 6 (energy efficiency standards), and has provided voluntary measures for reductions up to 30% beyond Title 24 standards. CALGreen provides checklists and measures that, when implemented, will achieve energy use reductions up to 30% beyond Title 24 standards with existing technologies. With improved technologies, a 20% reduction in energy use beyond Title 24 standards is feasible, and is consistent with reductions in other jurisdictions.

Mitigation Measure 3.6-1c refers to requirements for all new City-owned and operated facilities and 50% of all new development to generate at least 10% of their energy use from renewable sources. This measure ensures that a minimum of 5% of the City's energy use from new development would be from renewable sources. This measure does not require that every development implement the use of renewable energy, but assumes that some will achieve more than 10% renewable energy use, while others may implement less. This could also be achieved through City sponsored/implemented renewable programs. Other cities have similar or more ambitious renewable energy requirements. For example, the City of Berkeley has a "zero net energy performance" goal for all new construction, meaning that all energy usage must be reduced or offset by renewable sources. The City of Piedmont has a renewable energy requirement to reduce City emissions by 16%.

Mitigation Measure 3.6-1f requires construction-related impacts to be reduced by 75% (either through waste reduction/recycle or energy consumption reductions). The use of electric versus gasoline/diesel powered equipment would help to reduce impacts, as would recycling used materials and purchasing materials from local sources.

Mitigation Measure 3.6-1g requires local and long-haul trucks operating within the city to idle for less than 5 minutes. Idling for 5 minutes or less is a common requirement for all new development, as is the requirement for installation of electrical outlets at loading docks or parking areas to eliminate the need for idling where refrigerated trucks park. Existing California law limits diesel-fueled commercial motor vehicle idling to 5 minutes. The purpose of this mitigation measure is to ensure that idling time is reduced to the maximum feasible extent. This mitigation measure has been modified as indicated to further clarify the intent of the measure.

Implement an Anti-Idling Policy for heavy-duty diesel trucks, including local delivery trucks and long-haul truck transport within the City. This policy would prohibit idling of on and off-road heavy duty diesel vehicles for more than 5 minutes. This policy would be implemented by requiring signage at all loading docks and along truck routes informing drivers of the

requirement to limit idle time to no more than five minutes at loading docks and parking areas. Variances to the policy would include the necessity to idle while in traffic lanes due to traffic congestion on the roadway, or during emergency situations. Employers who own and operate truck fleets would be required to inform their drivers of the anti-idling policy. Enhances General Plan Policy EC5.3.

Mitigation Measure 3.6-1h implements incentives for employers with more than 100 employees to establish trip reduction plans. The commenter requests that the mitigation strategies be made optional, as showers and lockers may not be feasible for some businesses. Based on the calculations for the Draft EIR, it was determined that by including the Draft EIR mitigation, vehicle trips would be reduced by 3.95%. In order to make the mitigation optional, but maintain the reductions at the same level, projects would have to implement reductions on a project by project basis that will reduce trips by the 3.95%. The mitigation measure language has been revised such that the mitigation is optional, however the reduction level included in the reduced inventory is maintained.

Provide tax and development incentives for employers with more than 100 employees within the City to establish a trip reduction plan that would incorporate annual employee commute surveys, marketing of commute alternatives, ride matching assistance, and transit information at a minimum. Additional measures shall be incorporated such that vehicle trips are reduced by a minimum of 4%. Measures that may be used to achieve this reduction include and implement secure bicycle parking, showers and lockers for employees who bike to work, among others. This measure ~~could~~ would encourage building management companies and smaller localized businesses to cooperate in establishing joint trip reduction plans. Enhances General Plan Actions EC2.F and EC2.I.

Mitigation Measure 3.6-1o requires that water saving measures be incorporated such that a 20% reduction in water use is achieved. The 20% reduction in water usage is consistent with the California Green Building Standards.

Response to Comment 9-11

The comment states the discussion of train noise in the Draft EIR may be inconsistent with the direction of the City in the updated noise ordinance. As noted in Chapter 2 of this Response to Comments volume of the Final EIR and in Response to Comment 9-25, the provisions of the new noise ordinance have been incorporated into the Final EIR. The updated noise ordinance (Richmond Municipal Code Section 9.52.050[p]) exempts noise associated with train bells, sirens, horns, whistles or similar audible warning devices. While noise from these warning devices would be exempt from the noise ordinance, noise generated by the movement of trains could still expose sensitive uses to noise levels that exceed noise standards. .

Response to Comment 9-12

The comment states the Draft EIR should include sea level rise reports from the Bay Planning Commission, which are “not as drastic” as those included in the Draft EIR. Although other estimates

for sea level rise could be included in the EIR, the inclusion of data that depicts less sea level rise would be inconsistent with the goal of analyzing probable environmental impacts. The City's goal is neither to underestimate potential impacts nor to overestimate potential impacts by assuming drastic, unlikely events. However, to ensure fair and adequate assessment of potential impacts, the City has assumed the greatest degree of change that generally accepted data predicts. In addition, Draft EIR Figure 3.9-2 notes that the data included in the figure is intended to be illustrative and not used for planning purposes. Future development projects would need to consider the potential for sea level rise as new development is proposed, based on sea level rise projections available at the time development is proposed. Also refer to Responses to Comments 2-5 and 2-6 regarding more conservative information on sea level rise.

Response to Comment 9-13

The comment refers to the impact statement regarding train noise as included in the Executive Summary of the Draft EIR. The referenced text is only a summary; no supporting text is included in the summary section. The reader is referred to pages 3.10-25 through 3.10-28 in the Draft EIR for a discussion of train noise, which includes a discussion of quiet zones.

Response to Comment 9-14

The comment requests that the acronym "CAP" (which refers to "Clean Air Plan") be spelled out. The comment refers to text in the Summary Chapter of the Draft EIR. The information in the summary chapter is provided for quick reference to the analysis contained in the technical sections of the EIR. The impact statements and mitigation measures are taken verbatim from the technical sections, where, in context, the acronyms have been defined. The 2009 Clean Air Plan was developed by the BAAQMD to attain and maintain state and federal criteria air pollutant standards. The BAAQMD regulates compliance with the Clean Air Plan through its permitting process and through the criteria pollutant thresholds that are set for both construction and operation activities. Richmond's General Plan Health and Wellness Policy HW9.1 outlines ways in which the City will work to reduce air pollution within the City. Further, under General Plan Health and Wellness Policy HW9.1G (Air Quality Impact Analysis Guidelines), the City would develop, update, and enforce local guidelines for new stationary sources of air pollution to ensure that new facilities meet the BAAQMD's stationary source requirements (e.g., permitting) and do not create additional net cumulative air pollution health impacts on sensitive receptors.

Response to Comment 9-15

The comment states toxic air contaminants (TACs) need to be defined. The comment also questions the source of the buffers included in the EIR. The commenter further breaks out the subsections of the TAC mitigation to pose more in-depth questions. The responses to these individual questions are detailed below by sub-topic.

TACs are described on page 3.3-8 in the Draft EIR and further discussed on page 3.3-11 with regard to their regulation. Regarding buffers, the buffer distances would be variable, depending on the type of TAC generated, which would differ by land use. As noted in the Draft EIR (page 3.3-27), the

buffer distances are based on the CARB's *Air Quality and Land Use Handbook—A Community Health Perspective* (CARB Handbook) (April 2005; CARB Guidance). As new development is proposed, the City would review the operations of the proposed facility and consider specific emissions and locations of receptors relative to the project site to determine the appropriate buffer, based on the buffer zone overlays and buffer zone distances identified in the CARB Handbook.

Mitigation Measure 3.3-3b (General) – The commenter indicates that this mitigation needs to add distinctions for locating sensitive receptors. Mitigation for the location of sensitive receptors with respect to existing stationary sources is outlined in Mitigation Measure 3.3-3c.

Mitigation Measure 3.3-3b (Ports, refineries) – The commenter expresses concern that the mitigation with respect to ports and refineries is not implementable and requests that the mitigation be removed and replaced with “The city will support buffer zones between industrial areas and sensitive land uses.” The determination of mitigation specifically for port and refinery development is based on the CARB Handbook's emphasis on these land use types as sources of TACs. While they have not been removed, the mitigation measures have been updated as indicated below to clarify areas where there is potential for confusion.

- *The City will support buffer zones between industrial areas and sensitive land uses, including port development. Proposed port developments should not site the heavily impacted areas immediately upwind (based on prevalent wind direction) of sensitive land uses. Siting of port developments that have the potential to emit TACs should be done in consultation with the BAAQMD to determine the need for a health risk assessment.*
- *The City will support buffer zones between industrial areas and sensitive land uses, including refinery development. Proposed petroleum refineries should not site the heavily impacted areas immediately upwind (based on prevalent wind direction) of sensitive land uses. Siting of refineries should be done in consultation with the BAAQMD to determine the need for a health risk assessment.*

Mitigation Measure 3.3-3c (distribution centers) – The commenter questions if the number of daily trucks or truck trips is relevant if the sensitive land uses are an appropriate distance from the distribution center. As diesel particulate matter (DPM) concentrations are reduced with distance, the buffer zones in the CARB Handbook were developed to ensure that DPM emissions from distribution centers would not be above ambient concentrations at nearby receptors. If sensitive land uses are positioned outside the 1,000 foot buffer zone, impacts are not anticipated to occur from large or small distribution center operations.

Response to Comment 9-16

The commenter requests Mitigation Measure 3.5-1 be changed to simply require compliance with the Historic Demolition Ordinance. The existing Measure 3.5-1 requires compliance with the entire Historic Structures Code, of which the Historic Demolition Ordinance (Section 6.06.074) is a part.

The requested change would not increase the mitigating effect of the measure; therefore, it is not incorporated into the Final EIR.

Response to Comment 9-17

The comment questions the achievability of several mitigation measures that are identified in the climate change section of the Draft EIR. Please refer to Response to Comment 9-10 for a detailed response to these concerns.

Response to Comment 9-18

The comment expresses interest in working with the City regarding noise and vibration mitigation. The comment is noted. The comment also recommends changes to Mitigation Measure 3.10-5. These changes would reduce the effectiveness of the mitigation measure and, therefore, are not incorporated into the EIR.

Response to Comment 9-19

The comment refers to the impact statement in the summary chapter of the Draft EIR. As discussed above, the summary does not include all information from the technical chapters of the Draft EIR. As discussed in section 3.13, Public Utilities, the primary landfill used by the City's solid waste service is the Potrero Hills Landfill, which had a 35-year expansion approved in 2010 (Draft EIR page 3.13-22). Other landfills that have been used by the service provider and those landfills' remaining capacity are shown in Table 3.13-2 on Draft EIR page 3.13-23.

Response to Comment 9-20

The comment suggests the removal of Mitigation Measure 3.14-1, which requires future projects to include traffic reduction measures. The comment states this measure is not feasible and that more traffic lanes and new roads should be built. It should be noted that it is the City's intention to encourage the use of alternatives to the single-occupancy vehicle with measures such as transit incentives for employees and bicycle parking rather than adding capacity on the roads, which could further encourage automobile use.

Response to Comment 9-21

The comment refers to mixed-use designations, which could include residential uses, on the Ford Peninsula at Marina Bay. As discussed in Response to Comment 9-6, the General Plan specifically states that the Transitional/Buffer Zone Ordinance (Ord. No. 1805) would continue to apply, so residential uses would not be allowed in this area.

Response to Comment 9-22

The comment refers to land uses in Change Area 16. Please see Response to Comment 9-7.

Response to Comment 9-23

Please see Response to Comment 28-14 regarding the currency of the data used in the Draft EIR. As shown in Response to Comment 28-14, the revised population projections are very close to those used in the Draft EIR and would not alter the findings of the EIR. The comment regarding the effect of foreclosures on General Plan policies is a comment on the General Plan and not the Draft EIR; therefore, it is noted without response.

Response to Comment 9-24

The comment refers to a statement that emissions from construction activities and industrial uses in the City contain toxic air contaminants and states that no monitoring was done to determine if concerns about these contaminants are justified. It should be noted, however, that the referenced statement is made in the setting portion of the technical section. In that context, the statement is intended to inform readers that construction activities and industrial uses can emit toxic air contaminants, but the statement does not reach a conclusion about the significance of any particular contaminant or industry. The commenter is referred to Impact 3.3-3 on pages 3.3-25 through 3.3-28 for a discussion of exposure to pollutants.

Response to Comment 9-25

The comment states the City is updating the Noise Ordinance. The comment also supports the use of buffers between residential and industrial uses and recommends the City continue to work with the railroads regarding noise. The recommendations for buffers and work regarding quiet zones for train noise are noted and forwarded to the decision-makers for their consideration. Regarding the updated Noise Ordinance, the City has adopted a new ordinance. To be consistent with the updated ordinance, the following changes are made on pages 3.10-16 through 3.10-18 of the Draft EIR:

~~**Section 9.52.090 – Prohibited Noises.** This section prohibits noise within the City that is considered a noise disturbance including, but not limited to, the following:~~

- ~~1. **Vibration.** Operating or permitting the operation of any contraption or device that creates a vibration so as to create a noise disturbance or cause any violation of this chapter.~~
- ~~2. **Power Tools, Machinery.** Operating or permitting the operation of any mechanically powered saw, drill, grinder, lawn or garden tool, leaf blower, or similar machinery at any time between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and 8:00 p.m. and 8:30 a.m. on weekends and legal holidays, or at any other time so as to create a noise disturbance or cause any violation of this chapter. Any motor, machinery, generator, pump, which, by its nature or necessary function, must be operated on a continuous or regular basis, such as swimming pool equipment, or air conditioning/heating system, shall be enclosed or muffled and maintained so as not to create a noise disturbance or otherwise violate this chapter.~~
- ~~3. **Loading and Unloading.** Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, or similar objects between the hours~~

10:00 p.m. and 7:00 a.m. in any residential or commercial zoning district or adjacent to any noise-sensitive uses or so as to create a noise disturbance or cause any violation of this chapter.

4. ~~Construction Activities. Causing or permitting the operation of any tools or equipment used in construction, drilling, repair, alteration or demolition work at any time between the hours of 7:00 p.m. and 7:00 a.m. on weekdays or 6:00 p.m. and 8:30 a.m. on weekends and legal holidays in any residential or commercial zoning district or adjacent to any noise-sensitive uses or so as to create a noise disturbance or cause any violation of this chapter. Prior to commencing any construction project, the project sponsor may meet and confer with the City Public Works Department to establish an appropriate construction schedule which is designed to minimize construction noise impacts and which is in conformity with the requirements of this subsection. Where construction activities on a construction project which is adjacent to any noise-sensitive use(s) are anticipated to last for a year or more, temporary noise barriers shall be constructed that break the line of sight between the noise-sensitive use(s) and the construction project, and that minimize noise impacts.~~

Section 9.52.100—Exterior Noise Standards

1. ~~No uses or activities shall create levels which exceed the standards in Table 3.10-7. In addition, the exterior noise limits for any source of noise within any residential zone shall be reduced by 10 dBA between 10:00 p.m. and 7:00 a.m. The exterior noise limits for any source of noise in any zone other than a residential zone shall be reduced between 10:00 p.m. and 7:00 a.m. so that when measured at the property line of a “noise-sensitive use,” the noise does not exceed 50 dBA.~~

Zoning District	Maximum Noise Level in dBA (levels not to be exceeded more than 30 minutes in any hour)		Maximum Noise Level in dBA (level not to be exceeded more than 5 minutes in any hour) ³
	Measured at Property Line or District Boundary	Measured at Any Boundary of a Residential Zone	Between 10 p.m. and 7 a.m., ³ Measured at Any Boundary of a Residential Zone
Single-Family Residential	60	—	—
Multifamily Residential	65	—	—
Commercial	70	60	50 or ambient noise level
Lt. Industrial and Office Flex ¹	70	60	50 or ambient noise level
Heavy and Marine Industrial ²	75	65	50 or ambient noise level
Public Facilities and Community Use	65	60	50 or ambient noise level
Open Space and Recreational Districts	65	60	50 or ambient noise level

Notes:
1. For M-1 and M-2 the measurement will be at property lines.
2. For M-3 and M-4 the measurement will be at boundary of the district.
3. Restricted hours may be modified through condition of an approved conditional use permit.
Source: City of Richmond. *City of Richmond Municipal Code*, 2006.

Section 9.52.110 – Temporary noise-generating equipment. Where technically and economically feasible, construction activities shall be conducted in such a manner that the maximum sound levels at affected properties will generally not exceed those listed in Tables 3.10-8 and 3.10-9, below.

TABLE 3.10-8			
MOBILE EQUIPMENT (STANDARDS FOR THE CITY)¹			
	SFR-1, SFR-2, SFR-3 Zoning Districts (Single-Family Residential)	MR-1, MR-2, MR-3 Zoning Districts (Multi-Family Residential)	Commercial and Industrial Zoning Districts
Weekdays, 7:00 a.m. to 7:00 p.m.	75 dBA	80 dBA	85 dBA
Weekends, including legal holidays 9:00 a.m. to 8:00 p.m.	60 dBA	65 dBA	70 dBA
Note: 1. _____ Maximum sound levels for nonscheduled, intermittent, short-term operation (period less than 15 days) of mobile equipment. Source: City of Richmond. <i>City of Richmond Municipal Code, 2006.</i>			

TABLE 3.10-9			
STATIONARY EQUIPMENT (STANDARDS FOR THE CITY)¹			
	SFR-1, SFR-2, SFR-3 Zoning Districts (Single-Family Residential)	MR-1, MR-2, MR-3 Zoning Districts (Multi-Family Residential)	Commercial and Industrial Zoning Districts
Weekdays, 7:00 a.m. to 7:00 p.m.	60 dBA	65 dBA	70 dBA
Weekends, including legal holidays 9:00 a.m. to 8:00 p.m.	55 dBA	60 dBA	65 dBA
Note: 1. _____ Maximum sound levels for respectively scheduled and long-term operation (period exceeding 15 days or more) of stationary equipment. Source: City of Richmond. <i>City of Richmond Municipal Code, 2006.</i>			

9.52.040 General Prohibition

It shall be unlawful for any person, corporation, firm or association to make, create or continue, or cause, permit, maintain, or suffer to be made or continued, any loud, raucous, unnecessary, and unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area or that exceeds the maximum dBA levels set forth herein or that violates any provision of this Chapter. The standard for determining whether a violation of the provisions of this chapter exists may include, but is not limited to, the following:

- (a) The volume, level and intensity of the noise;
- (b) Whether the nature of the noise is usual or unusual;
- (c) Whether the origin of the noise is natural or unnatural;
- (d) The level and intensity of the background noise, if any;

- (e) The proximity of the noise to residential dwellings;
- (f) The proximity of the noise to residential sleeping facilities;
- (g) The nature and zoning of the area within which the noise emanates;
- (h) The density of the inhabitation of the area within which the noise emanates;
- (i) The time of day or night the noise occurs;
- (j) The duration of the noise;
- (k) Whether the noise is recurrent, intermittent, a cumulative period, or constant;
- (l) Whether the noise is produced by a commercial or non-commercial activity; and
- (m) Whether the noise can be heard more than twenty-five (25) feet away from any adjoining property boundary line in a residential district;
- (n) The intrusiveness of the noise;
- (o) Whether it is a mobile noise source;
- (p) The number of persons affected by the noise; or
- (q) Whether noise exceeds the maximum dBA levels set forth in 9.52.100 or 9.52.110.

9.52.050 Specific Prohibitions.

In addition to and separate from any provision of this Code, the following acts, and the causing, suffering or permitting thereof, shall be considered excessive and annoying noises creating a nuisance and disturbing the peace and shall constitute a violation of this Code. The listing of the following specific prohibited acts is not intended to limit the City's authority to regulate any and all loud, unnecessary and unusual noises and even if not included herein, such noise disturbances shall be subject to regulation pursuant to section 9.52.30:

(a) Mechanical or Electronic Devices. Using any mechanical or electronic device for the intensification of any sound or noise into the public streets which produces excessive or annoying noise;

(b) Advertisement. Using any instrument, whistle, drum or bell or making any other unnecessary noise for the purpose of advertising, announcing, or otherwise calling attention to any goods, wares, merchandise, or to any show, entertainment, or event. The provisions of this section shall not be construed to prohibit the selling by verbally announcing the sale of merchandise, food, or beverages at licensed sporting events, parades, fairs, circuses or other similar licensed public entertainment events;

(c) Animals and Birds. Owning, possessing, or harboring any animal or bird which howls, barks, meows, squawks, or makes other annoying noises continuously and/or incessantly for an unreasonable period of time so as to create a noise disturbance across a real property line. For the purposes of this chapter, the animal or bird noise shall not be deemed a noise

disturbance if a person is trespassing or threatening to trespass upon private property in or upon which the animal or bird is situated, or is using any other means to tease or provoke the animal or bird. This provision shall not apply to public zoos, licensed animal parks or licensed veterinarian facilities;

(d) Emergency Signaling Device. The intentional sounding or permitted sounding outdoors of any fire, burglar, or civil defense alarm, siren, whistle, or similar stationary emergency signaling device not in compliance with subsection (d)(1) or (2) unless occurring for emergency purposes or required by State or Federal regulations or the weekly testing of community emergency warning system;

(1) The testing of a stationary emergency signaling device shall not occur before seven a.m. or after seven p.m. Any such testing shall use only the minimum cycle test time, in no case shall such test time exceed sixty (60) seconds.

(2) The testing of the complete emergency signaling system, including the functioning of the signaling device, and personnel response to the signaling device, shall not occur more than once in each calendar month, except for the testing of the community emergency warning system that may be conducted weekly or as needed to protect public safety, health and welfare. Such testing shall not occur before seven a.m. or after seven p.m. The time limit specified in subsection (d)(1) of this section shall not apply to such community emergency warning system testing;

(e) Stationary Non-emergency Signaling Devices. Sounding of any electronically amplified signal from any stationary bell, chime, siren, whistle, or similar device, intended primarily for non-emergency purposes, from any place, for more than ten seconds in any one hour period. Parking structure exit alarms and any warning and/or signaling devices required by State or Federal law shall be exempt from the operation of this provision;

(f) Burglar or Fire Alarm. Sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm which is not terminated within fifteen (15) minutes of activation;

(g) Loading and Unloading. Loading, unloading, opening, closing, or other handling of boxes, crates, containers, building materials, refuse, or similar objects between the hours of nine p.m. and six a.m. in such a manner as to cause a noise disturbance across a residential real property line or at any time to violate the applicable noise provisions of the Richmond Planning Code.

This subsection shall not apply to the collection and disposal of garbage and recyclable materials by the City's franchises;

(h) Domestic Power Tools; Machinery. Operating or permitting the operation of any mechanically powered saw, sander, drill, grinder, leaf blower, lawn or garden tool, or similar tool between 9:00 p.m. and 7:00 a.m. during weekdays, so as to create a noise disturbance across a residential real property line or at any time to violate the applicable noise provisions

as set forth in the Richmond Planning Code. Power tools and/or machinery or other tools creating noise associated with construction, manufacturing or gardening activities prior to 9:00 a.m. or after 7:00 p.m. on Saturdays and Sundays if the noise from such tools or machinery creates a noise disturbance across a residential property line or at any time violates any noise provisions of the Richmond Planning Code;

(i) Noise Sensitive Uses. Creation of any noise disturbance adjacent to or within one-thousand feet of a hospital or medical care facility, nursing home, school during school hours, courthouse during hours of operation, day care, church during hours of worship services, or similar facility, so as to interfere with the functions of such activity;

(1) Where construction activities on a construction project which is adjacent to any noise sensitive use(s) are anticipated to last for a year or more, temporary noise barriers shall be constructed that break the line of sight between the noise-sensitive use(s) and the construction project, and that minimize noise impacts.

(j) Noise resulting from construction and demolition activities, the operation of commercial refrigeration units, air conditioning systems, compressors, commercial exhaust systems, ventilation units, use of any instrumentality that results in impulsive sound, and other commercial or industrial noises associated with land use activities, shall be regulated pursuant to standards contained within the noise regulations of the Richmond Planning Code.

(k) Vehicular Attachments. Attaching any accessory or device to any vehicle which results in the creation of unnecessary noise.

(l) Radios, television sets, musical instruments or similar devices. Operating, playing, or permitting the operation or playing of any radio, television set, compact disc player, stereo, drum, musical instrument or similar device which reproduces sound so as to create a noise disturbance or cause any violation of this Chapter;

(m) Sound amplifier. Using or operating or permitting or allowing the using or operating, for any purpose, a sound amplifier except in compliance with and under a Sound Amplifier permit issued pursuant to Chapter 7.64 of this Code is prohibited.

(n) Places of public entertainment. Operating or permitting or allowing the operation or playing of any loudspeaker, musical instrument, motorized racing vehicle, or other source of sound in any place of public entertainment as to create a noise disturbance or which can be heard more than 500 feet from the property line of the property on which the public entertainment is located after 9:00 p.m. or before 8:00 a.m., except if the public entertainment is permitted or occurs on property that is not located within 1000 feet of residential dwellings.

(o) Tampering. The removal or rendering inoperative, other than for purposes of maintenance, repair or replacement, of any noise control device, muffler, or other sound

dissipative device or element thereof; as required under federal, state or local law, and the use of said product after its noise control device has been removed or rendered inoperable, other than for purpose of maintenance, repair or replacement.

(p) Train bells, sirens, horns, whistles or similar audible warning devices shall be exempt from the provisions of this chapter only to the extent that the General Code of Operating Rules (GCOR) adopted by railroad companies or Federal or State law permits or requires their use and such use is strictly limited to the GCOR or Federal or State sounding standards, including, but not limited to, the sound level, the necessity for using the signal and the pattern or frequency of use.

Where an adopted GCOR allows the use of "other forms of communication," railroad companies are encouraged to use maximum reasonable restraint in the use of horns, particularly during times when people are likely to be sleeping (10:00 PM until 7:00 AM) and to use "other forms of communication," including radios and visible signals whenever possible, consistent with safety requirements.

9.52.060 Persistent Noises

Failure to comply with the following provisions shall constitute a nuisance and violation of this ordinance:

(a) All construction equipment powered by internal combustion engines shall be properly muffled and maintained.

(b) Unnecessary idling of internal combustion engines is prohibited.

(c) All stationery noise-generating construction equipment such as tree grinders and air compressors are to be located as far as is practical from existing residences.

(d) Quiet construction equipment, particularly air compressors, are to be selected whenever possible.

(e) Use of pile drivers, sources of impulsive sound and jack hammers shall be prohibited on Sundays and holidays, except for emergencies or as approved in advance by the Building Official.

9.52.070 Noise from Radios, etc. in Vehicles; Appeal

(a) It shall be unlawful for any person to use or operate a radio, tape player, tape recorder, record player, television or similar device in a vehicle on a street, which is audible to a person of normal hearing sensitivity more than twenty-five (25) feet from said vehicle.

(b) Any penalties that may be imposed under this Chapter may be subject to being offset by the performance of community service work as determined by a court commissioner, judge or administrative hearing officer.

(c) The provisions this section shall be enforced by the Richmond Police Department or authorized peace officer.

(d) Provisions of section 9.52.070 are to be supplementary and complementary to all of the provisions of this Code, the laws of the State of California and any other applicable law, and nothing in this chapter shall be read, interpreted or construed in any manner so as to limit any existing or future right or power of the City of Richmond to control or limit excessive noise caused by radios or other devices in vehicles.

9.52.080 Noises--Exceptions

Nothing in this Chapter shall apply to the playing of music by a band or the blowing of a bugle, or the announcing of any show, entertainment, or event upon the public streets for which band music, bugle blowing or privilege or announcing, the Chief of Police has granted a special permit specifying the time and place when and where such music may be played or such bugle blown, or shall apply to the blowing of any whistle or horn or the ringing of any bell or other noise necessary as a vehicular or pedestrian traffic warning or signal; or to any regularly licensed peddler calling his or her wares in an ordinary tone of voice. Emergency vehicles, including police vehicles, fire vehicles and ambulances are exempt from the requirements of this Chapter.

9.52.100 Alternative Use of Maximum noise limits by dBA levels.

It addition to determining noise violations under the standard set forth elsewhere in this Chapter, the enforcing officer may alternatively use the maximum decibel ("dBA") levels to determine a violation of this Chapter. The standard chosen by the enforcing officer for the specific incident shall be the sole means used to determine if a violation has occurred. Neither standard shall be considered superior, nor controlling, nor preempt the other.

If the enforcing officer selects the alternative standard to using the dBA level standard, evidence of dBA levels within the maximum permitted levels may be presented in defense of the charged violation only if the proffered dBA reading was taken at the exact time and location and under identical conditions, including wind, and temperature, as those encountered by the enforcing officer encountered at the time he or she charged the violation and by a decibel meter with valid current calibration records and evidence of the training or expertise of the person offering the dBA reading as evidence of compliance with this ordinance.

It shall be unlawful to maintain, permit, allow or suffer any use or activity that creates noise levels which exceed the following standards:

TABLE 3.10-7			
ALLOWABLE NOISE LEVELS IN THE CITY			
Zoning District:	Maximum Noise Level in dBA (levels not to be exceeded more than 30 minutes in any hour)		Maximum Noise Level in dBA (level not to be exceeded more than 5 minutes in any hour)
	Measured at Property Line or District Boundary	Measured at Any Boundary of a Residential Zone	Between 10 PM and 7AM***, Measured at Any Boundary of a Residential Zone
Single-Family Residential	60		
Multifamily Residential	65		
Commercial	70	60	50 or ambient noise level
Lt. Industrial and Office Flex*	70	60	50 or ambient noise level
Heavy and Marine Industrial	75	65	50 or ambient noise level
Public Facilities and Community Use	65	60	50 or ambient noise level
Open Space and Recreational Districts	65	60	50 or ambient noise level
* For M-1 and M-2 the measurement will be at property lines. ** For M-3 and M-4 the measurement will be at boundary of the district. *** Restricted hours may be modified through condition of an approved conditional use permit. Section subsections of this Chapter also provide for additional restricted hours and the most restrictive hours shall be controlling.			

(b) In determining whether any noise exceeds the maximum exterior noise limits set forth in this section, measurements shall be taken at the property line of the property from which the noise emanates, except that for noise emanating from property in an M-3 or M-4 zoning districts, measurement shall be taken at boundary of the zoning district in which the property is located.

(c) No person shall operate or cause to be operated within a dwelling unit, any source of sound that causes the sound level when measured inside a neighboring receiving dwelling unit to exceed the allowable noise level, for any period of time.

(d) In the event the noise, as judged by the enforcing authority, contains a steady, pure tone such as a whine, screech or hum, or is an impulsive sound such as hammering or riveting, or contains music or speech, the standard limits set forth above shall be reduced by 5 decibels.

(e) The exterior noise limits for any source of noise within any residential zone shall be reduced by 10 dBA between 10:00 p.m. and 7:00 a.m. The exterior noise limits for any source of noise in any zone other than a residential zone shall be reduced between 10:00 p.m. and 7:00 a.m. so that when the noise measured at the property line of a "noise-sensitive use" does not exceed 50 dBA.

9.52.110 Temporary construction activity.

Where technically and economically feasible temporary construction activity shall be conducted in such a manner that the maximum sound levels at affected properties shall not exceed the following dBA levels:

(a) Mobile construction equipment- Maximum sound levels for nonscheduled, intermittent, and short term operation of less than 15-days:

TABLE 3.10-8			
MOBILE EQUIPMENT (STANDARDS FOR THE CITY)			
	<u>SFR-1, SFR-2, SFR-3 Zoning Districts (Single- Family Residential)</u>	<u>MR-1, MR-2, MR-3 Zoning Districts (Multifamily Residential)</u>	<u>Commercial and Industrial Zoning Districts</u>
<u>Weekdays, 7:00 a.m. to 7:00 p.m.</u>	<u>75 dBA</u>	<u>80 dBA</u>	<u>85 dBA</u>
<u>Weekends, including legal holidays 9:00 a.m. to 8:00 p.m.</u>	<u>60 dBA</u>	<u>65 dBA</u>	<u>70 dBA</u>

(b) Stationary Construction Equipment- Maximum sound levels:

TABLE 3.10-9			
STATIONARY EQUIPMENT (STANDARDS FOR THE CITY)			
	<u>SFR-1, SFR-2, SFR-3 Zoning Districts (Single- Family Residential)</u>	<u>MR-1, MR-2, MR-3 Zoning Districts (Multifamily Residential)</u>	<u>Commercial and Industrial Zoning Districts</u>
<u>Weekdays, 7:00 a.m. to 7:00 p.m.</u>	<u>60 dBA</u>	<u>65 dBA</u>	<u>70 dBA</u>
<u>Weekends, including legal holidays 9:00 a.m. to 8:00 p.m.</u>	<u>55 dBA</u>	<u>60 dBA</u>	<u>65 dBA</u>

The above changes do not change the conclusions in the Draft EIR.

Response to Comment 9-26

The comment states the number of policies included in the climate change section of the Draft EIR (Draft EIR section 3.6) appears to be replacing the General Plan. It should be noted that the policies contained in the EIR are General Plan policies and not policies created for the purposes of the EIR.

Response to Comment 9-27

The comment refers to the findings in the Bay Planning Commission's report regarding sea level rise. Please see Response to Comment 9-12.

Response to Comment 9-28

The comment states any action items related to construction emission thresholds can only be recommendations since the BAAQMD has not established thresholds for construction emissions. The comment is incorrect. The City can establish measures to reduce greenhouse gas (GHG) emissions in its attempt to meet the GHG reduction targets set forth by California State Assembly Bill (AB) 32.

Response to Comment 9-29

The comment questions the status of the City's Climate Action Plan and states that the Council of Industries (COI) would like to work with the City regarding the policies and action items related to the Climate Action Plan. The City is in the process of seeking funding for the Climate Action Plan. As the policies and action items listed in the Draft EIR are components of the General Plan, this is a comment on the merits of the project and not a comment on the Draft EIR. The comment is noted and forwarded to the decision-makers for their consideration.

Response to Comment 9-30

The comment references the demolition ordinance for historic resources and states COI would like to continue to work with the City on this topic. The comment is noted and forwarded to the decision-makers for their consideration.

Response to Comment 9-31

The comment suggests changing requirements in certain mitigation measures in the Draft EIR to recommendations. Recommendations would reduce the effectiveness of the measures in mitigating potential significant impacts. Therefore, the changes are not incorporated.

Response to Comment 9-32

The comment questions the status of the City's Climate Action Plan and would like to work with the City to educate businesses about climate challenges and potential solutions. Please see Response to Comment 9-29 regarding the status of the Climate Action Plan. The comment is forwarded to the decision-makers for their consideration.

Response to Comment 9-33

The comment states that the City needs to reconsider the bicycle and pedestrian paths through the industrial area on Harbor and along the port areas because of truck and rail traffic. This is not a comment on the adequacy of the analysis contained in the Draft EIR, but on information contained in the General Plan. It should be noted, however, that the City would consider truck and rail traffic in the design of any bicycle or pedestrian facilities to ensure safety.

Response to Comment 9-34

The comment states that the Port Emissions Reduction Plan cannot be enforced by the City and needs to be revised. The referenced policy contains language about collaboration to develop an emissions reduction plan, exploring strategies to reduce emissions, and continued enforcement of existing regulations. The City would only enforce regulations over which it has control.

Response to Comment 9-35

The comment questions the City's definition of "Green" businesses in General Plan Energy and Climate Change Policy EC5.1. The concept of green businesses is included in the policy itself: green businesses are industries that provide goods and services to fill the growing need for clean and sustainable technologies, fuels, vehicles, and equipment.

Response to Comment 9-36

The comment states the Bay Planning Coalition does not agree with the requirement for evaluation of potential one meter sea level rise for projects within 300 feet of the existing shoreline as included in General Plan Energy and Climate Change Policy EC6.3 and requests a reduction of the one-meter requirement. This is not a comment on the adequacy of the analysis contained in the Draft EIR, but on a policy contained in the General Plan. Also see Response to Comment 2-5 for additional information on sea level rise.

Response to Comment 9-37

The comment supports buffers, including the Transitional/Buffer Zone in Change Area 2 – Ford Peninsula in Marina Bay. As discussed in Response to Comment 9-6, Draft EIR Figure 2-6 notes that residential uses are not allowed in the Transitional/Buffer Zone. Compliance with proposed General Plan policies and existing regulations would further reduce risks associated with hazardous materials releases.

Response to Comment 9-38

The comment requests clarification of the term "hazardous waste facility" as used in General Plan Public Safety and Noise Policy SN1.3. The term 'hazardous waste facilities' does not refer to a particular industry or group or industries, but is intended to mean nothing more than facilities that generate hazardous waste. The City would review applications for new and expanded facilities for their potential to generate hazardous waste and their location relative to the shoreline and streams or creeks.

Response to Comment 9-39

The comment questions the use of the term "soil and water contamination" and states total elimination of contamination is not feasible. Existing regulations promulgated by the Regional Water Quality Control Board and the Department of Toxic Substances Control define contamination, and

provide standards for cleanup of contaminated sites. The City does not propose new standards related to soil or groundwater contamination.

Response to Comment 9-40

The comment requests a copy of the City's Pollution Prevention Program and states that they were unaware of the Pollution Prevention Program discussed in General Plan Conservation and Natural Resources Policy CN6.C. This is not a comment on the adequacy of the analysis contained in the Draft EIR, but on information contained in the draft General Plan. Information regarding the City's Pollution Prevention Program can be obtained upon request from the City's Engineering Services Department.

Response to Comment 9-41

The comment requests that bicycle and pedestrian paths not be allowed in industrial areas and that the City establish an overlay zone that diverts pedestrian and bicycle traffic around industrial areas. The comment is noted and forwarded to the decision-makers for their consideration. Please also see Response to Comment 9-33.

Response to Comment 9-42

The comment expresses opposition to proposed General Plan Circulation Policy CR1.D, which requires all new commercial, industrial, and residential projects to provide access for construction and operation of planned or designated trails. This is not a comment on the adequacy of the analysis contained in the Draft EIR, but on a policy contained in the General Plan. The comment is forwarded to the decision-makers for their consideration.

Response to Comment 9-43

The comment questions the portions of Cutting Boulevard to which proposed General Plan Circulation Policy CR2.D refers regarding reducing the width or number of lanes for streets that have excess capacity. The City would take into consideration the type of traffic on the roadway in its consideration of the availability of "excess" capacity and would not reduce road widths where the section is needed for truck travel. This is not a comment on the adequacy of the analysis contained in the Draft EIR, but on a policy contained in the General Plan.

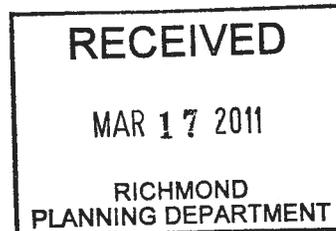
Response to Comment 9-44

The comment states that General Plan Circulation Policy CR3.A, related to railroad crossing improvements, is infeasible due to costs. This is not a comment on the adequacy of the analysis contained in the Draft EIR, but on a policy contained in the General Plan. The comment is forwarded to the decision-makers for their consideration.

Comments on Richmond draft General Plan Update (GPU) - Safety and Noise Element and the draft Environmental Impact Report (EIR) that supports the GPU.

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Comments are based on the author's prior *experience*.

References: California Governor's Office of Planning and Research
General Plan Guidelines, 2003 edition. (GPG)
U.S. Department of Transportation - Transit Noise and
Vibration Impact Assessment, 2006 edition (FTA)

General Comments

1. Preferred General Plan and EIR format is to have a separate Noise Element. Public safety and emergency preparedness issues are subjective and speculative in nature, whereas noise issues relate to actual ongoing conditions using objective methods. The noise element is more directly related to the Land Use and Circulation elements, but has very little in common with safety issues. The GPG recognizes the uniqueness of noise issues, with a separate Appendix section that lists specific requirements for a Noise Element.

10-1

2. Noise levels in various tables of both the GPU and the EIR are stated to a accuracy of 0.1 dB, which is misleading; measurement or reporting with a precision greater than whole numbers is meaningless except under tightly controlled laboratory conditions. Both the FTA and the GPG point this out and recommend that all noise data be reported as whole numbers. The GPG (page 185) also states:

10-2

"Although considerable effort may go into developing noise contours which, in some instances, utilize rather sophisticated digital programming techniques, the present state-of-the-art is such that their accuracy is usually no better than 3 dB. In fact, the accuracy of the noise exposure prediction decreases with increasing distance from the noise source. In the near vicinity of the source, prediction accuracy may be within the range of 1 dB, while at greater distances this may deteriorate to 5 dB or greater."

3. Traffic Noise is described variously as "roadway" or "motor vehicle" noise. It should always be called "traffic" noise, to be consistent with the designation used in the Circulation Element. The traffic count data assumed in the Circulation Element should be more clearly identified as the source of traffic noise predictions.

10-3

Specific comments on the GPU ...

Page 12.3 Legal Requirement(s)

The code section for Noise is 65302(f), which states that the noise element "shall serve as a guideline for compliance with the state's noise insulation standards", with a specific reference to the UBC standards for Sound Transmission Control. This relationship is not stated in the GPU, but is actually one of the most important features of the Noise Element.

The correct code section for Safety is 65302(g), not 65032(f). See general comment 1, above.

Page 12.8 Table 12.1 - Land Use Compatibility

The table is not introduced in the section text.

The labels for the table columns are incorrectly placed; the labels should be at the divisions between the columns, not at the center of the columns. This error could lead to confusion regarding the 60 dB threshold for requirement of residential noise insulation analysis per UBC.

10-4

This error is repeated in Figure 3.10-3 of the EIR.

Page 12.9 Table 12.2 - Existing Conditions

The table is not introduced in the section text, and there is no mention of the source of the data. (The table appears to be based on traffic predictions from the Circulation Element, not actual measurements)

Page 12.27 Figure 12.7 - Future Noise Contours

Noise contours are not shown.

It is unclear why Figure 12.7 would show "future" conditions whereas Table 12.2 shows "existing" conditions. Noise impact assessments should either compare future levels to present levels, or compare future levels with and without the effect of a specific "project", in the same table or contour map. Also, the GPG requires that noise contour maps show all significant sources (traffic, rail, stationary)

Specific Comments on the EIR ...

Page 3.10-4 Aircraft

There is a heliport at Doctors' Hospital. The report should state how often has this been used in the past and what is the expected future trend.

10-5

Page 3.10-5 Railroads

The section should introduce and discuss the significant issue of locomotive horns at uncontrolled grade crossings, and how this might be affected by the potential use of "quiet zones" with alternate crossing safety controls. General Plan Action SN4.D talks about studying the use of quiet zones.

10-6

How many uncontrolled grade crossings are there, and where are they?
 What are the FTA safe crossing standards for quiet zones?
 How does the city plan to implement action SN4.D?

The EIR does not include noise contours for railroad lines (or uncontrolled grade crossings) in either existing or future noise level maps; this is inconsistent with the GPG.

Page 3.10-5 BART

BART Richmond lines (to Fremont and Daly City) presently have about 200 daytime operations and 50 nighttime operations, at 7-8 min intervals; the EIR should state this and note any possible changes expected for the future.

10-7

The EIR does not include noise contours for BART in either existing or future noise level maps; this is inconsistent with the GPG.

Page 3.10-6 Table 3.10-3 Noise Monitoring Data

See general comment 2 above regarding precision of data reporting.

10-8

Page 3.10-10 Figure 3.10-2 Existing Noise Contours

Page 3.10-32 Figure 3.10-4 Future Noise Contours

These should be labeled Existing and Future Traffic Noise Contours, since they only show traffic noise and not trains, BART, or stationary sources. Better yet, show contours for all sources like the GPG recommends.

10-9

Page 3.10-11 Table 3.10-4 Existing Roadway Noise Levels

See general comments 1 and 2, above regarding data precision and "traffic" designation

10-10

Page 3.10-15 Land Use Compatibility

The table column heading labels are incorrectly placed. See comment on GPU Table 12.1 above.

10-11

Page 3.10-19 Standards of Significance

Incorect grammar: "if it would do" should read "if it would cause"

10-12

Page 3.10-20 Table 3.10-10 ... Interior and Exterior Noise Standards

This should be titled " Noise Impact Significance", since it does not state absolute standards. The table also uses fractional parts of decibels, which is inconsistent with GPG recommendations; values should be rounded to nearest dB before comparison.

10-13

Suggested revision is as follows, based on FTA guidelines (Table 3.10-6) for residential land use.

TABLE 3.10-10
Noise Impact Significance
of Change in Noise Exposure

Existing Noise Level (Ldn or CNEL)	Allowable Increase (dB)
< 50	7
50-55	5
56-60	3
61-65	2
> 65	1

Page 3.10-31 Table 3.10-14 Future Roadway Noise Compared to Ambient Future Levels

Title should be "Future Traffic Noise Levels compared to Existing Traffic Noise Levels", with corresponding column headings. The table should use whole numbers instead of fractional parts of decibels; this also makes it easier to see math errors (e.g. in the first entry, $69.9 - 68.1 = 1.8$, not 1.1)

10-14

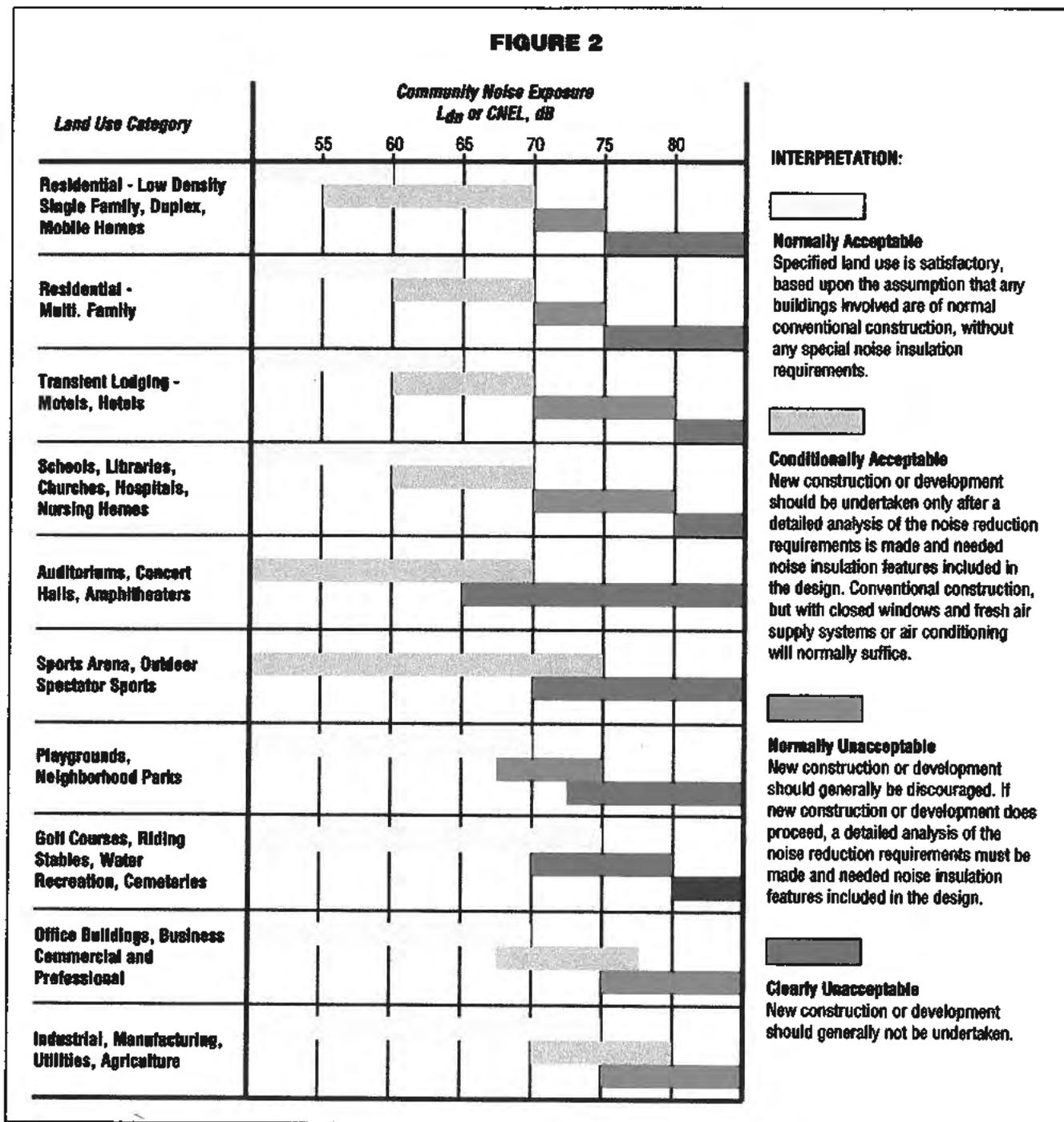
Pages 3.10-20 to 3.10-35 Impacts and Mitigations - General Comments

These sections are hard to comprehend because of the organization and style of presentation, which does not follow the GPG suggestions:

The general plan should clearly distinguish its objectives, policies, and plan proposals from background information and discussion. Although data and analysis are important to the preparation of the plan and help put the objectives and policies in context, including them within statements of development policies can cause unnecessary confusion. A preferred approach is to include the data and analysis in a technical appendix or in a separate volume.

10-15

FIGURE 2



LETTER 10: Krause Engineering Services, Nick Krause**Response to Comment 10-1**

The comment states that the preferred format of a general plan is to have a separate noise element. The General Plan Guidelines, referenced in the comment do not, however, require a separate element for noise. The General Plan Guidelines allow for flexibility and element consolidation in the structure of general plans to provide functional chapters and eliminate redundancies in a general plan (General Plan Guidelines, Chapter 5, Format and Element Integration).

Response to Comment 10-2

The comment states that the 0.1-decimal reporting of noise levels is too precise and could be misleading. While the Draft EIR reports noise levels to 0.1-decimal, these are simply the readings taken from the sound level meter and the results of the modeling. The inclusion of results to the one-tenth decibel was not intended to imply that noise levels could be predicted with such precision, but merely to report the results of the measurements and modeling as described in the methodology. The inclusion of results to this level of precision does not affect the adequacy of the program-level analysis in the Draft EIR.

Response to Comment 10-3

The comment takes issue with the use of the terms “roadway” or “motor vehicle” when referring to “traffic” noise. The use of the terms “roadway” or “motor vehicle” in reference to noise generated by vehicles on roads makes no difference in the conclusions of the analysis in the Draft EIR. No change is required.

Response to Comment 10-4

The comment recommends various edits to the Public Safety and Noise Element of the General Plan. This is not a comment on the adequacy of the analysis contained in the Draft EIR, but on the draft General Plan. Regarding Figure 3.10-3 of the Draft EIR, the alignment of the labels of the columns has been revised and the figure is attached to these responses.

Response to Comment 10-5

The comment requests information on the operation of the helistop at Doctor’s Medical Center at 2000 Vale Road in the City of San Pablo. The Medical Center is not within the City of Richmond’s jurisdiction and the City has no control over the use of the helistop. In addition, the Medical Center is not located near a change area and, therefore, the proposed General Plan would not result in any changes in exposure to helicopter noise that would not occur without the proposed General Plan.

Response to Comment 10-6

The comment states the Draft EIR does not include contours for railroad lines, which is inconsistent with the General Plan Guidelines. While the General Plan Guidelines states that it is advisable to

prepare contours for a general plan, contours are not required in an EIR. The comment also requests additional information regarding the number and location of uncontrolled grade crossings in the city and questions the effect of train horns. As a program-level EIR, the analysis does not look at each intersection or grade crossing individually. The Draft EIR addresses noise associated with rail operations (Draft EIR pages 3.10-27 and 3.10-28) and specifically references General Plan Public Safety and Noise Action SN4.D regarding horn noise. However, the Draft EIR found the potential for rail horns to affect nearby sensitive receptors, especially along Grant Boulevard and Carlson Boulevard, would still exist, even with implementation of the proposed General Plan policies and actions. The City has established quiet zones at a number of at-grade railroad crossings, each of which includes advanced warning signs, railroad crossing pavement markings, stop lines, crossing gates, flashing lights, and warning bells. If the City establishes new quiet zones, the City must submit Notices of Intent and Establishment in accordance with the Federal Railroad Administration's Final Rule on the Use of Locomotive Horns at Highway/Rail Grade Crossings and would be required to comply with specific guidelines on the quiet zone establishment process.

Response to Comment 10-7

The comment notes the current schedules for BART trains, requests information on future operations, and states that the lack of contours is inconsistent with the General Plan Guidelines. As noted above, the General Plan Guidelines do not require noise contours for an EIR. Regarding the future changes to BART operation in Richmond, BART produced the *Comprehensive Station Plan, Richmond, June 2004*, which projects additional ridership and the need for expansion and station modifications in Richmond, but does not state how train operations would change. It is anticipated that the additional ridership could be served by trains of higher capacity, or by changes in the number of trains. However, at this time, the City has no firm data regarding the number of trains in the future, so meaningful analysis cannot be provided at this time.

Response to Comment 10-8

The comment restates the previous comment regarding the precision of the data reported. Please see Response to Comment 10-2.

Response to Comment 10-9

The comment accurately notes that the titles of figures 3.10-2 and 3.10-4 do not include reference to roadway noise and the titles should be changed. The titles are changed as shown below.

The title on Figure 3.10-2 on page 3.10-10 is changed as follows and the figure is attached to these responses.

Existing Traffic Noise Contours within the City of Richmond

The title on Figure 3.10-4 on pages 3.10-32 is changed as follows and the figure is attached to these responses.

Future Traffic Noise Contours under the Proposed General Plan Update

Response to Comment 10-10

The comment reiterates previous comments regarding reporting of data and the use of “traffic” terms. See Responses to Comments 10-2 and 10-3, respectively.

Response to Comment 10-11

The comment refers to labels on Figure 3.10-3. See Response to Comment 10-4.

Response to Comment 10-12

The comment notes a typographical error on page 3.10-19. The text on page 3.10-19 under the heading “Standards of Significance” is changed as follows:

For the purposes of this EIR, implementation of the proposed General Plan would have a significant impact to noise in the City if it would ~~de~~ cause any of the following:

Response to Comment 10-13

The comment questions the use of the term “standard” in Table 3.10-10 on page 3.10-20 of the Draft EIR and provides suggestions for changes to the table. The use of the term “standard” in the table is appropriate as these levels were used in the Draft EIR to determine the significance of impacts. Regarding the recommended changes, the noise levels provided in the table are within the Normally Acceptable/Conditionally Acceptable range of those in the General Plan Guidelines. No changes are required.

Response to Comment 10-14

The comment again refers to the use of the term “roadway” in reference to traffic noise. Please see Response to Comment 10-3.

Response to Comment 10-15

The comment generally states that the impacts should be reorganized for clarity and references the General Plan Guidelines. As noted above, the General Plan Guidelines provide guidelines for the preparation of a general plan, and are not requirements of an EIR. The City believes the information in the technical section of the Draft EIR clearly defines the potential impacts of the proposed General Plan.

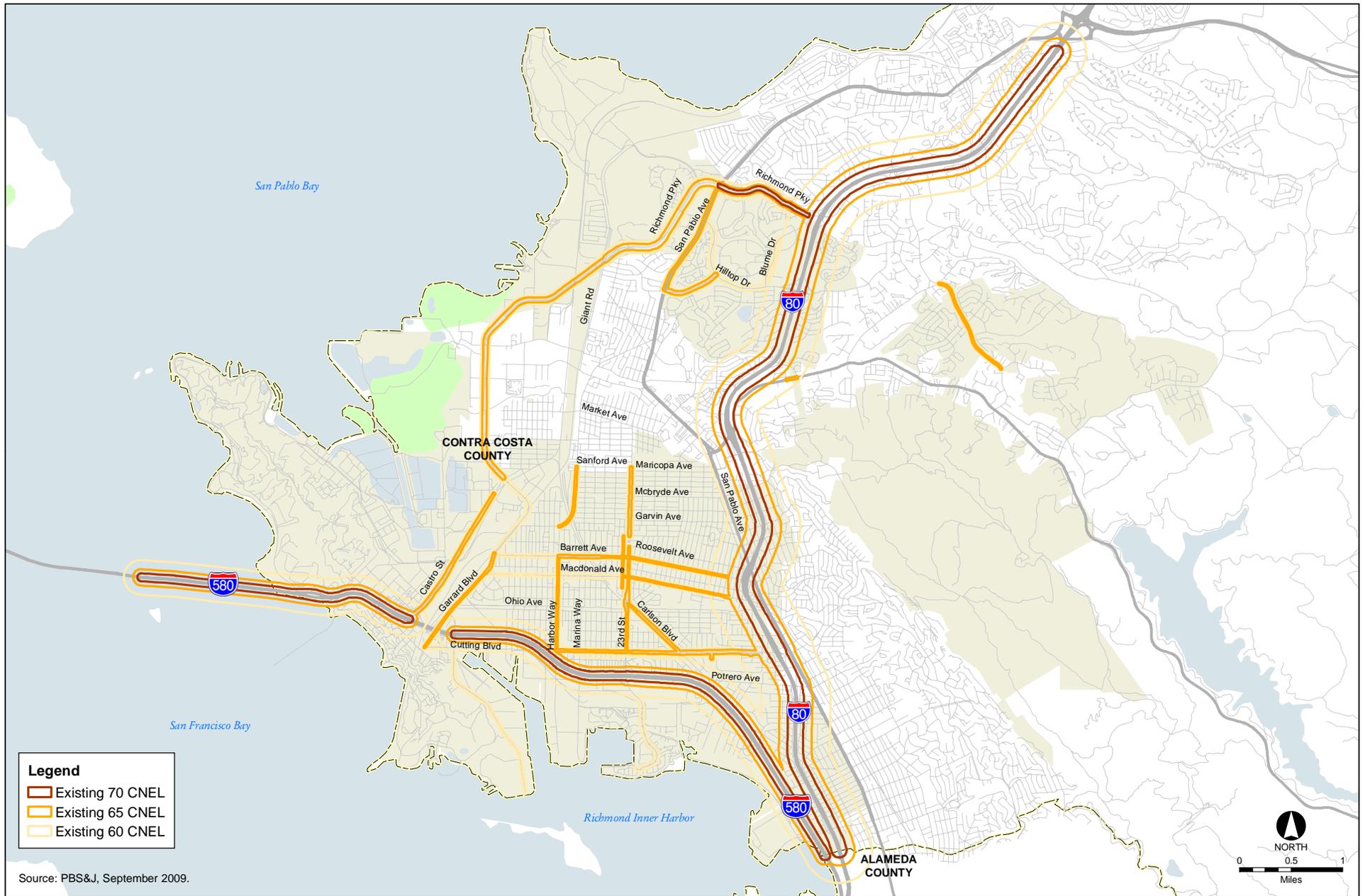


FIGURE 3.10-2
Existing Traffic Noise Contours within the City of Richmond



100018268

Land Use Category	Community Noise Exposure - L _{dn} or CNEL, dB							
	55	60	65	70	75	80	85	
Residential – Low-Density Single Family, Duplexes and Mobile Homes								
Residential – Multifamily								
Transient Lodging – Motels, Hotels								
Schools, Libraries, Churches, Hospitals, Nursing Homes								
Auditoriums, Concert Halls, Amphitheaters								
Sports Arena, Outdoor Spectator Sports								
Playgrounds, Neighborhood Parks								
Golf Course, Riding Stables, Water Recreation, Cemeteries								
Office Buildings, Business Commercial and Professional								
Industrial, Manufacturing, Utilities, Agriculture								

Source: Governor's Office of Planning and Research, State of California General Plan Guidelines. 2003.

-  Normally Acceptable
Specified land use is satisfactory, based upon the assumption that any buildings involved are of normal conventional construction, without any special noise insulation requirements.
-  Conditionally Acceptable
New construction or development should be undertaken only after a detailed analysis of the noise reduction requirements is made and needed noise insulation features included in the design. Conventional constructions, but with closed windows and fresh air supply systems or air conditioning will normally suffice.
-  Normally Unacceptable
New construction or development should generally be discouraged. If new construction or development does proceed, a detailed analysis of the noise reduction requirements must be made and needed noise insulation features included in the design.
-  Clearly Unacceptable
New construction or development should generally not be undertaken.

Source: City of Richmond, 2009.



FIGURE 3.10-3
Noise Exposure Land Use Compatibility Standards

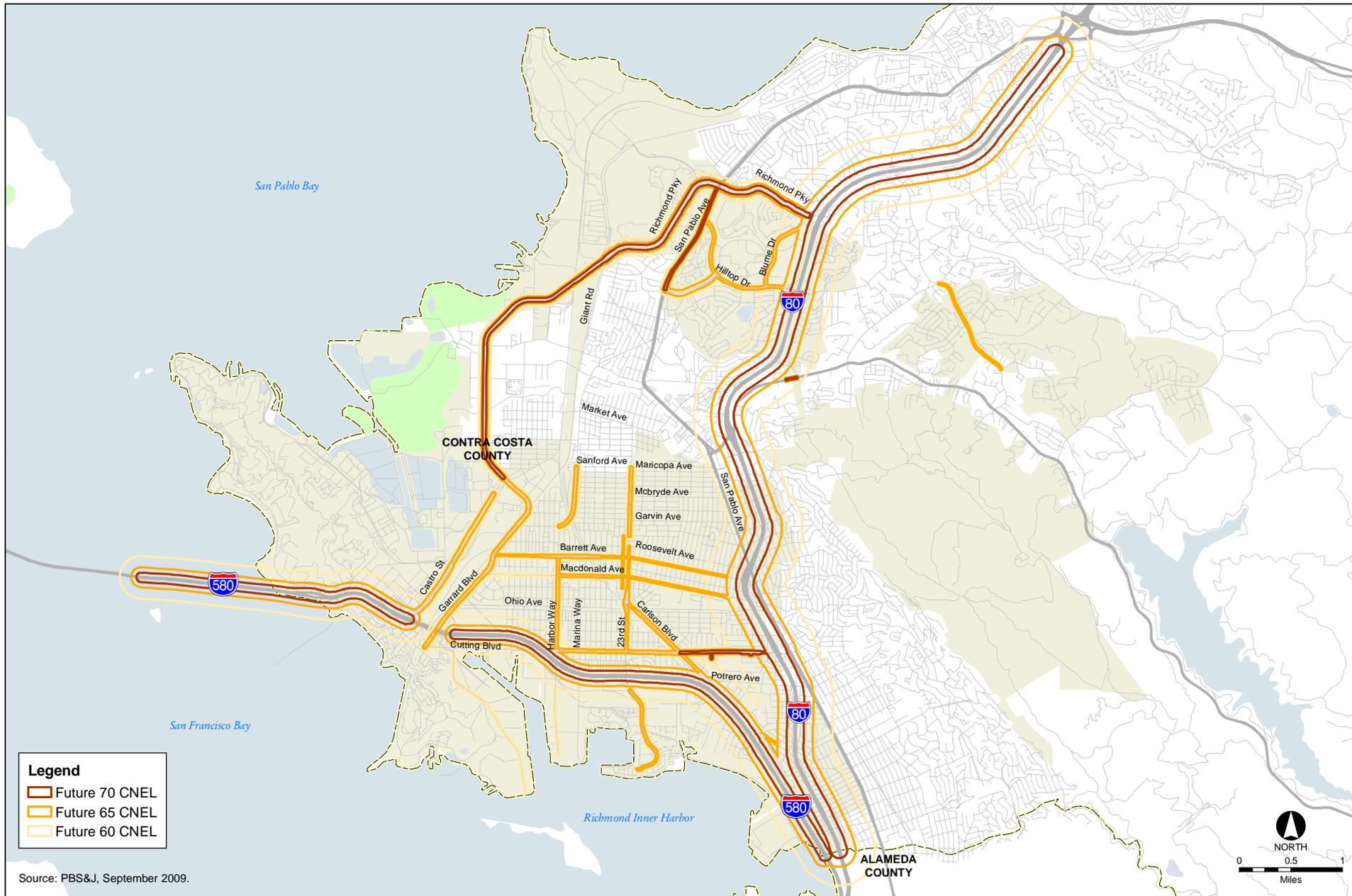


FIGURE 3.10-4

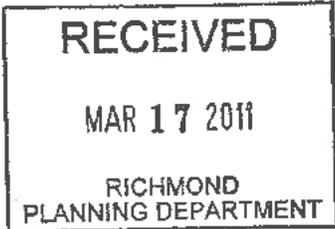
Future Traffic Noise Contours under the Proposed General Plan Update



100018268



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March 17, 2011

Mr. Hector Rojas, Senior Planner
 City of Richmond
 P.O. Box 4046
 Richmond, CA 94804

Dear Mr. Rojas:

TRAC, the Trails for Richmond Action Committee, has reviewed the February Public Review Draft of Richmond General Plan 2030 with respect to the San Francisco Bay Trail. We find that it is very good in most respects but do recommend the following improvements.

Element 3 - Land Use and Urban Design

Page 3.41: The Desired Urban Land Form section for the Southern Gateway recommends a "strong grid street pattern" but doesn't mention the need for pedestrian and bicyclist connectivity. As illustrated by TRAC's attached February 18 letter to Bill Lindsay in support of a second campus for LBNL in Richmond, please add the following: "A multi-use trail system should be integrated to provide convenient pedestrian and bicyclist circulation, shoreline recreation, commuting and access to nearby cafes, restaurants and services."

Element 4 - Circulation

Page 4.6 first sentence: Please revise to recognize that over 300 miles of Bay Trail has been completed overall with 30 miles of it in Richmond where there is 11 miles more to build.

Page 4.8 middle column second paragraph: Please revise to read "As of 2011, approximately 30 miles of the trail within Richmond have been completed with 11 additional miles planned."

Page 4.32 Action CR1.E Trails and Greenway Program: Please revise as follows with additions underlined and deletions in parentheses: "Create (Consider creating) a Class I multi-use trail loop north of Meeker Tidal Creek and Stege Marsh as a transportation and recreation (scenic) route. Also provide (consider providing) trailhead staging areas at the south end of 32nd and 46th streets with bridges across Meeker Tidal Creek and the unnamed creek east of S. 32nd Street."

Page 4.53: Please make the following revisions to the Planned Pedestrian and Bicycle Facilities Map 4.1:

1. Shipyards 3 Bay Trail: Add a solid red line for the recently completed Class I trail along Canal Blvd. south from Seacliff Drive around the Point Potrero Marine Terminal to the SS Red Oak Victory. (The gap along the shoreline between the Shipyards 3 Trail and Brickyard Cove Rd. has not been completed yet.)

11-1



- 2. Landfill Loop Bay Trail: Add a solid red line on the northern side of former West County Landfill since the official opening of the Landfill Loop Bay Trail will occur next month.
- 3. Meeker Tidal Creek Trail: Please add the completed Class I Meeker Tidal Creek Trail on the north side of Meeker Tidal Creek. As shown in red on the attached satellite image, this trail runs between the end of South 32nd Street and Regatta Blvd. It was built and is maintained by Bio-Rad and Richmond Wholesale Meat Company as conditions of BCDC permits associated with their facilities on Regatta Blvd.
- 4. Meeker Tidal Creek/S. 51st St. Connector Trail: The map does not correctly show the trail connecting the eastern end of the Meeker Tidal Creek Trail at S. 32nd St. to the S. 51st Street Bay Trail section via the planned S. 46th St. Bay Trail access point. As illustrated in yellow on the attached satellite image, it should begin at the eastern end of the Meeker Tidal Creek Trail, rather than at the intersection of S. 32nd and Regatta. This will provide a recreational trail loop linking with the Bay Trail while also encouraging non-vehicular modes of transportation by residents and employees in the area as described in the attached February 18 letter to Bill Lindsay in support of a second campus for LBNL in Richmond.

11-1
(cont.)

Element 7 - Conservation, Natural Resources and Open Space

Page 7.26 4th bullet: Both S. 32nd and S. 46th street ends are planned Bay Trail access points in the current General Plan. Therefore, please revise as follows with additions underlined and deletions in parentheses: "Require (Promote and encourage) the dedication of trailheads at the ends of South 46th and (or) South 32nd Streets as part of any plans to redevelop"

Element 10 - Parks and Recreation

Page 10.8 left column middle paragraph: Please revise to recognize that 30 miles of Bay Trail has been completed in Richmond and that the planned Bay Trail is 500 miles, rather than 400.

Page 10.55 Map 10.1: The revisions of Map 4.1 on Page 4.53 also apply to Map 10.1.

TRAC hopes that these comments and recommendation will prove helpful. Please let me know if clarification is needed.

Sincerely,



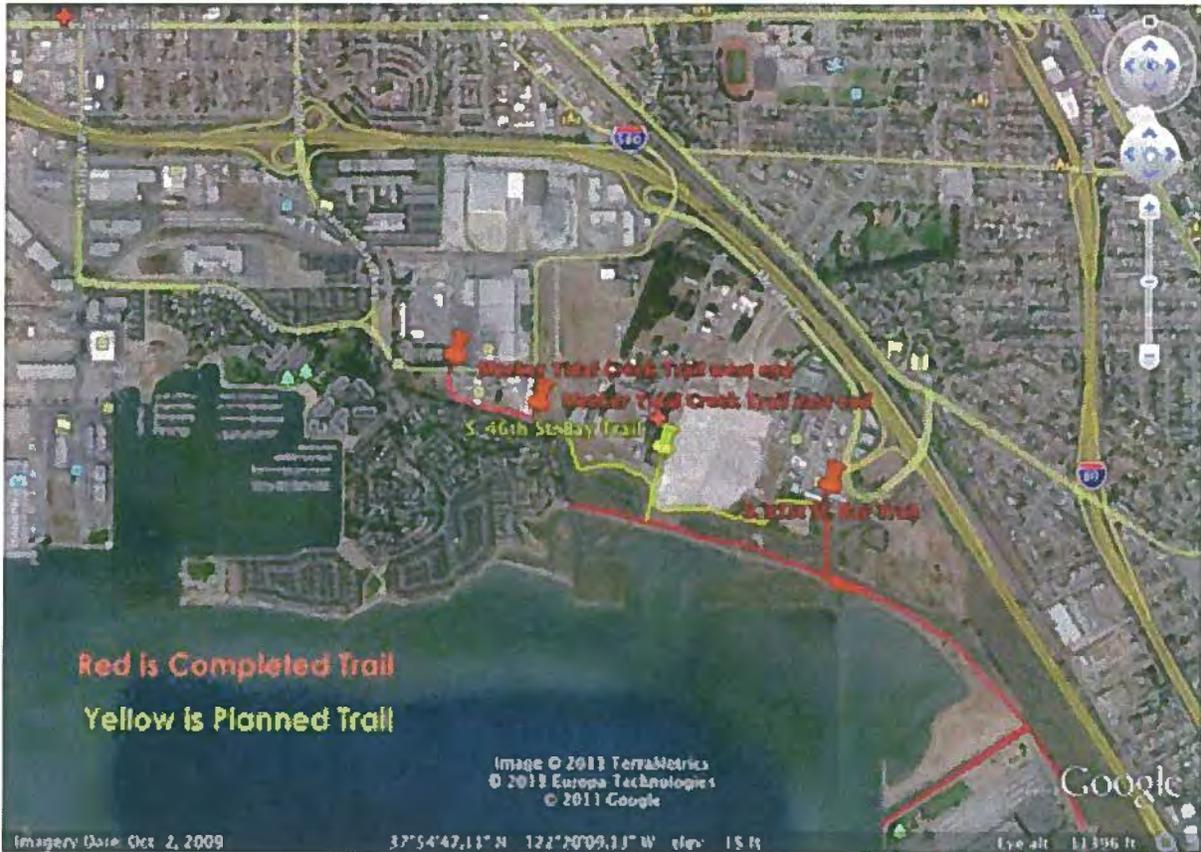
Bruce Beyaert, TRAC Chair

Attachments:

Satellite photo showing Meeker Tidal Creek Trail and connection with S. 51st Bay Trail section

February 18 TRAC letter to Bill Lindsay

Existing Meeker Tidal Creek Trail,
Planned Connection to S. 51st Bay Trail Inland of Stege Marsh and
Planned S. 46th St. Bay Trail Access





73 Belvedere Avenue
Richmond, CA 94801
Phone/Fax 510-235-2835
tracbaytrail@earthlink.net

February 18, 2011

University of California
Lawrence Berkeley National Laboratory
c/o City of Richmond City Manager's Office
450 Civic Center Plaza
Richmond, CA 94801

Attention: Ms. Laura B. Crosby

RE: Request for Qualifications, Lawrence Berkeley National Laboratory (LBNL)
Second Campus

Dear Ms. Crosby:

TRAC, the Trails for Richmond Action Committee, is submitting this letter in support of RFQ's submitted by others for locating Lawrence Berkeley National Laboratory's second campus within the City of Richmond.

Richmond offers exceptional recreation and non-vehicular transportation opportunities for LBNL employees on a second campus. Richmond has more bay shoreline -- 32 miles -- and more completed San Francisco Bay Trail -- 28 miles -- than any other city in the nine-county Bay Area. Richmond's Bay Trail is popular for both commute and recreational use by bicyclists from Oakland, Emeryville, Berkeley and Albany in Alameda County as well as from throughout western Contra Costa County. Referring to the attached map, employees at a satellite campus also would be able to use the Bay Trail to walk or bicycle and enjoy virtually all sites in Rosie the Riveter WWII Home Front National Historical Park, East-shore State Park, Point Isabel and Miller/Knox Regional Shorelines and five City of Richmond shoreline parks.

Richmond's Bay Trail with connecting multi-use trails supports the following desired site attributes:

- " ... a beautiful environment that will be the location of choice for internationally recognized researchers."
- " ... sustainable land use and circulation patterns which maximize bicycle, pedestrian and shuttle services."
- " ... safe bicyclist access from a designated bike path such as the Bay Trail."

- " ... proximate to either existing or planned restaurants and cafespreferably within walking distance convenience stores ... banks and/or ATMs ..."
- " ... proximate to recreational facilities"

For example, UCB's Richmond Field Station and the adjacent Campus Bay sites inland of Stege Marsh could provide immediate access to the scenic Bay Trail section in Eastshore State Park via the planned S. 46th St. trail access point shared by these properties, as well as the existing S. 51st St. trailhead. Also, the planned multi-use trail along the Stege Marsh frontage of these properties could connect with the existing Meeker Tidal Creek Trail offering LBNL employees a convenient walking and bicycling route to five cafes and other services near the intersection of Marina Bay Parkway and Meeker Ave., as well as to Amini's By the Bay and Salute Ristorante in Marina Bay. Moreover, the multi-use Meeker Tidal Creek Trail connects with a large vacant lot at the intersection of Regatta Blvd. and Marina Bay Parkway on the north side of Meeker Tidal Creek. This property might be considered as a complimentary site for cafes, restaurants and other services outlined in item 8 of Article 2. Site Attributes.

TRAC looks forward to working with Lawrence Berkeley National Laboratory, the City of Richmond and responders to the RFQ proposing LBNL's second campus in Richmond. Please let me know if you have any questions or would like additional information.

Thank you for considering the City of Richmond.

Sincerely,

A handwritten signature in black ink that reads "Bruce Beyaert". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Bruce Beyaert, TRAC Chair

Attachment: Richmond Bay Trail map

LETTER 11: Trails for Richmond Action Committee, Bruce Beyaert

Response to Comment 11-1

The comment notes various issues in the Land Use and Urban Design Element, the Circulation Element, the Conservation, Natural Resources and Open Space Element, and the Parks and Recreation Element. The comment is forwarded to the decision-makers for their consideration. The comment also states corrected mileage for the Bay Trail.

The text on page 3.11-5 under the heading “Trails and Greenways” is changed as follows:

Trails and greenways dispersed throughout the City provide connections between neighborhoods, commercial centers, parks and shorelines. The San Francisco Bay Trail links many of the City and regional parks in Richmond, including the Point Isabel Regional Shoreline, six City-owned parks in Marina Bay, Point Isabel Regional Shoreline, and the Miller/Knox Regional Shoreline, as well as the Richmond Greenway and the Wildcat Creek Regional Trail. This trail also provides regional connections through a network of regional walking and cycling trails, like the Richmond Greenway. This trail also provides regional connections through a network of regional walking and cycling trails, like the Richmond Greenway. The San Francisco Bay Trail is a planned 500-mile hiking and biking trail encircling San Francisco and San Pablo Bays. ~~Twenty-five~~ Thirty miles of this trail have been completed in the City, and will ultimately run along the shoreline wherever feasible.

The text on page 3.14-21 under the heading “Multi-Use Trails” is changed as follows:

Richmond’s trails and greenways provide important bicycle and pedestrian connections between some neighborhoods, commercial centers, parks, and the Richmond shoreline. Figure 3.14-5 shows the completed and planned segments of the Richmond portion of the San Francisco Bay Trail. When completed, the San Francisco Bay Trail will provide a ~~400~~500-mile separated right-of-way for bicycles and pedestrians around San Francisco and San Pablo bays, connecting through Richmond. Ultimately, the Richmond segment of the Bay Trail will provide for recreational as well as utilitarian trips. As of 2011~~0~~, more than ~~28~~ 30 miles of the trail within Richmond had been completed, with approximately ~~43~~ 11 additional miles planned.

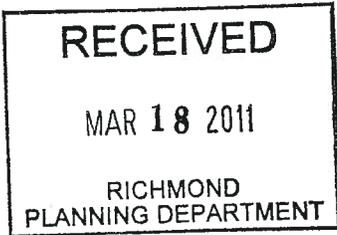
Bruce Beyaert

73 Belvedere Ave Richmond, CA 94801

Tel: 510 235-2835 Fax: 510 235-2835 beyaert@earthblink.net

March 18, 2011

Mr. Hector Rojas, Senior Planner
City of Richmond Planning Dept.
P.O. Box 4046
Richmond, CA 94804



Dear Mr. Rojas,

As a Richmond resident, I would like to offer two personal recommendations for improving parks and recreation aspects of the February Public Review Draft of Richmond General Plan 2030.

Element 7 - Conservation, Natural Resources and Open Space, Element 10 - Parks and Recreation and Element 11 - Community Health & Wellness

Pages 7.23, 10.34 & 11.23 Actions CN2.C, PR1.G & HW1.B Parkland Dedication Ordinance: Heightened recognition of the critical roles that parks and trails play in fostering physical and mental public health is fueling demands that residential developers contribute more for creating and maintaining parks and trails. The attached Contra Costa Times article describes San Ramon's requirements for new parks as part of new residential development, including 6.5 acres/1000 residents with developers also paying for the first year of maintenance. From the article "We want to have a park within a half-mile of every residence," said Esther Lucas, of San Ramon's parks and recreation department. "Moms will be able to stroll down to the park with their kids and have a place to play -- kids won't have to play basketball in an alley." However, the draft General Plan appears to recommend continuing Richmond's current requirement of only 3.0 acres per 1,000 population for new development and redevelopment projects.

12-1

Element 10 - Parks and Recreation and Element 11 - Community Health & Wellness

Pages 10.42 & 11.20 Policies PR4.2 & HW1.8 Shoreline Access and Development: Please add "water-dependent" as follows: "Enhance public access to and encourage development of water-dependent sports and recreation activities along the Richmond's shoreline to encourage environmental awareness and improve public health and fitness. Encourage the development of water-dependent sports and recreation activities along Richmond's waterfront." Sports and recreation activities such as kayaking, sailing, sail and kite boarding, swimming and fishing should be encouraged along the shoreline; however, it wouldn't make sense to encourage development of facilities such as tennis courts and soccer fields in unique and limited shoreline areas when they could be built anywhere and should be near residential areas. Also, please note that the second sentence of this policy is repetitive and should be deleted.

I hope that these recommendations will prove helpful.

Sincerely,

Bruce Beyaert

CONTRA COSTA TIMES

Posted on Tue, Dec. 26, 2006

San Ramon fired up over parks

By Eric Kurhi

CONTRA COSTA TIMES

When it comes to public parks, San Ramon residents would have to look over a lot of fences before finding grass that's greener than what they have at home.

And the facilities are expanding along with the city, with pocket-parks and sports fields popping up all over Dougherty Valley. All told, more than 30 parks of all shapes and sizes eventually will be developed in the area.

"We want to have a park within a half-mile of every residence," said Esther Lucas, of San Ramon's parks and recreation department. "Moms will be able to stroll down to the park with their kids and have a place to play -- kids won't have to play basketball in an alley."

Officials say many of the parks will be destinations for residents all around the city when they open this spring and summer.

One such park is the aptly named Sports Park. The sprawling 30-acre facility includes basketball courts, baseball fields, a multi-use field and a dedicated, artificial-turf soccer field named after Tiffany Roberts, a San Ramon native who won Olympic gold in Atlanta and played on the winning 1999 Women's World Cup team.

"It's one of the most advanced materials out there for a soccer field," said parks director Jeff Eorio. He said it's the same material that UC Berkeley used for its new field.

"It's a lot more forgiving than old AstroTurf," he said. "It will see a lot of use. Anytime you have a nice sporting field, out-of-town teams will be coming in."

Not far away, Arlington Park is built more for locals. It has a baseball field, but with Little League dimensions. There's a picnic area and playground, and its signature feature: a labyrinth of stone and artificial sod.

"We're trying to make each one unique, so people will want to explore all of the parks," said Lucas. "We don't want cookie-cutter parks."

She also said the city's changing demographic is a guideline for the parks' amenities. San Ramon has a growing population of people with roots in India and Pakistan; hence, a cricket pitch is going in at Monarch Park.

"We've also found that many families like to picnic at the parks," Lucas said. "They bring a bunch of family and friends and make a day of it."

Most of the parks being built have barbecue pits and are conducive to a day of leisurely hanging out and enjoying nice weather and good company.

The developers that are building what will eventually be 11,000 homes in Dougherty Valley -- Windemere LLC and Shapell Industries -- agreed to build the parks and keep the area in compliance with the city's vision of 6.5 acres of parks for every 1,000 residents.

They will also pay for maintenance for one year; after that, the city will take over.

San Ramon makes parks a high priority and this year set aside nearly \$7 million for the parks and recreation department. Only police and public works received more.

Eorio said the parks are being eagerly eyed as they take shape.

"These are very attractive to kids," he said. "It's like moths to a light."

One particularly bright bulb is Firetruck Park, a small-tot lot that makes up for its little footprint with a lot of style.

In addition to the firetruck play structure, there's a wall that looks like a cityscape, a concrete-filled firehose for a railing, and a tricycle road, complete with stop signs.

Even the plants were picked to fit the fire theme.

"They turn shades of red and orange," Lucas said. "And when they grow bigger and the wind blows, they will wave and look like they are on fire."

The park is slated to open in the summer, with an event that will have real fire trucks and a lot of fanfare.

"The fire district is extremely excited about it," said Lucas. "They're going to bring ladder trucks for the grand opening, which will be a big picnic."

Lucas, eyes alight, looked as eager as any kid as she pointed out the various fire-related details.

"It's just so different," she said. "It's going to be so popular!"

Eric Kurhi covers San Ramon. Reach him at 925-847-2184 or e-mail ekurhi@cctimes.com.

LETTER 12: Bruce Beyaert

Response to Comment 12-1

The comment notes various issues in the Conservation, Natural Resources and Open Space Element, the Parks and Recreation Element, and the Community Health and Wellness Element of the General Plan and questions the requirements for only three acres of parks per 1,000 residents. The Draft EIR addresses the parkland ratio requirements on page 3.11-6, which states that the Quimby Act “requires the provision of three acres of park area per 1,000 persons residing within a subdivision, unless the amount of existing neighborhood and community park area exceeds that limit, in which case the City may adopt a higher standard not to exceed five acres per 1,000 residents.” As discussed on page 3.11-8 of the Draft EIR, the City’s current parkland ratio is 2.44 acres per 1,000 residents. Consequently, under California law, the City cannot require developers to provide more than three acres of parkland per 1,000 residents. The comment also requests the addition of the term “water-dependent” to policies in the General Plan’s Community Health and Wellness Element. As this is not a comment on environmental issues or the content or adequacy of the Draft EIR, no response is required. However, the comment is forwarded to the decision-makers for their consideration.

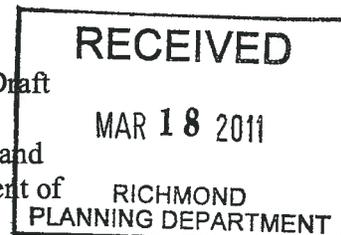
**Expert Report of Greg Karras, Senior Scientist,
Communities for a Better Environment (CBE)**

**Regarding:
The Draft Environmental Impact Report for the
Proposed General Plan Update (PLN09-137),
City of Richmond, California.**

March 18, 2011



Communities for a Better Environment (CBE) has requested that I review the Draft Environmental Impact Report for the proposed General Plan Update (DEIR). Specifically, I was asked for my opinion on the DEIR's analysis of the Energy and Climate Element in the proposed Update, to address concerns about the treatment of industrial emissions in the General Plan Update.



My qualifications for this opinion include extensive experience, knowledge, and expertise gained from 27 years of industrial and environmental health investigation in the energy manufacturing sector, on toxic chemicals, and on petroleum refining in particular.

Among other assignments, I served as an expert for CBE and other non-profit groups in efforts to prevent pollution from refineries, to investigate alternatives to fossil fuel energy, and to improve environmental monitoring of dioxins and mercury. I served as an expert for CBE in collaboration with the City and County of San Francisco and local groups in efforts to replace electric power plant technology with reliable, least-impact alternatives. I serve as an expert for CBE and other groups in a project involving comprehensive investigation of environmental impacts of and alternatives to refining heavier, more contaminated oil.

I authored a technical paper on the first publicly verified pollution prevention audit of a California petroleum refinery in 1989 and the first comprehensive analysis of refinery selenium discharge trends in 1994. From 1992 through 1994 I authored a series of technical analyses and reports that supported the successful achievement of cost-effective pollution prevention measures at 110 industrial facilities in Santa Clara County, California. I authored the first comprehensive, peer-reviewed dioxin pollution prevention inventory for the San Francisco Bay, which was published by the American Chemical Society and Oxford University Press in 2001. I authored an alternative energy blueprint, published in 2001, that served as a basis for the Electricity Resource Plan adopted by the City and County of San Francisco in 2002. In 2005 and 2007 I co-authored two technical reports that documented air quality impacts from flaring by San Francisco Bay Area refineries, and identified feasible measures to prevent these impacts. I authored the first peer-reviewed report to verify quantitative estimates and predictions for the effects of crude oil quality on the energy intensity and greenhouse gas emission intensity of petroleum refining, which was published by the American Chemical Society in the *Journal Environmental Science & Technology* in 2010. My curriculum vitae and list of publications are attached hereto as Attachment 1.

My opinion is set forth in this report and is summarized at the beginning of each section of the report in **boldface**.

Draft General Plan EIR—energy, climate and air quality review

1. The description of the City’s role in solving the climate problem is incomplete.

The DEIR fails to describe the energy problem that must be solved for climate protection.

The deep emission cuts needed to avoid severe climate disruption pose an energy problem: Achieving them will require monumental efforts to replace the old, entrenched fossil energy system with a portfolio of sustainable resources tapping different primary energy sources.¹ Further, because the old and new energy systems compete for land and money resources, and adding onto the fossil energy infrastructure will commit us to new emissions for decades, this requires us to stop building fossil energy *in order to build* the sustainable energy system we need.² Equally important, solving this energy problem to protect our climate will involve an enormous economic development opportunity—the “green jobs” scenario referenced by policy makers—as the new, sustainable energy system is put into place.

13-1

This problem applies doubly to Richmond. Here, replacing limited conventional crude with heavier, dirtier oil resources could eventually increase emissions³ from a refinery that is already the largest greenhouse gas emitter of any industrial plant in California.⁴ Land now committed to this refinery might otherwise generate more daytime solar power than the City could use.⁵ The tenfold greater employment per dollar economic activity in all sectors of the economy on average as compared with employment per dollar revenue in oil refining⁶ shows that this “green jobs” opportunity also exists in Richmond.

Although the proposed General Plan Update (“Project”) includes an Energy and Climate Element, the DEIR does not describe or address this critically important context for climate analysis. In addition, the DEIR does not describe the importance of cutting industrial emissions in order to meet the total emissions reduction goal of the Project, and as a result does not actually propose to make these reductions. The Project sets a goal of cutting emissions back to 1990 emissions by 2020, and 80% below 1990 emissions by 2050 (Goal EC2; see also City Resolution 108-08).

13-2

¹ Hoffert, 2002. *Science* 298: 981–987. DOI: 10.1126/science.1072357; Meinshausen et al., 2009. *Nature* 458: 1158–1162. DOI: 10.1038/nature08017; Hoffert, 2010. *Science* 329: 1292–1294. DOI: 10.1126/science.1195449; Davis et al., 2010. *Science* 329: 1330–1333. DOI: 10.1126/science.1188566; Brandt and Farrell, 2007. *Climatic Change* 84: 241–263. DOI: 10.1007/s10584-007-9275-y; Karras, 2010. *Env. Sci. Technol.* 44(24): 9584–9589. DOI: 10.1021/es1019965.

² Davis et al., 2010. *Science* 329: 1330–1333. DOI: 10.1126/science.1188566; Hoffert, 2010. *Science* 329: 1292–1294. DOI: 10.1126/science.1195449.

³ Karras, 2010. *Env. Sci. Technol.* 44(24): 9584–9589. DOI: 10.1021/es1019965; Brandt and Farrell, 2007 (DOI: 10.1007/s10584-007-9275-y) as referenced above; Kerr, 2009. *Science* 326: 1048; Meyer et al., 2007. *Heavy oil and natural bitumen resources in geologic basins of the world*. U.S. Geological Survey Open-File Report 2007-1084 (<http://pubs.usgs.gov/of/2007/1084/>).

⁴ Calif. Air Resources Board, 2009. *Mandatory GHG Reporting Data*. See calendar year 2008.

⁵ See e.g., estimated theoretical potential of 2,900 acre site after EIR SCH #2005072117 RTC at 2-18 (PV; peak 0.5–1 MW/acre less 15–19% capacity factor) vs 1 kW/household x 100,000/4.

⁶ See U.S. Economic Census: employment vs annual sales, shipments, receipts or revenue data.

Draft General Plan EIR—energy, climate and air quality review

Figure 1 shows greenhouse gas (GHG) emissions and targets within the City’s geopolitical boundaries. It shows the City’s own estimates for every emission source or category except for the Richmond refinery today.

The Energy and Climate Element relies on the City’s 2005 *Greenhouse Gas Emission Inventory* estimate that the refinery emits 3.516 Megatons (Mt) per year (Table 12, page 12). However, the City admits that its industrial emission estimates are uncertain, and refinery emissions have increased (Framework at 28, 65). Indeed, more recent estimates of Richmond refinery emissions—4.304 Mt in 2007,⁷ 4.792 Mt in 2008 and 4.519 Mt in 2009⁸—are much larger than the 3.516 Mt estimate from 2005. Using these 2007, 2008 and 2009 estimates, total citywide industrial and commercial emissions exceed the City’s 2020 emission target by 386,000 tonnes/year, 874,000 t/yr, and 601,000 t/yr respectively. Thus, all more recent estimates indicate that the City cannot meet its emission reduction goal unless industrial and commercial emissions are reduced in Richmond. The 2009 refinery estimate is used in Figure 1.

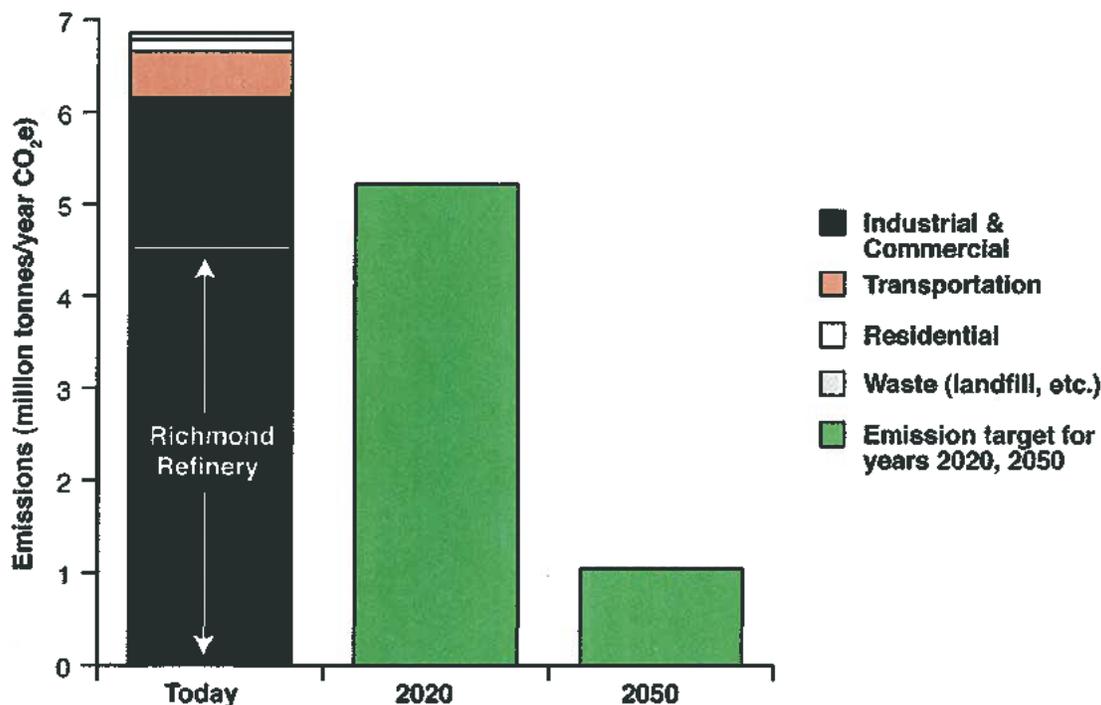


Figure 1. Greenhouse gas emissions, City of Richmond, CA. Richmond refinery emissions in 2009 (4.52 Mt/yr) from Calif. Air Resources Board. Emission targets from Energy and Climate Element: 1990 emissions by 2020; 80% cut in 1990 emissions by 2050; 1990 estimate from Table 3 in Chan, 2010. *Building a Framework for a Climate Action Plan in the City of Richmond*. All other estimates from City of Richmond 2005 *Greenhouse Gas Emissions Inventory*.

⁷ AQMD, 2010. *Source Inventory of Bay Area Greenhouse Gas Emissions*. Bay Area Air Quality Management District (AQMD). Updated: February 2010. See Table V.

⁸ *Mandatory GHG Reporting Data*. California Air Resources Board (ARB). See emissions reported for calendar years 2008 and 2009.

Draft General Plan EIR—energy, climate and air quality review

Further, the DEIR presents an incomplete description of the City’s role in addressing industrial emissions. It asserts that the City “has no jurisdictional control over” industrial and commercial operations that cause the majority of emissions from within the City (DEIR at 3.6–7). Despite this one unsupported reference in the DEIR, the City does in fact have land use authority to control industrial emissions. In one example, “the City made ‘carbon neutrality’ one of the conditions” of approval for an upgrade to the Chevron refinery in 2008 (Framework⁹ at 28). In another example, on July 18, 2006 the City Council used its land use authority to avoid siting a large crematorium that would increase mercury emissions and was expected to receive the regional, state and/or federal environmental approvals necessary for its construction and operation.¹⁰

13-3

This practice of supplementing requirements imposed by regional, state, and federal government shows that the City does not rely solely on other levels of government for industrial emissions control. Thus, the DEIR’s assertion of “no jurisdiction” is an incomplete description of the City’s role in climate protection because it omits the ability and practice of curbing industrial emissions through land use authority. This omission is not cured elsewhere in the DEIR, possibly because the Energy and Climate Element proposes no City *requirement* to reduce or limit industrial emissions in Richmond.¹¹

Finally, even though the City found that refinery GHG emissions and total emissions have increased since 1990 in Richmond¹² and the DEIR finds future emission reductions are uncertain,¹³ the DEIR’s “regulatory” discussion does not detail climate protection policies at other levels of government that affect GHG emitters in Richmond. Most importantly, the DEIR omits key details of two climate policy developments that affect major industrial sources of GHG statewide and may undermine efforts to meet the City’s and Project’s emissions reduction goal in Richmond.

13-4

First, on December 12, 2008 the Air Resources Board (ARB) adopted a scoping plan that would allow ARB to later adopt a “cap-and-trade” pollution trading scheme to implement California’s AB 32 legislation.¹⁴ This pollution trading scheme allows

⁹ Chan, 2010. *Building a Framework for a Climate Action Plan in the City of Richmond*. Advanced Policy Analysis Conducted for the City of Richmond.

¹⁰ See City Council July 18, 2006 Minutes; proposal to amend Mun. Code Chapter 15.04.

¹¹ See esp. Goal EC3; policies EC3.2, EC5.2 and EC5.3; and actions EC1.A, EC3.D, and EC5.D. The Framework further clarifies that Action EC1.A (Climate Action Plan) is limited to targeting emission reductions from residential energy usage, local vehicle transportation, and waste disposal (Framework at 7), which are defined to exclude industrial emissions, among other excluded emissions (Framework at 25–31; 2005 City Emission Inventory).

¹² Framework, Table 31; and compare Framework, Table 3 with Inventory, Appendix A.

¹³ The DEIR concludes that emission reductions from regional, state and federal actions are too uncertain to be relied upon by its environmental impact analysis. See esp. DEIR at 3.3-21 through 3.3-25: (Describing measures to monitor air quality, support regional policies and efforts that improve air quality and “conform to” AQMD standards for stationary sources and concluding that even though this mitigation “would be implemented, the impact of operational emissions remains uncertain and, therefore, would be considered *significant*”). *Emphasis in original*. See also DEIR at 3.3-17; 3.3-30; 3.6-14; 3.6-28.

¹⁴ See ARB “AB 32 Scoping Plan” (<http://www.arb.ca.gov/cc/scopingplan/scopingplan.htm>).

Draft General Plan EIR—energy, climate and air quality review

industrial facilities to continue or even increase GHG emissions in Richmond by obtaining “emission credits” that represent promises to reduce emissions elsewhere.¹⁵ Because oil infrastructure is more deeply entrenched than other major emitters, the emission credits are *expected* to flow from other sectors to oil, according to ARB’s own technical advisors from the University of California, resulting in continued or increased emissions from oil infrastructure.¹⁶

Second, on April 23, 2009 ARB adopted California’s Low Carbon Fuel Standard (LCFS). ARB’s LCFS sets standards that apply a single statewide average emission rate to direct emissions from each refinery in the state.¹⁷ The LCFS thus does not measure changes in direct emissions from individual refineries and therefore fails to control them. Therefore, ARB’s requirements would control direct GHG emissions from refineries through its cap-and-trade scheme, which allows refineries to obtain emission credits.

These AB 32 and LCFS requirements are the only regional, state or federal GHG control requirements applicable to industrial sources in Richmond adopted to date.¹⁸ Despite evidence that crude oil quality is the dominant driver of emissions from refinery fuel combustion¹⁹ and the worsening quality of refinery crude inputs²⁰ nationwide, there is no regional, state or federal monitoring of, or direct limit on, this cause of substantially increasing emissions.

In sum: ARB plans to address industrial emissions in a way that allows industrial emitters to continue or increase emissions if they obtain emission credits. Refiners are expected to obtain the credits from other business sectors.²¹ Separately, emissions from refineries regionally,²² and industrial/commercial sources in Richmond,²³ are projected to increase.

Information that the DEIR omits suggests the need to continue or expand the City’s use of industrial land use authority in order to meet the Project’s emission reduction goal.

¹⁵ See e.g., ARB, 2011. Emissions Trading Program Overview. Air Resources Board website (www.arb.ca.gov/cc/capandtrade/capandtrade.htm). Downloaded March 14, 2001. See esp. Major program elements: Scope (~350 businesses totaling 600 facilities included), Offsets (includes forestry, livestock management, and ozone-depleting substance removal now; may expand internationally), and Linkage to Other Greenhouse Gas Emissions Trading Schemes (intended to expand beyond California to other western U.S. states; may expand to New Mexico and Canada).

¹⁶ Farrell et al. *A low-carbon fuel standard for California, part 1: Technical analysis*; UCD-ITS-RR-07-07; University of California, Institute of Transportation Studies; Davis, CA, 2007; http://pubs.its.ucdavis.edu/publication_detail.php?id=1082. See pages 22, 23.

¹⁷ ARB Resolution 09–31; CCR §95486, esp. (b)(1) references (A) and (C) and tables 6 and 7.

¹⁸ SB 1368 (2006) is not applicable here: there are no coal-fired power plants in Richmond.

¹⁹ See Karras, 2010. *Env. Sci. Technol.* 44(24): 9584–9589. DOI: 10.1021/es1019965.

²⁰ Energy Information Administration (www.eia.gov/dnav/pet/pet_pnp_crq_dcu_nus_a.htm).

²¹ Farrell et al., 2007. (UCD-ITS-RR-07-07) as referenced above. See page 23.

²² Framework at 65 (52% increase in Bay Area refinery emissions from 2005–2020 in Table 31).

²³ City of Richmond *2005 Greenhouse Gas Emission Inventory* at 19 (31.9% increase in commercial/industrial GHG emissions projected from 2005–2020 in Table 19).

13-4
(cont.)

2. Project-related industrial emissions could cause significant potential air quality and climate impacts that the DEIR fails to identify, analyze, lessen or avoid.

Increasing industrial emissions are reasonably foreseeable in Richmond as a result of the Project. Refinery emissions and industrial/commercial emissions of greenhouse gases (GHG) have been increasing (Framework at 29, 65). The City projects that without additional action these refinery and industrial/commercial emissions will continue to increase (Framework at 29, 65; Inventory at 19). This would be allowed by the state’s “cap-and-trade” pollution trading scheme, so long as local polluters obtain “credits” that promise to reduce emissions elsewhere, and refineries are expected to obtain these emission credits.²⁴ Continued reliance on oil could continue the trend of refining heavier, higher-sulfur crude²⁵ that is replacing limited conventional oil²⁶ with vast heavy oil and tar sands resources,²⁷ which burn more fuel in processing and could—by 2030—increase refinery emissions dramatically.²⁸

13-5

Crucially important for environmental health and justice, these emissions include GHG and GHG “copollutants.” The fact that burning fossil fuels emits toxic and smog-forming combustion products along with carbon dioxide (CO₂) is beyond reasonable dispute. Thus, the covariance of GHG and copollutant emissions is shown by the dominance of CO₂ by mass among GHG emissions from refineries (>99%) and regionally (92%).²⁹ Combustion emissions from the refinery and port are linked to disparately high GHG-copollutant exposures in Richmond, including health-threatening exposures to fine particulate matter,³⁰ the major cause of air pollution-related health risk regionally.³¹ Therefore, increasing GHG emissions in Richmond could worsen disparately high environmental health risks in Richmond.

However, the DEIR assesses air quality impacts based on its analysis that quantifies potential future emissions solely from increased vehicle-miles-traveled (VMT), which, it estimates, will increase 50.1% by 2030.³² This assumes that only vehicle tailpipe emissions will increase. The DEIR’s air quality analysis omits readily available information to estimate post-Project industrial emissions—including the City’s own projections cited above. By estimating potential emissions based solely on one source category (transportation) that accounts for less than 10% of emissions (Inventory at 10), the DEIR underestimates potential air quality impacts in Richmond drastically.

13-6

²⁴ Farrell et al., 2007. (UCD-ITS-RR-07-07) as referenced above.

²⁵ *US Refinery Crude Input Qualities*. EIA (www.eia.gov/nav/pet/pet_pnp_crq_dcu_nus_a.htm).

²⁶ Kerr, 2009. *Science* 326: 1048.

²⁷ Meyer et al., 2007. (<http://pubs.usgs.gov/of/2007/1084/>) as referenced above.

²⁸ Karras, 2010. (DOI: 10.1021/es1019965) as referenced above.

²⁹ See SI Table S7 in Karras (2010) as referenced above; AQMD, 2010 as referenced above.

³⁰ Brody et al., 2009. *Am J Public Health* 2009(99): S600–S609. 10.2105/AJPH.2008.149088; Pastor et al., 2010. *Minding the Climate Gap: what’s at stake if California’s climate law isn’t done right and right away*. USC Program for Environmental and Regional Equity: Los Angeles, CA (<http://college.usc.edu/pere/publications>).

³¹ See AQMD’s 2010 Clean Air Plan at ES-4.

³² DEIR at 3.3-12; 3.3-18 (VMT increase from 1,668,000 now to 2,503,000 in 2030); 3.3-25.

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Figure 2 shows three projections of the reasonably foreseeable emissions increase resulting from the Project. Its caption documents the projections and shows that, with one exception discussed below, they are based on the City’s data. The projections are very different because one of them (DEIR) excludes the potential for industrial emissions to increase, and one (Oil Quality) includes the potential effects of continued reliance on oil of ever-worsening quality through 2030.

Note that the comparison in Figure 2 isolates the effect of ignoring the potential for industrial emissions to increase in a way that tends to minimize the DEIR error: the DEIR air quality analysis projection (2030-A) assumes no mitigation; the Inventory (2030-B) and Oil Quality (2030-C) projections assume the DEIR’s mitigation. The Oil Quality projection also assumes no change in the volume of oil refined (it assumes no growth % for the refinery). Note also that the Inventory and Oil Quality projections should be interpreted as bounding a reasonably foreseeable range of emissions resulting from the Project, assuming other levels of government continue to allow locally increased industrial emissions through pollution trading.

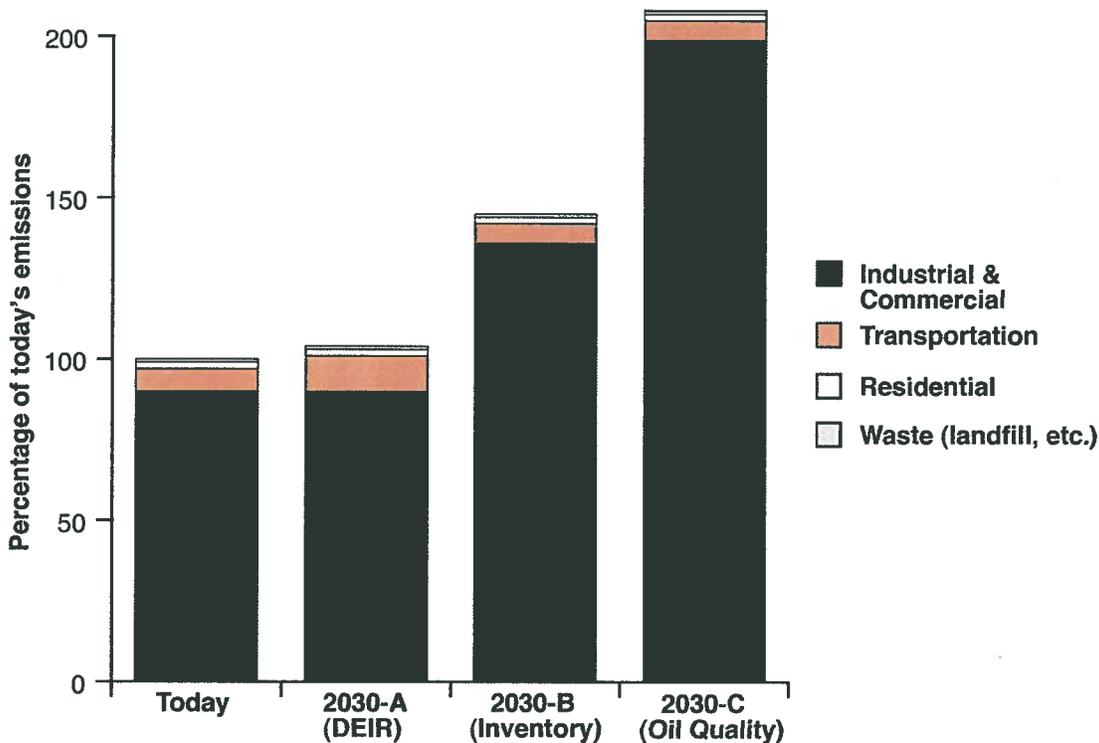


Figure 2. Three projections of post-project emission potential in 2030, Richmond, CA.
Today: Current pre-project emissions from Figure 1. **2030-A:** DEIR air quality analysis projection; assumes only transportation emissions increase from a 50.1% increase in VMT; no change in vehicle fuels, efficiency or emission control. **2030-B:** City 2005 Inventory projection; assumes annual % growth from Inventory Table 19 and emission mitigation (difference of EIR tables 3.6-1, 3.6-2) for each sector. **2030-C:** Oil quality change projection; identical to 2030-B except for refining; assumes no Inventory growth % for refining; assumes refinery emissions consistent with nationwide industry observations from Karras (2010) for a year-2030 crude input that is 50% heavy oil and 50% natural bitumen.

13-6
(cont.)

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Projections 2030-B and 2030-C describe the potential future emissions range because of uncertainty about future industrial emissions, which drive changes in Richmond’s total emissions; and more specifically, uncertainty about the quality of crude refined, the major driver of changes in refinery combustion emissions. The Inventory projection (2030-B) may underestimate potential emissions because it assumes no worsening of crude quality through 2030, which may be unrealistic given the global trend in oil quality discussed above. The Oil Quality projection (2030-C) is based on peer reviewed evidence for the average increase in refinery fuel combustion and resultant CO₂ emissions derived from observations across 97% of the U.S. refining industry over ten years, assuming no other relevant change in circumstances.³³ Since crude feed quality drives refinery emissions, the major uncertainty in this projection involves the assumption of future crude quality. If the refinery crude feed does not become as heavy or high in sulfur as the 50% heavy oil, 50% tar sands feed³⁴ this projection assumes by 2030, projection 2030-C may overestimate potential emissions.

13-6
(cont.)

The DEIR’s use of air quality thresholds based solely on local tailpipe emissions³⁵ is inappropriate for analysis of air quality impacts in Richmond. As Figure 2 illustrates, the DEIR’s analysis based on a +50.1% increase in VMT would change total emissions in Richmond very little (+4%) while greater future industrial emissions would increase total emissions in Richmond dramatically (+45% to +108%). This analysis shows that the DEIR could have estimated potential future industrial emissions, and, had it done so, could have found that the air quality impacts resulting from Project industrial emissions would be significant. However, having failed to identify and describe potential industrial emissions, the DEIR does not analyze the potential air quality impacts that could result from this aspect of the Project.

Indirect emissions will add to these increased direct emissions over time. Replacement or expansion of long-lived fossil energy infrastructure that could be allowed by the Project would commit us to new emissions for decades.³⁶ For example, a major equipment replacement or expansion project is foreseeable at the Richmond refinery.³⁷ Since the

13-7

³³ Karras, 2007. (DOI: 10.1021/es1019965) as referenced above. Relevant changes in circumstances that may affect this estimate (other than crude density and sulfur) include unanticipated significant changes in: the product slate; the fuel mix; the balance of carbon rejection and hydrogen addition technologies; equipment or catalyst efficiency via modernization; the portion of anomalous oils or synthetic crude oil (SCO) in the crude feed.

³⁴ This feed would have a density of 995.5 kg/m³ and be 3.68% sulfur by weight, based on the average heavy oil and natural bitumen qualities reported by Meyer et al. (2007).

³⁵ DEIR at 3.3-12 through 3.3-16; 3.3-18; 3.3-25; 3.3-26.

³⁶ Davis et al., 2010. (DOI: 10.1126/science.1188566) as referenced above.

³⁷ See: Chevron Corp (CVX) 10-K Annual report pursuant to section 13 and 15(d) filed on 2/24/2001 with the Securities and Exchange Commission at 26, 36, FS-61 (stating that the company is considering its options regarding proceeding with a previously-proposed major refinery expansion project in some form); City Staff Agenda Report, Chevron Renewal Project Application, March 1 2011 Council Meeting (recommending that the City Council adopt a resolution encouraging the project application to proceed).

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emissions and their impacts are cumulative over time,³⁸ prolonging them over time would increase cumulative pollution and climate impacts. Indirect impact analysis is especially important for oil. Petroleum is the biggest GHG emitter among primary energy sources in California and in the U.S., and petroleum-fueled transport is the biggest emitter among energy end uses statewide and in the U.S.³⁹ Among regional producers of those transport fuels, the largest refinery in northern California is the Richmond refinery.⁴⁰ However, despite the City’s admission that GHG emissions analysis should account for emissions “that occur as a result of activities that take place within the geopolitical boundary of the local government, but that occur at sources outside” Richmond,⁴¹ the DEIR ignores indirect emissions from the refinery (3.6-11 through 3.6-13).

A substantial body of scientific work demonstrates the interdependence of refining with each step in the petroleum fuel cycle and quantifies GHG emissions from well to wheel, at each step from oil extraction to the vehicle tailpipe.⁴² The City could have used this readily available information to estimate indirect emissions from the Richmond refinery. For example, the City could have used ARB’s statewide average percentage of fuel cycle emissions from refineries for gasoline (14.43%) and diesel (12.11%),⁴³ the California Energy Commission’s statewide average refinery gasoline and diesel outputs,⁴⁴ and direct refinery GHG emissions⁴⁵ to estimate indirect emissions. Had it done so, the DEIR could have estimated fuel cycle emissions of roughly 33.0 Mt/yr and indirect emissions of roughly 28.5 Mt/yr associated with Richmond refinery activities.⁴⁶ These indirect emissions would add to the potential direct emissions discussed above. The City could improve on this rough estimate using refinery-specific products data and estimates for potential extraction of future heavier and more viscous oils, and it should be noted that those extraction estimates would likely increase estimated indirect emissions.

13-7
(cont.)

³⁸ Meinshausen et al. (2009) as referenced above; Allen et al., 2009. *Nature* 458: 1163–1166.

DOI: 10.1038/nature08019 (total mass of CO₂ emitted drives peak and average climate impacts).

³⁹ *Annual Energy Outlook 2010*, U.S. Energy Information Administration, App., table A18, A19; *California Greenhouse Gas Inventory for 2000–2008*, Air Resources Board, 2010; DEIR at 3.6-6.

⁴⁰ *Oil & Gas Journal Worldwide Refining Survey–2009* (30% of crude charged in N. California).

⁴¹ City of Richmond 2005 *Greenhouse Gas Emissions Inventory* at 7.

⁴² See: Wang et al., 2004. *Int. J. Life Cycle Assess.* 9(1): 34-44; Brandt and Farrell (2007) as referenced above; Skone and Gerdes, 2008. *Development of baseline data and analysis of life cycle greenhouse gas emissions of petroleum-based fuels*, U.S. DOE. DOE/NETL-2009/1346; Gerdes and Skone, 2009. *An evaluation of the extraction, transport and refining of imported crude oils and the impact on life cycle greenhouse gas emissions*, U.S. DOE. DOE/NETL-2009/1362; Karras (2010) as referenced above; *Detailed CA-GREET pathway for California reformulated gasoline blendstock for oxygenate blending (CARBOB) from average crude refined in California, Version 2.1*, ARB, 2009; *Detailed CA-GREET pathway for ultra low sulfur diesel (ULSD) from average crude refined in California, Version 2.1*, ARB, 2009.

⁴³ See ARB (2009) Detailed CA-GREET pathways (CARBOB and ULSD) as referenced above.

⁴⁴ *Input & Output at California Refineries*, California Energy Commission, 2011 (gasoline/diesel ratio of 2.15 on an energy basis from 2007 and 2008 outputs of RBOB and distillate < 15 ppm).

⁴⁵ ARB, 2010. *Mandatory GHG Reporting Data*. See emissions reported for calendar year 2009.

⁴⁶ From data noted above and: $(0.1443 \times 2.15/3.15) + (0.1211 \times 1/3.15) = 13.69\%$ of fuel cycle emitted by refining (gasoline & diesel); and $4.52/0.1369 = 33.0$ Mt/yr as fuel cycle emissions.

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These indirect emissions represent roughly 80% of total (direct and indirect) emissions associated with activities in Richmond. Thus, the commitment to future emissions for decades noted in the climate literature cited above clearly applies to the prospect of expanding or replacing long-lived fossil infrastructure in Richmond. Locking these refinery fuel cycle emissions into place for decades would make the deep emissions cuts needed to protect climate even more difficult for other sources to achieve, and—if the targets could still be achieved—continuing refinery fuel cycle emissions of 33 Mt/y would represent more than one-third of total statewide GHG emissions by 2050.⁴⁷

↑
13-7
(cont.)

Air quality impacts of these emissions could be substantial. For example, particulate matter emissions generally increase with the increasing fuel combustion that would drive GHG emission increases in Richmond, as discussed above. Fine particulate matter concentrations associated with fuel combustion at the Richmond refinery and port are disparately high in the air outside Richmond homes and even higher inside Richmond homes, where PM_{2.5} exceeds the state’s ambient air standard in nearly half the homes sampled.⁴⁸ Further, PM_{2.5} already dominates high regional air pollutant health risks.⁴⁹ Thus, potential air quality impacts resulting from Project industrial emissions can be considered significant.

13-8

Climate impacts from “business as usual” scenarios, as listed in the DEIR, could be catastrophic, and the Project’s potential contribution to these impacts could be substantial as documented above. Unfortunately, the DEIR’s general description of Richmond as “well situated” to weather climate change omits potential food security impacts for which Richmond is not well situated. Very little of the food consumed in Richmond is grown here; most foods are imported from hundreds or thousands of miles away; this global food market makes Richmond residents vulnerable to potential food supply and price disruptions. Climate disruption is likely to cause such food supply and price disruptions. The probability that climate change will cause unprecedented crop failures on multiple continents simultaneously may reach 90% by the end of this century.⁵⁰ Thus, global and local climate impacts resulting from the Project can be considered significant.

13-9

Cumulative impacts would result from these air quality and climate impacts locally. In addition to the physical facts of combined increases in CO₂ and toxic copollutant emissions, and simultaneous exposure to resultant air quality, flooding, and food security risks, Perera notes that climate change could increase childhood asthma risks by increasing both smog formation and pollen exposures.⁵¹ Since these potential air quality and climate impacts could be significant individually, their cumulative or combined impacts could be significant. The DEIR does not identify or analyze the potential cumulative impacts of combined exposures to these risks on local community health.

13-10

⁴⁷ ~80 Mt/y, based on the targeted –80% from 1990 levels, which are approximately 20% below total statewide emissions of 473.76 Mt/y in 2008 as reported ARB’s Inventory referenced above.

⁴⁸ Brody et al., 2009 (10.2105/AJPH.2008.149088) as referenced above; Pastor et al., 2010. (<http://college.usc.edu/per/publications>) as referenced above.

⁴⁹ See AQMD’s 2010 Clean Air Plan at ES-4.

⁵⁰ Battisti and Naylor, 2009. *Science* 323: 240–244. DOI: 10.1126/science.1164363.

⁵¹ Perera, 2008. *Env. Health Perspectives* 116(8): 987–990. DOI: 10.1289/ehp.11173.

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No mitigation or alternative addressing these potential industrial pollution impacts is identified, analyzed, or proposed in the DEIR (See eg., DEIR Table ES-2, 5.3, 5.4). The DEIR thus ignores substantial evidence that industrial emission reductions are feasible.

Industrial equipment designs have become more efficient (less fuel intensive) and leak resistant during the decades long service life of existing, aging equipment: equipment replacement can thus reduce emissions by reducing fossil fuel combustion and fugitive leaks. The lower-emitting replacement technology available for the currently proposed Chevron Tanks Replacement project⁵² is an example of this feasible option.

Intrinsically less carbon-intensive, less emission-intensive fuels and feedstocks lower or eliminate emissions. Even industrial uses that cannot yet switch to 100% renewable fuels can often partially repower with such zero-emission fuels and less carbon-intensive fossil fuels or feedstocks. Grid purchases favoring renewable electricity resources while avoiding coal (see e.g., SB 1368), and relatively lighter and lower-sulfur crude feedstock,⁵³ are examples of this feasible emissions reduction measure.

By increasing passengers-per-vehicle, expanding public transit reduces fuel use in both vehicles and refineries through conservation, making transportation both less costly and less polluting. The vast technical capacity for quickly expanding public transit can thus curb emissions while freeing up money for the new energy system that replaces fossil energy. It could slow emission impacts while conserving resources needed to build the new infrastructure that lights our homes and powers our cars with renewable energy.

It is technically feasible to light our buildings and power our transportation system with wind, solar photovoltaic, and concentrating solar energy—with minimal “baseload” operation of existing fossil power plants for nighttime lighting until renewable energy storage “batteries” are developed and deployed. Technology to accomplish this is available now.⁵⁴ Comparisons of societal costs indicate it is more cost effective than continued reliance on fossil fuels.⁵⁵ The barrier is the relative cost of renewable resources, which is largely driven by “perverse” incentives: fossil fuel subsidies much greater than renewable energy subsidies.⁵⁶ Land use requirements could leverage the unique values of industrial land in Richmond to overcome this barrier *and* leverage “green” investment locally. The tenfold greater employment per dollar for all sectors in the general economy than that of oil refining⁵⁷ points to a dramatic potential for local economic benefits—which may drive and accelerate the implementation of these measures once they are adopted and those benefits begin to be realized.

⁵² *Comments of Communities for a Better Environment (CBE) and West County Toxics Coalition (WCTC) on the Proposed Chevron Tank Replacements, Project No. PLN10-179. 2/18/2011.*

⁵³ Karras, 2010. (DOI: 10.1021/es1019965) as referenced above.

⁵⁴ See e.g., Hoffert (2010) as referenced above (solar PV power ~10–15¢/kWh with extensive development “scale up” totaling >10–100 Gigawatts peak power); and Farrell et al., 2007 as referenced above at 106–107 (electric vehicles cost-effective at today’s gas prices).

⁵⁵ See e.g., Perera, 2008. *Env. Health Perspectives* 116(8): 987–990. DOI: 10.1289/ehp.11173.

⁵⁶ See e.g., Hoffert, 2010. (DOI: 10.1126/science.1195449) as referenced above.

⁵⁷ See U.S. Economic Census: employment vs annual sales, shipments, receipts or revenue data.

13-11

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Based on this information, it would be technically and economically feasible⁵⁸ to implement a policy, set of goals, and plan that achieves the following results locally:

Integrated plan

- A planned, coordinated transition from fossil energy production and use toward a new energy system that provides for light, power and transportation using a portfolio of renewable energy sources, and leverages investments preferentially in Richmond.

Major industrial/commercial construction/reconstruction requirements

- Replace old and outdated equipment with efficient least-emitting equipment.
- Demonstrate maximum feasible energy efficiency (minimum fuel energy burned/unit production or other relevant activity) for fossil fueled uses.
- Prohibit reduced efficiency (increased fuel energy burned/per unit production or other relevant activity) by existing fossil fueled uses.
- Demonstrate minimum feasible carbon intensity (intrinsic emission intensity) of fuels and feedstocks.
- Prohibit increased carbon intensity (intrinsic emission intensity) of fuels and feedstocks by existing fossil fueled uses.
- Demonstrate financial support for public transit access to serve 100% of direct and indirect transportation needs associated with major industrial/commercial uses.
- Prohibit use of emission credits or offsets related to emission reductions outside of Richmond for direct emissions in Richmond (in order to ensure that pollution trading will not cause increased emissions locally and that benefits of regional, state and federal emission requirements applied in Richmond will accrue in Richmond).

In addition to suggesting a specific solution to the problems discussed above, these feasible measures show that, had the DEIR analyzed potential industrial emission impacts, it could have found ways to lessen or avoid them.

Unfortunately, having failed to identify or describe potential impacts of industrial emissions that could result from the Project, the DEIR fails to analyze them. The DEIR then fails to mitigate these potential impacts or analyze appropriate alternatives that could lessen or avoid these potential impacts.

⁵⁸ Note that community participation and consent may be critically important factors in the political feasibility of local plans for energy transition, however; political feasibility is not addressed in this technical review. Note also that this partial list of feasible measures is focused on the industrial component of the energy and emissions problem, and is not meant to be comprehensive.

3. The finding that air quality and climate impacts are unavoidable is incorrect.

The DEIR concludes that significant potential air quality and climate impacts from Project-related increases in emissions are unavoidable (3.3-17; 3.3-21; 3.3-24; 3.6-14; 3.6-28; 4-1; 4-2; 4-3). This conclusion lacks any evidentiary support because the DEIR did not analyze mitigation or alternatives that could lessen or avoid larger changes in the cause of impact (combustion emissions of GHG and copollutants) from industrial sources in the same location (Richmond).

13-12

GHG and copollutant emissions from industrial sources could decrease if the feasible measures identified at the end of the previous section are adopted. An example of this is documented in Table 1. Note that, although the exact covariance of GHG and copollutant emissions can change with changes in fuels, combustion conditions and abatement, this uncertainty is limited for the scenarios shown in Table 1 because differences among these scenarios are driven by refinery emissions. The GHG emission/copollutant exposure link is strong for refinery emissions in Richmond, as shown in section 2 of this report.

The equipment replacement, fuel efficiency, fuel and feedstock, conservation, and partial repowering with renewables measures in the previous section would support Richmond refinery emission reductions consistent with ARB’s AB 32 “cap.” Requiring the refinery to comply with ARB’s cap without using pollution trading “credits” would result in a 1.7 Mt/yr (37%) reduction in its emissions by 2030. Those measures at the refinery alone would overwhelm the City’s projected increases in emissions from all other sources, causing total emissions of GHG and copollutants to *decrease*. Therefore, since feasible measures can avoid the potential emissions increase causing the impacts, the DEIR’s finding that these impacts are unavoidable is demonstrably incorrect.

Table 1. Comparison of unmitigated EIR scenarios with on-site compliance with AB 32 by the Richmond refinery, emissions in 2030 within Richmond, CA

Scenario	Emissions by sector, Megatons per year (Mt/y)				Total (Mt/y)
	Industrial/Commercial	Transportation	Residential	Waste & Landfill	
Emissions today ^a	6.14	0.51	0.13	0.08	6.86
DEIR-GHG ^b	9.74	0.76	0.15	0.07	10.72
DEIR-Air Quality ^c	6.14	0.76	0.13	0.07	7.11
Refinery-2030 ^d	5.41	0.76	0.15	0.07	6.39

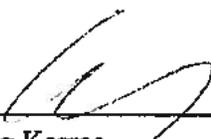
^a Current emissions as shown and documented in Figure 1 of this report.
^b City 2005 inventory projection: assumes annual % growth from Inventory Table 19 without mitigation.
^c DEIR air quality analysis projection: assumes only transportation emissions increase from a 50.1% increase in VMT with no change in fuels, efficiency, emission control or other mitigation.
^d Assumes refinery emissions decrease by the amount targeted by ARB’s AB 32 statewide emissions cap: emissions reduced by 15% (-15%) by 2020 followed by -3%/yr thereafter; all other industrial, commercial, residential and waste emissions increase as in the GHG-2030 scenario (note b).

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The documents identified in the “Attachments list” appended to this report were copied, in portable document file (PDF) format, to a compact disk submitted with this report.

I declare under penalty of perjury that the foregoing is true of my own knowledge, except as to those matters stated on information and belief, and as to those matters, I believe them to be true.

Executed this 24 day of March, 2011 at Oakland, California.



Greg Karras

Draft General Plan EIR—energy, climate and air quality review**Attachments list**

1. Curriculum vitae and list of publications, Greg Karras.
2. Allen et al. 2009. Warming caused by the cumulative carbon emissions towards the trillionth tonne. *Nature* 458: 1163–1166.
3. AQMD, 2008. *Chevron–Richmond Refinery Proposed Energy and Hydrogen Renewal Project: Findings and Supporting Facts Regarding the Environmental Impact Report*.
4. AQMD, 2010. *Source Inventory of Bay Area Greenhouse Gas Emissions*. Bay Area Air Quality Management District (AQMD). Updated: February 2010.
5. ARB, 2009. *Mandatory GHG Reporting Data*. California Air Resources Board. Emissions reported for calendar year 2008.
6. ARB, 2009. *Detailed CA-GREET pathway for California reformulated gasoline blendstock for oxygenate blending (CARBOB) from average crude refined in California, Version 2.1*. Air Resources Board.
7. ARB, 2009. *Detailed CA-GREET pathway for ultra low sulfur diesel (ULSD) from average crude refined in California, Version 2.1*. Air Resources Board.
8. ARB, 2010. *Mandatory GHG Reporting Data*. California Air Resources Board. Emissions reported for calendar year 2009. Total emissions: Chevron Products Company–Richmond Refinery.
9. ARB, 2010. *California Greenhouse Gas Inventory for 2000–2008*, Air Resources Board.
10. Battisti and Naylor. 2009. Historical warnings of future food security with unprecedented seasonal heat. *Science* 323: 240–244. DOI: 10.1126/science.1164363.
11. Brandt and Farrell, 2007. Scraping the bottom of the barrel: greenhouse gas emission consequences of a transition to low-quality and synthetic petroleum resources. *Climatic Change* 84: 241–263.
12. Brody et al., 2009. Linking exposure assessment science with policy objectives for environmental justice and breast cancer advocacy: The northern California household exposure study. *Am J Public Health* 2009(99): S600–S609.
13. CEC, 2011. *Input & Output at California Refineries*, California Energy Commission.
14. Davis et al., 2010. Future CO₂ emissions and climate change from existing energy infrastructure. *Science* 329: 1330–1333.
15. Farrell et al., 2007. *A low-carbon fuel standard for California, part 1: Technical analysis*; UCD-ITS-RR-07-07; University of California, Institute of Transportation Studies: Davis, CA.

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16. Gerdes and Skone. 2009. *An evaluation of the extraction, transport and refining of imported crude oils and the impact on life cycle greenhouse gas emissions*, U.S. DOE. DOE/NETL-2009/1362.
17. Hoffert et al., 2002. Advanced technology paths to global climate stability: Energy for a greenhouse planet. *Science* 298: 981–987.
18. Hoffert, 2010. Farewell to fossil fuels? *Science* 329: 1292–1294.
19. Karras, 2010. Combustion emissions from refining lower quality oil: What is the global warming potential? *Env. Sci. Technol.* 44(24): 9584–9589.
20. Kerr, 2009. Splitting the difference between oil pessimists and optimists. *Science* 326: 1048.
21. Meinshausen et al., 2009. Greenhouse-gas emission targets for limiting global warming to 2° C. *Nature* 458: 1158–1162.
22. Meyer et al., 2007. *Heavy oil and natural bitumen resources in geologic basins of the world*. U.S. Geological Survey Open-File Report 2007-1084 (<http://pubs.usgs.gov/of/2007/1084/>).
23. Pastor et al., 2010. *Minding the Climate Gap: what's at stake if California's climate law isn't done right and right away*. USC Program for Environmental and Regional Equity: Los Angeles, CA.
24. Perera, F. P. 2008. Children are likely to suffer most from our fossil fuel addiction. *Env. Health Perspectives* 116(8): 987–990. DOI: 10.1289/ehp.11173.
25. Skone and Gerdes. 2008. *Development of baseline data and analysis of life cycle greenhouse gas emissions of petroleum-based fuels*, U.S. DOE. DOE/NETL-2009/1346.
26. U.S. Energy Information Administration, 2010. *Annual Energy Outlook 2010; Appendixes*. Includes Table A18, *Carbon dioxide emissions by sector and source*, and Table A19, *Energy-related carbon dioxide emissions by end use*.
27. U.S. Energy Information Administration, 2010. *Crude oil input qualities*. Downloaded from www.eia.gov/dnav/pet/pet_pnp_crq_dcu_nus_a.htm; release date: 7/29/2010.
28. Wang et al. 2004. Allocation of energy use in petroleum refineries to petroleum products: Implications for life-cycle energy use and emission inventory of petroleum transportation fuels. *Int. J. Life Cycle Assess.* 9(1): 34-44.
29. Worldwide Refining Survey–2009. *Oil & Gas Journal* Koottungal, L., Ed. Figures as of 1 January 2010.

LETTER 13: Communities for a Better Environment, Greg Karras

The letter opens with a discussion of the author's background and qualifications. No response is required.

Response to Comment 13-1

The comment states that the Draft EIR fails to describe the energy problem that must be solved for climate protection and provides a discussion of energy usage, particularly the use of fossil fuels refined from crude oil. The comment states that existing emissions from oil refining are substantial. While the City acknowledges existing uses within the City generate emissions that could contribute to climate change (see Draft EIR pages 3.6-1 through 3.6-3), operation of the existing oil facilities is not the subject of the General Plan EIR. The Draft EIR programmatically addresses the potential effect of future development that could occur under the General Plan. Because the General Plan does not include specific proposals to expand existing or develop new industrial uses, the Draft EIR does not attempt to quantify emissions from specific uses. Rather, the General Plan EIR begins its analysis with baseline emissions within the entire plan area and includes policies and actions to ensure that emissions from future development are minimized to the greatest extent feasible. It should also be noted that the General Plan includes policies to reduce project emissions that would be applied to future projects, thereby reducing the City's contribution to climate change. Please refer to Draft EIR pages 3.6-14 through 3.6-32 for a discussion of the potential effects of future development on climate change and the proposed General Plan policies and EIR mitigation measures designed to reduce these effects.

Response to Comment 13-2

The comment states that the Draft EIR does not address the need to reduce industrial emissions to reduce the General Plan's contribution to climate change. The comment also includes data regarding carbon dioxide equivalents generated within the City of Richmond, particularly by the Chevron Refinery. It should be noted that the comment refers to existing conditions and not effects that would be generated by implementation of the General Plan. The greenhouse gas emissions used in the analysis were obtained from the City's Greenhouse Gas Emissions Inventory, which includes emissions generated by the Chevron Refinery. Consequently, these emissions were accounted for in the Draft EIR's analysis.

Response to Comment 13-3

The comment disputes the statement in the Draft EIR (page 3.6-7) that the City has "no jurisdictional control" over industrial emissions with respect to the production of greenhouse gas emissions. As an example, the commenter notes that the City Council has in the past required carbon neutrality as a condition of approval for an upgrade to the Chevron Refinery. However, the General Plan is not a codified regulatory document, but a policy document that reflects the framework on which the City establishes its regulations. As a policy document, the General Plan is not the appropriate mechanism to regulate existing uses. As noted by the commenter, it has been the direction of the City Council to require new or upgraded uses to reduce overall emissions from industrial sources.

The example cited in the comment is consistent with the policies of the proposed General Plan, discussed on Draft EIR pages 3.6-14 through 3.6-31.

The comment also refers to the California Air Resources Board's (ARB) cap and trade plan and Low Carbon Fuel Standard (LCFS). The cap and trade plan developed by ARB was suspended by the courts in March 2011, pending CEQA review of the physical impacts of that plan. As such, it could not be implemented until such review has been completed. In any case, the implementation of cap and trade or the LCFS are outside the control of the City of Richmond. While the General Plan contains policies and the Draft EIR includes specific mitigation measures to reduce the amount of greenhouse gases generated within the City, this impact was found to be significant and unavoidable.

Response to Comment 13-4

The comment states project-related industrial emissions could cause significant air quality and climate impacts, and provides other statements that "without additional action" the industrial emissions will continue to increase if cap and trade is allowed and if the trend for heavier, higher sulfur crude oil continues. The contention that the increases would be caused by the General Plan are contradicted by the later statements, because the cap and trade program and the crude oil processed in Richmond are not the subject of the General Plan or the EIR. The comment also describes the health effects of the "copollutants" associated with fossil fuel combustion and contends that the Draft EIR only bases analysis of emissions on vehicle miles traveled (VMT). However, Impact 3.3-3, on pages 3.3-25 through 3.3-28, addresses non-vehicular toxic air contaminant (TAC) sources. In addition, Mitigation Measure 3.3-3 requires that the City develop special overlay zones around all planned sources of TAC to minimize the potential impacts on sensitive receptors, buffers to ensure TAC emitters and sensitive receptors are not located in close proximity to one another, and coordination with the BAAQMD regarding TAC sources and requirements of health risk assessments. This mitigation would reduce the potential for exposure to a level that is consistent with existing standards.

The comment continues with additional projections of emissions in the City, which includes estimates of different types of crude oil used in the refining processes that the author projects would occur into the future. As discussed previously, the Chevron Refinery is an existing use that is included in the baseline for the General Plan. Potentially shifting operations at the Refinery in Richmond would not be a result of the General Plan and, therefore, are not the subject of this EIR. It should be noted that the commenter himself has pointed out that the direction of the City Council has been one of requiring a reduction in emissions as projects are processed through the City. The content of the proposed General Plan also supports the approach to reduce emissions associated with the continuing development in the City.

Response to Comment 13-5

The comment states the "[r]eplacement or expansion of long-lived fossil energy infrastructure that could be allowed by the Project would commit us to new emissions for decades" and again focuses on emissions from the Chevron Refinery, stating that the Draft EIR ignores its indirect emissions. As

noted in previous responses, the General Plan is not a regulatory document that addresses existing Refinery operations. Replacement of Refinery equipment could occur with or without the proposed General Plan. However, the General Plan contains policies and actions to reduce emissions related to new development. As noted by the commenter (see Comment 13-3), the direction of the City when considering approval of new or replacement projects at the Refinery has been to limit emissions and, in the specific case cited, the City Council required carbon neutrality.

Response to Comment 13-6

The comment refers to the indirect emissions from existing Chevron Richmond Refinery operations referenced in Response to Comment 13-5, stating that they could be substantial. The comment also characterizes these emissions as “project emissions.” As discussed in Response to Comment 13-5, these indirect emissions would be the result of existing operations at the Refinery and are not a result of the proposed General Plan.

Response to Comment 13-7

The comment states that the “business as usual” scenarios described in the Draft EIR could be catastrophic and the project’s contribution to these could be substantial “as documented above”, referring to previous statements about indirect emissions from existing operations of the refinery. As noted above, the existing conditions at the refinery would not be attributable to the proposed General Plan. In addition, implementation of the proposed General Plan would not represent a business as usual scenario. As discussed on page 3.6-28 of the Draft EIR, implementation of the proposed General Plan would achieve, at a minimum, a 29 percent emissions reduction from the business as usual scenario. Thus, the commenter’s estimate of the project’s contribution is overstated. The comment regarding crop failures by the end of the century is speculative and cannot be addressed in the EIR. Lastly, the long-term global food supply is not within the control of the City and to include an analysis of a global collapse of food supplies would be speculative.

Response to Comment 13-8

The comment refers to overall climate effects, including an increased risk of childhood asthma due to the increase in smog and pollen. The Draft EIR discusses the potential health risks, including increased asthma rates, associated with ozone, a smog precursor (page 3.3-4), particulate matter (page 3.3-5), and nitrogen dioxide and sulfur dioxide (page 3.3-6). While the EIR does not include a discussion of pollen, the proposed General Plan would not directly increase pollen and its increased production as a result of climate change is speculative. This also seems to contradict the assertion of global crop failures, in that one must assume a scenario in which food crops would fail while other non-food, pollen-producing plants would flourish.

Response to Comment 13-9

The comment states that the Draft EIR does not provide mitigation for the impacts identified by the commenter in previous comments. As discussed in the responses above, the impacts to which the commenter refers are existing conditions within the City and would not be a result of the

implementation of the proposed General Plan. Consequently, no mitigation is required. The comment includes suggestions to reduce the emissions in the City, such as retrofitting of aging equipment, use of less carbon-intensive fuels, expanding public transit, and use of more wind and solar-generated energy while reducing the use of fossil power. The General Plan contains several policies related to the above reduction methods. The reader is directed to the Energy and Climate Change Element of the General Plan for a comprehensive list of policies and actions to reduce the City's contribution to climate change.

Response to Comment 13-10

The comment states that the finding that air quality and climate impacts are unavoidable is incorrect and provides recommendations to reduce emissions from the existing Chevron Richmond Refinery operations. As discussed in previous responses, the General Plan is not the appropriate mechanism to change operations or increase regulations on existing Refinery operations. The General Plan includes policies and actions to reduce emissions of pollutants and greenhouse gases. In addition, the Draft EIR includes a number of mitigation measures that would further reduce emissions and limit exposure of residents to criteria pollutants and toxic air contaminants, as well as further reducing greenhouse gases. Nonetheless, due to the programmatic nature of the EIR, the City cannot assure efficacy of the mitigation measures to reduce impacts of future development to a less-than-significant level. For this reason, the impacts were found to be significant and unavoidable.



March 21, 2011

Mr. Hector Rojas, Associate Planner
Planning Division
City of Richmond
450 Civic Center Plaza
P.O. Box 4046
Richmond, CA 94804-1630



Dear Mr. Rojas,

Per our discussion last week, the Point Richmond Neighborhood Council would like to propose that some of the wording from the 1994 General Plan be carried over into the Draft General Plan.

The 1994 General Plan Land Use Element, under "Area Specific Guidelines" for "West Shoreline" (page LU-23) states under 3:
"Ensure that additional commercial facilities at Point Richmond will be developed in a way that complements and preserves the historic, "village-like" appearance and character of the district."

Although support for distinct places in Richmond could be inferred from the Draft General Plan under "Policy LU6.3, A Place-Based Land Use Approach" (page 3.73), we would like to see the wording from the 1994 Plan included because it is clearer and more specific to the character of the Point Richmond Historic District.

Point Richmond was the birthplace of Richmond. It has a special place in our history, and its unique character needs to be acknowledged and clearly defined in the General Plan.

A recent decision of the City Council to deny a conditional use permit for a Subway in the historic district relied heavily on the area specific guideline in the 1994 Plan. It is important that the new General Plan includes a have a clear statement ensuring that the unique character of Point Richmond is preserved.

Thank you for considering this change.

Best regards,

Peter Minkwitz, *President*
POINT RICHMOND NEIGHBORHOOD COUNCIL

14-1

LETTER 14: Point Richmond Neighborhood Council, Peter Minkwitz

Response to Comment 14-1

The comment states that some of the language from the 1994 General Plan Land Use and Urban Design Element should be carried over to the draft General Plan. This is not a comment that addresses the adequacy of the analysis contained in the Draft EIR. As it is not a direct comment on environmental issues or the content or adequacy of the Draft EIR, no response is required. The recommendation in the comment is forwarded to the decision-makers for their consideration.



**Richmond Equitable
Development Initiative**

Collaborative Partners:

Alliance of Californians for Community
Empowerment (ACCE) – Richmond Chapter

Contra Costa Interfaith Supporting
Community Organization (CCISCO)

Contra Costa Faith Works!

East Bay Alliance for a
Sustainable Economy

Greater Richmond
Interfaith Program (GRIP)

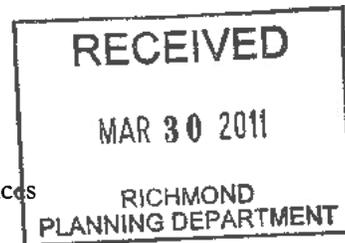
Urban Habitat

Project Partners:

Asian Pacific Environmental Network
Laotian Organizing Project (LOP)
Communities for a Better Environment (CBE)

March 30, 2011

Hector Rojas, Associate Planner
City of Richmond Planning and Building Services
450 Civic Center Plaza
PO Box 4046
Richmond, CA 94804-1630



**RE: Draft Environmental Impact Report on Richmond
General Plan**

Dear Mr. Rojas:

Since 2006, the Richmond Equitable Development Initiative (REDI) has been actively working with the City and city agencies on the development of the updated General Plan. We are a diverse coalition of social justice and community-based organizations, representing thousands of Richmond residents working to improve the City today and into the future.

REDI is dedicated to ensuring that Richmond's General Plan creates a healthier and more environmentally sustainable future for people of all incomes. Because of this, we welcome the opportunity to comment on the Draft Environmental Impact Report (DEIR) on the General Plan update, which must both identify the environmental impacts of the Plan and consider ways to reduce these impacts. Unfortunately, the DEIR falls short in many areas: failing to study all significant environmental impacts, and neglecting to consider feasible environmental mitigation measures, including many policies that REDI has suggested. REDI members testified

about these issues at the March 17, 2011, DEIR hearing. This letter reiterates and expands on those comments.

As detailed below, we are very concerned that the DEIR:

- Exhibits a systemic failure to include sufficient information and analysis of the environmental impacts likely to result from the expansion and intensification of industrial and commercial land uses;
- Lacks a transportation needs assessment, which is a necessary foundation for assessing traffic, transit, air quality, and climate change impacts and mitigations;
- Glosses-over potential cumulative health impacts, especially those facing lower income and non-white populations; and
- Neglects to consider the potential environmental mitigation benefits of workforce and housing policies that could reduce traffic and tailpipe emissions that contribute to air quality, health, and climate change impacts.

15-1



These deficiencies in the DEIR are more than mere technical flaws in meeting state law requirements; they cut directly to the core policy choices that will be made in the General Plan update. Incomplete or unreliable information about the environmental impacts of these choices deprives the public and decision-makers of the opportunity to consider their full ramifications and adopt a General Plan that will move Richmond forward in the right direction for the next 20 years.

In many instances, deficiencies in the DEIR closely track policy proposals that REDI has long advocated as necessary for the environmental and economic health of the City. *See* Attachment A, REDI's Platform and Framework for Equitable Development. For example the DEIR's treatment of industrial land use impacts relates to REDI-proposed policies to require industrial and commercial actors to meet greenhouse gas reduction targets, promote the transition to cleaner and more energy efficient operations, and place permitting conditions on new or renewed permits that could exacerbate the environmental and health impacts of pollution. Similarly, the DEIR's transportation impacts analysis ties to important General Plan choices about how and where to spend scarce dollars for transit improvements.

Substantial revisions to the DEIR are necessary to address these issues and provide full information to the public and decision-makers about the environmental impacts of the Draft General Plan and mitigation measures that could be implemented to reduce these impacts. We look forward to detailed responses to these comments and to appropriate revisions to both the DEIR and the underlying Draft General Plan before they are certified and adopted by the City Council.

The first section below outlines some of the basic purposes and requirements of environmental review under CEQA. Following that is a discussion of the shortcomings in this DEIR that elaborates on the bullet points listed above.

I. CEQA Requires Full Disclosure of Environmental Impacts and Consideration of Mitigation Measures

The touchstone of CEQA is informed public participation and decision making. That requires an EIR that discloses sufficient information to evaluate the reasonableness of the conclusions it reaches. *See Ass'n of Irrigated Residents v. County of Madera*, 107 Cal. App. 4th 1383, 1390 (2003) ("An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project."); *Napa Citizens for Honest Gov't v. Napa County Bd. of Supervisors*, 91 Cal. App. 4th 342, 355-356 (2001) ("The ultimate decision of whether to approve a project is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA."). So critical is the role of informed public participation that, where an agency fails to disclose information required by CEQA, the EIR will be found deficient even if the conclusions drawn from the analysis would not change as a result. *See Dry Creek Citizens Coalition v. County of Tulare*, 70 Cal. App. 4th 20, 25-26 (1999).

A. Identification of Significant Impacts

An EIR must contain sufficient information to inform the public at large of all significant environmental effects of the Project. *See* Cal. Code Regs. tit. 14, § 15121(a); *Ass'n of Irrigated Residents*, 107 Cal. App. 4th at 1390. Reasonably foreseeable indirect environmental impacts must be included in this analysis. *See Anderson First Coalition v. City of Anderson*, 130 Cal. App. 4th 1173, 1182 (2005)

(“When there is evidence ... that economic and social effects caused by a project ... could result in a reasonably foreseeable indirect environmental impact, ... then the CEQA lead agency is obligated to assess this indirect environmental impact.”); *Bakersfield Citizens for Local Control v. City of Bakersfield*, 124 Cal. App. 4th 1184, 1198 (2004); *see also, Napa Citizens*, 91 Cal. App. 4th at 367-68. CEQA requires that the EIR be based in fact, not supposition; on expert analysis, not threadbare conclusions. *See* Cal. Code Regs. tit. 14, §15384. Not only must the EIR provide the requisite information for public review, it must, at the end of the day, contain substantial evidence to support the City’s conclusions with respect to each topic addressed, the methods employed to reach those conclusions, and the validity of the data relied upon. *See Bakersfield Citizens*, 124 Cal. App. 4th at 1198. While this DEIR is a programmatic effort, it should nevertheless “ensure consideration of cumulative impacts that might be slighted in a case by case analysis” in future development under the umbrella of this Project. Cal. Code Regs. tit. 14, §15168(b)(2).

The DEIR for Richmond’s Draft General Plan fails to present a complete and adequately supported analysis of the Plan’s environmental impacts, denying REDI and the public at large the opportunity to participate meaningfully in the decision making process. As discussed below, major sources of hazardous waste, air pollution, greenhouse gas emissions, traffic and other environmental impacts have been studied incompletely and imprecisely, or have been omitted from scientific study altogether. We reserve our right to make further comment on, or otherwise respond to, the DEIR until such time as the City corrects the deficiencies in the DEIR.

B. Consideration of Alternatives and Mitigation Measures

An analysis of project alternatives lies at the heart of CEQA’s mission to provide the public with full information and opportunity to participate in the planning process, particularly with respect to the selection among alternatives and mitigation measures. *See Citizens of Goleta Valley v. Bd. of Supervisors*, 52 Cal. 3d 553, 564 (1990) (“The core of an EIR is the mitigation and alternatives sections.”). The DEIR must contain sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison. Cal. Code Regs. tit. 14, § 15126.6(d). This includes clear disclosure of areas in which an alternative would substantially lessen the environmental impacts of the Preferred Alternative, even if the alternative would not completely avoid the impact. *See* Cal. Code Regs. tit. 14, § 15126.6(b).

In addition to information about environmental effects and consideration of alternatives, the DEIR must identify feasible mitigation measures that would minimize the significant impacts of the Project. *See* Pub. Resources Code, §21081.6(b); *see also* Cal. Code Regs. tit. 14, § 15121(a); *see also Fed’n of Hillside and Canyon Ass’ns v. City of Los Angeles*, 83 Cal. App. 4th 1252, 1258 (2000). In order to be deemed feasible, mitigation measures must be successfully achievable within a reasonable period of time. *See Napa Citizens*, 91 Cal. App. 4th at 365; *San Joaquin Raptor Rescue Center v. County of Merced*, 149 Cal. App. 4th 645, 670 (2007). Where multiple measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Cal. Code Regs. tit. 14, §15126.4(a)(1)(B).

Deferring the specifics of a mitigation measure to the future does not generally fulfill these requirements. *See* Cal. Code Regs. tit. 14, § 15216.4(a)(1)(B) (“Formulation of mitigation measures should not be deferred until some future time.”); *see also San Joaquin Raptor Rescue Center*, 149 Cal. App. 4th at 670. In multiple places, the DEIR fails to identify mitigations that are concrete, specific, enforceable, and comprehensive enough to reliably reduce or eliminate significant environmental



15-1
(cont.)

15-2

impacts. For example, “promot[ing] reduced transit fares for daily commutes within the City” is listed as an Air Quality mitigation; however, there is not plan of action, timeframe, or other specific strategy included to accomplish this aspiration. DEIR at 3.3-21. Similarly, while the DEIR imposes precise and strict limitations on the siting of minor hazardous waste producers such as dry cleaners and auto body repair services, much more heavily polluting port and petroleum refinery developments are subject to vaguer and more directory limitations that provide some guidance for future decision making without setting firm constraints. See DEIR at 3.3-27 to 28. This issue is further discussed below in Section II.B. This undermines any confidence that binding mitigation commitments will actually address Project’s significant environmental impacts.

15-2
(cont.)

II. Insufficient Consideration of the Environmental Impacts of Industrial and Commercial Land Uses

The DEIR exhibits a consistent blind-spot to the environmental impacts of industrial and commercial land uses, despite the fact that they generate dramatically more pollutants than other land uses in the City. Industrial and commercial activities account for 88% of the greenhouse gas emissions in the City. See Energy and Climate Change Element at 8.6. They are the primary source of hazardous waste. See DEIR at 3.8-2. They contribute significant stationary- and mobile-source air pollutants. See DEIR at 3.3-12 to 13. The Draft General Plan envisions and plans for substantial growth of industrial and commercial activities in the City. Nonetheless, the DEIR gives only passing attention to the environmental impacts likely to result from this planned expansion and intensification of industrial and commercial land uses. Omitting serious study of industrial and commercial land use undermines the validity of the DEIR in two respects: failure to identify some significant environmental impacts, and failure to consider feasible mitigation measures.

15-3

The DEIR hides behind the assertion that the nature of future industrial land use is impossible to predict. One of the main purposes of environmental review of a high-level plan such as a General Plan update, however, is to evaluate the potential impacts of alternative development scenarios. The General Plan will set forth the parameters governing development in the City for 20 years, and many environmental impacts will be unavoidable if not addressed at this long-range systemic level. The DEIR could and should consider the many foreseeable environmental impacts of expanded and intensified industrial land use so that alternatives and mitigation measures can be considered fully.

The following discussion provides two examples of these deficiencies, which are illustrative of the larger systemic failings in the DEIR related to impacts and mitigation measures arising from industrial and commercial activities. Section C identifies some of REDI’s policy proposals that would help to mitigate the environmental impacts of industrial and commercial land uses.¹

A. Hazardous Materials

¹ In addition to the comments offered in this letter, we reference and incorporate the Comments and Expert Report of Greg Karras submitted by Communities for a Better Environment (CBE). This report discusses of the ways in which the DEIR omits or underestimates the environmental impacts of industrial land use in the City, and presents mitigation approaches that could bring some of these impacts to less than significant levels.

The DEIR's treatment of hazardous materials impacts is perplexing and contradictory. On the one hand, it acknowledges that industrial and commercial land uses in Richmond create risks relating to hazardous waste generation, transportation, storage, and accidental release. On the other hand, it reaches the surprising conclusion that the Draft General Plan will have no significant impacts in any of these areas, despite planned expansion of industrial and commercial activities. This profoundly confusing presentation effectively prevents informed public participation and decision making. Moreover, because the DEIR finds no significant hazardous materials impacts, its analysis of mitigation measures is cursory and over-reliant on regulation by agencies other than the City.

15-4

In numerous places, the DEIR concludes that "there would be ongoing and likely an increase in the amount of hazardous waste generated with implementation of the proposed General Plan." DEIR at 3.8-15. This conclusion matches the current pattern in Richmond, where "the primary sources of hazardous waste . . . are the petroleum refinery, manufacturing and processing that use chemicals, research laboratories, trucking facilities, and automotive repair." DEIR at 3.8-2. Seven industrial sites use or generate such substantial amounts of hazardous materials that they must prepare and maintain special risk management plans. *Id.*

The DEIR also acknowledges that "[w]herever hazardous materials are used or stored, or hazardous waste generated, there is the potential for human exposure, and, under certain conditions, potential releases to the environment." DEIR at 3.8-15. Exposure can occur through "inhalation, ingestion, dermal (skin and eye) contact, and accidental releases that allow the hazardous materials to become airborne or enter waterways." *Id.* The DEIR finds also that "the frequency of accidental releases would be expected to increase" under the Draft General Plan. DEIR at 3.8-16.

The DEIR identifies standards of significance for evaluating these hazardous materials risks. Among other standards, hazardous materials impacts are considered significant if they create public or environmental hazards from their routine transport, use, or disposal, or from reasonably foreseeable upset or accident. DEIR at 3.8-14.

Application of these articulated standards would seem to lead inexorably to the conclusion that the expansion of industrial and commercial land uses under the plan will have environmental impacts that are significant under CEQA. The DEIR acknowledges that industrial and commercial land uses pose serious environmental risks, and that these risks will increase under the Draft General Plan, yet it still concludes that there are no significant impacts in this area. The City must revise the DEIR to address this error.

Another recurring flaw in the DEIR's treatment of hazardous waste risks is the over-reliance on regional, state, and federal regulations. *See* DEIR at 3.8-7 to 3.8-12. CEQA demands more than just a cross reference to other statutory schemes (much less an assumption about future regulatory programs) in order to satisfy the requirements of environmental impacts and mitigation. If such cataloguing were sufficient to satisfy CEQA, there would ultimately be no need to address impacts or mitigation at all, since every Project sponsor could simply rely on other regulatory agencies to take care of potential environmental impacts. Rather than simply deferring to other regulatory regimes, the DEIR must itself adopt fully enforceable mitigation measures in order to comply with CEQA. *See, e.g.,* Cal. Pub. Res. Code 21081.6(b); 14 Cal. Code Regs 15091(d); *see also Fed'n of Hillside and Canyon Ass'ns*, 83 Cal. App. at 1261 (holding a general plan EIR defective where there was not substantial evidence that mitigation measures would "actually be implemented"). While the DEIR does refer in passing to Richmond's 17 year old Hazardous Waste Management Element and 20 year

old Household Hazardous Waste Element, these plans appear to be both out of date and insufficient to address the City’s responsibility to study and mitigate the hazardous waste impacts of the full-scale General Plan revisions currently undergoing CEQA review.

15-4
(cont.)

B. Air Quality and Climate Change

In the inter-related areas of Air Quality and Climate Change, the DEIR acknowledges some impacts from industrial land uses, but it consistently downplays the role of industrial uses relative to other contributing factors. The Expert Report of Greg Karras details the many shortcomings in the DEIR related to its analysis of local and greenhouse gas air pollution from industrial uses. The General Plan Health and Wellness Element also acknowledges these dangers, reporting among other things that: “The number of air quality incidents per capita in Richmond was 14 times higher than the Bay Area average. Diesel particulate matter (DPM) per square mile per year released in Richmond is six times higher than the County average and 40 times higher than the state average. More than 60% of the diesel pollution in Richmond comes from ships and commercial vessels, about 20% from diesel locomotives and about 10% each from heavy duty trucks and construction equipment.” General Plan Health Element at 11.11

15-5

The severity of environmental harms caused by the expansion of industrial activities under the General Plan requires a more serious consideration of mitigation measures. While the DEIR points to some advisory guidelines in the General Plan to address industrial air pollution, most of these actions consist either of commitments to comply with existing regulations or to develop strategies to address these impacts in the future. Such “planning to plan” does not meet the requirements of CEQA. See Cal. Code Regs. tit. 14, §15216.4(a)(1)(B) (“Formulation of mitigation measures should not be deferred until some future time.”) While the General Plan is a relatively high-level and long range plan, that does not mean that the DEIR may defer the development of mitigation policies until some unspecified future date or wait for to consider mitigations until more detailed projects are proposed. Indeed, a programmatic level DEIR such as this one should “consider broad policy alternatives and program wide mitigation measures” that will provide some assurance that future, project-specific mitigation measures will indeed be available and effective. See Cal. Code Regs. tit. 14, §15168(b)(4).

C. Industrial and Commercial Land Use Mitigations

A number of City actions could make a meaningful difference in mitigating these unanalyzed impacts. REDI has suggested alternative approaches to the City’s current industrial and commercial land use policies throughout the General Plan update process. None of them are analyzed in the DEIR. The City should analyze fully the potential environmental benefits of implementing each of these actions, among them the following:

15-6

- Requiring commercial and industrial polluters to do their fair share by reducing their greenhouse gas emissions at least 10% by 2020;
- Requiring a transition to cleaner and more energy efficient operations for all industrial property that changes use;
- Adopt strict policies to deny or put conditions on new or renewed permits for industrial and commercial projects if they would further concentrated harmful emissions in communities

that already bear more than their share of the pollution burden—at a minimum prohibit the use of emission credits or offsets related to emission reductions outside of Richmond for direct emissions in Richmond;

- Work with Port tenants to reduce emissions from Port ships through measures such as "shore-side power supply" and retrofitting or replacing older equipment;
- Require the Port and other industrial agents to reduce health and environmental impacts from rail and truck traffic;
- Consider alternatives to expanding the industrial land-use footprint, such as dedicating land to urban agriculture to produce healthy food for local residents.

15-6
(cont.)

These feasible mitigation measures are likely to blunt the significant environmental impacts already identified in the DEIR and the additional impacts likely to be revealed with more complete study. It is not an exhaustive list; however, it should be used as a minimum baseline for the DEIR's mitigation analysis.

III. Failure to Conduct a Transportation Needs Analysis Undermines the DEIR's Analysis of Transportation-Related Impacts and Mitigation Measures

Assessing the impact of planned employment and residential growth on the local transportation network is among the most critical components of a General Plan EIR. Without an informed long-range approach to dealing with increased demand for public transit, car usage, and commercial and industrial vehicle activity, new growth has the potential to clog roadways, further overcrowd buses, and pollute the environment.

15-7

The first step in analyzing the Draft General Plan's approach to accommodating increased demand on the transportation system should be a complete transportation needs analysis. Such a study of the transportation needs of Richmond residents and workers should include the specific location of transit riders, transit dependent populations, and populations with special needs (such as youth and seniors). Breaking down transit usage and demand by mode (bus, rail, ferry) is also essential to prioritize transit investment dollars. The Metropolitan Transportation Commission's (MTC) Richmond Area Community Based Transportation Plan² provides a good starting point for this analysis; however, this Plan dates from 2004 and should be updated to reflect current travel needs and reduced levels of public transit service. Based on this demand, a transit gap analysis should also be performed to determine whether there are geographic areas or times of day that do not have adequate transit service. MTC's Lifeline Transportation Network Report³ provides a useful model for this analysis, but it must be updated to reflect changes in need and cuts in transit service since it was released in 2001.

A current transportation needs analysis would serve two critical purposes in the DEIR: informing the study of environmental impacts, and guiding tailored mitigation measures. Without this foundational analysis, the DEIR leaves the public and decision-makers in the dark about assessing the General Plan's transportation priorities and the potential for environmentally superior alternatives.

² Available at http://www.mtc.ca.gov/planning/cbtp/RICHMOND_cbtp.pdf

³ Available at http://www.mtc.ca.gov/library/2001_rtp/downloads/lifeline/Lifeline_Network.pdf

Not only does the DEIR lack a complete transportation needs analysis, the baseline transportation data that it does use is largely out of date. CEQA generally requires that present day conditions be used as the baseline for study of environmental impacts. *See* Pub. Res. Code § 21060.5; 14 Cal. Code Regs. §§ 15002(g), 15125(e), 15126.2(a), 15360. The only information in the DEIR regarding actual travel patterns in Richmond is high-level commute data from the 2000 Census. *See* DEIR at 3.14-3. This information is both too general and too outdated to form a reliable basis to analyze the transportation impacts of the Draft General Plan. Information about Vehicle Miles Traveled is similarly stale, dating from 2005, as is Traffic Level of Service data, from 2007. *See* DEIR at 3.14-12 to 13; 3.14-10.

15-8

Moreover, even the limited and outdated information included in the DEIR is not presented in a way that facilitates public comprehension and participation. In particular, the lack of detailed maps of the existing and planned transit system presents a major barrier to understanding the DEIR's transportation analysis. We request that more detailed maps be included in the revisions to the DEIR.

Once a more complete transportation impacts analysis is performed, the DEIR should revisit its analysis of alternatives and mitigation measures for both the already-identified significant impacts and the additional ones that may emerge with proper study. The transportation needs analysis will also help to inform this process. A transportation plan that responds to identified community needs would be more effective in reducing driving and improving community health than one that takes a generic approach. Among the questions that should be explored in this alternatives and mitigation analysis are many that REDI has raised in the past, for example why a regional ferry service and streetcar are among the General Plan's top transit priorities. Given limited transportation dollars, investments in local bus service, bus stop improvements, or other investments that better address identified transportation needs may be environmentally superior options to the much more expensive ferry service projects discussed in the Draft General Plan. So too, the proposed city-run shuttle service and streetcar might theoretically help to relieve pressure on other transit and roadway networks, but only if they are designed to meet the community's needs. There is currently no evidence that this is the case. Without a more thorough assessment of these needs, it is impossible for the public and decision makers to assess either the full environmental impact of the Draft General Plan or the potential options to mitigate these impacts.

IV. Cumulative Health Impacts Require Further Study

In addition to assessing environmental impacts individually, the DEIR must "ensure consideration of cumulative impacts that might be slighted in a case by case analysis." Cal. Code Regs. tit. 14, §15168(b)(2). Health impacts are some of the most important environmental issues that require a cumulative impacts approach. The same communities often suffer from multiple environmental risk factors that may not seem serious taken in isolation. Because these risk factors tend to cluster in specific localized geographies, relating to the location of toxic emitters, roadways, wind patterns, etc., these burdened communities frequently share common economic and racial characteristics. And it is almost always lower income people and people of color who suffer from multiple environmental health risk factors. The current DEIR appears to miss the "cumulative" nature of a cumulative impacts analysis; simply summarizing the significant impacts found for each individual topic studied. *See* DEIR at 4-3 to 4. While such topical analysis is certainly required, it is not sufficient.

15-9

We urge the City to include a cumulative health impacts analysis in the DEIR. Many of Richmond’s low income and non-white communities face serious health burdens from the combined effect of air pollution, ground pollution, transportation patterns, lack of access to healthy food and healthcare, and other factors that the General Plan will influence. A cumulative health impact analysis should focus on the impacts on these populations of concern that suffer environmental harms from the accumulation of multiple impacts that might not rise to the a significant level on their own – including air quality, hazardous waste, transportation, and climate change.

15-9
(cont.)

One resource for analyzing cumulative health impacts associated with environmental factors is the Environmental Justice Screening Methodology that has been developed by Professors Manuel Pastor, Rachel Morello-Frosch, and James Sadd at the request of the California Air Resources Board. This multi-factorial analysis of environmental health risks is precisely the type of cumulative impacts study that the DEIR should include. The researchers involved in developing this Methodology are in the process of applying it to Richmond, and we urge the City to incorporate this work into the DEIR and General Plan update process. *See Attachment B, Proposed Screening Method for Low-Income Communities Highly Impacted by Air Pollution for AB 32 Assessments*, California Air Resources Board, April 21, 2010.

Analysis of cumulative health impacts at this stage in the planning process is crucial because the General Plan is the best vehicle for performing a systemic analysis and implementing systemic measures to mitigate such cumulative impacts. Land use alternatives, rules about where to site schools and other sensitive receptors, and the prioritization of investments, for example, should be considered as part of the General Plan update, as it will be difficult to tinker with such high level policy issues at a later date. While the DEIR points to some General Plan policies that may help to mitigate health impacts in at-risk communities, it is difficult to assess whether these policies are appropriate and adequate without a more complete health impacts assessment to serve as the foundation for this analysis.

V. Workforce and Housing Policies Should be Considered as Strategies to Mitigate Significant Environmental Impacts

The DEIR identifies a cluster of significant impacts stemming from the dramatic increase in car travel expected under the Draft General Plan. The projected 50% increase in vehicle travel by 2030 will substantially increase traffic, air pollution, and greenhouse gas emissions. While state and regional mandates under SB 375 and the regional Sustainable Communities Strategy are demanding a decrease in per-capita tailpipe emissions, the Draft General Plan is expected to produce precisely the opposite result: “The emissions associated with vehicle miles traveled are higher than the rate of increase in population within the City; this impact on cumulative conditions would be considered significant.” *See* DEIR at 4-3.

15-10

The DEIR finds that implementation of the current Draft General Plan will increase Vehicle Miles Traveled (VMT) by 50% by 2030, far outstripping the planned 21.95% population increase. *See* DEIR at 3.3-18. This increase in VMT contributes to at least four of the significant impacts identified in the DEIR: 1) increased regional emissions in conflict with the Clean Air Plan, 3.3-1; 2) increased greenhouse gas emissions, 3.6-1; 3) worsening traffic congestion that exceeds Level of Service standards, 3.13-1; 4) and increased congestion and lower travel speeds, 3.13-6.

Despite these significant impacts from the extremely disproportionate increase in VMT under the Draft General Plan, the DEIR includes few serious mitigation measures. We strongly urge the City to revisit this issue in revising the DEIR, as there are many feasible mitigation measures that would create better environmental and community outcomes than those projected under the current Draft General Plan. In particular, the mitigating potential of more sensible labor and housing policies should be studied.

In attempting to lower the skyrocketing VMT projections, one glaring fact springs from the pages of the DEIR: trips internal to Richmond are shorter than trips that originate or end outside of the City. External trips currently average 12.0 miles and are projected to increase to 12.9 miles under build-out of the Draft General Plan. *See* Tables 3.14-5, 3.14-11. In contrast, internal trips average just 2.6 miles and would increase to 2.7. *Id.* Vehicle trips with one end point outside the City account for 84% of the projected increase in VMT and 86% of total VMT. Reducing the absolute number and proportion of external vehicle trips should be a top priority, and labor and housing policies are among the best tools to accomplish this.

Increasing the proportion of Richmond workers who are also Richmond residents is likely to reduce VMT and mitigate the significant impacts that would otherwise result. The DEIR recognizes that locating residential and employment uses near to each other can reduce car travel and carry environmental benefit. *See* DEIR at 3.3-7. Practically speaking, this means that there must be a match between wages and housing costs, and between the education and skills of residents and available jobs. A two pronged approach will be necessary to accomplish this goal: labor policies to make sure that more Richmond residents are able to work in the city, and housing policies designed to make sure that Richmond workers can afford to live in the city.

REDI has suggested many workforce policies that would likely increase the number of Richmond residents working within the city, and therefore reduce VMT. These include policies both to attract jobs that Richmond residents are prepared to fill, and programs to increase the readiness of Richmond residents to work in jobs already available:

- Prioritize the retention and creation of jobs with living or sustainable wages, good benefits, and healthy working conditions for unskilled and semi-skilled workers and low-income residents;
- Extend and improve local hiring mandate and enforce compliance with existing requirements;
- Implement robust job training programs for local youth and other residents;
- Ensure that job training programs and job opportunities are available to Richmond's large immigrant community.

REDI has also offered numerous suggestions about how to ensure that local housing better meets the needs of Richmond residents and workers, allowing people to stay in their neighborhoods and workers to live closer to their jobs. Given the preponderance of retail and other low-wage jobs in the City, workforce housing generally means homes that people with low or very-low incomes can afford. As REDI detailed at length in our comments on the Draft Housing Element in February 2011, there are many ways in which the City can do a better job promoting the preservation and production of much-needed affordable housing. These include:

15-10
(cont.)

- Adopting a city-wide just cause and fair rent ordinance to allow current Richmond residents to remain in their neighborhoods;
- Strengthening the City's Inclusionary Housing ordinance to ensure that some new housing is affordable to those who build it, clean it, and work near to it;
- Creating a Community Land Trust to focus public resources on creating housing for lower income households who would otherwise be forced out of the City; and
- Implementing a comprehensive set of policies to incentivize affordable housing construction through zoning and permitting policies.

15-10
(cont.)

The City has represented that the Housing Element update initially included in the DEIR has been withdrawn from environmental review at this time, and that it will be subjected to further full review once the City has addressed the legal deficiencies in the document under California Housing Element laws. For this reason, we offer an overview of our comments relating to City housing policy as a mitigation measure to identified environmental impacts, while reserving the right to make further comments once the Housing Element is subjected to environmental review.

15-11

We look forward to reviewing the revisions to the DEIR that the City makes in response to these comments. As always, REDI will be happy to meet with the City or provide any other support that will assist staff in understanding or addressing the concerns that we have raised.

Respectfully,


Del Price
Coordinator

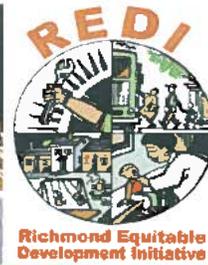

Sam Tepperman-Gelfant
Staff Attorney
Public Advocates Inc.

- Richmond Equitable Development Initiative (REDI)**
 Alliance of Californians for Community Empowerment (ACCE)
 Asian Pacific Environmental Network –
 Laotian Organizing Project (APEN-LOP)
 Communities for a Better Environment (CBE)
 Contra Costa Interfaith Supporting Community Organization (CCISCO)
 Contra Costa FaithWorks
 East Bay Alliance for a Sustainable Economy (EBASE)
 Greater Richmond Interfaith Program (GRIP)
 Urban Habitat (UH)

Attachments:

- A. REDI's Platform and Framework for Equitable Development
- B. *Proposed Screening Method for Low-Income Communities Highly Impacted by Air Pollution for AB 32 Assessments*, California Air Resources Board, April 21, 2010, also available at <http://www.arb.ca.gov/cc/ab32publichealth/communitymethod.pdf>

Cc: Mayor Gayle McLaughlin
Vice Mayor Tom Butt
Councilmember Nathaniel Bates
Councilmember Jovanka Beckles
Councilmember Courtland "Corky" Booze
Councilmember Jeff Ritterman
Councilmember Jim Rogers
Planning Commissioner Ben Choi
Planning Commissioner Charles Duncan, Chair
Planning Commissioner Sheryl Lane
Planning Commissioner Jeff Lee
Planning Commissioner Robert Reyes
Planning Commissioner Andres Soto
Planning Commissioner Carol Teltschick-Fall



Richmond Equitable Development Initiative

Richmond Equitable Development Initiative's collaborative partners include: Alliance of Californians for Community Empowerment (ACCE), Contra Costa Faith Works (and it's local project, Richmond Vision), East Bay Alliance for a Sustainable Economy (EBASE), Contra Costa Interfaith Supporting Community Organization (CCISCO), Greater Richmond Interfaith Program (GRIP) and Urban Habitat. REDI's project partners are: Asian Pacific Environmental Network (APEN) and its local subsidiary, Laotian Organizing Project (LOP), and Communities for a Better Environment (CBE).

REDI's Platform and Framework for Equitable Development

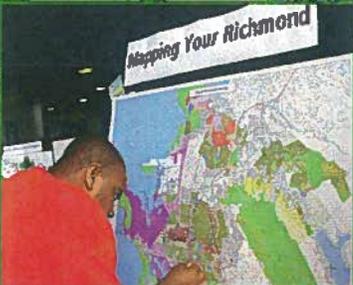
The Richmond Equitable Development Initiative (REDI) is a diverse coalition of regional social justice and community-based organizations that have been actively working together since 2006 to help shape policies that promote social equity and equitable development for the General Plan of the City of Richmond. REDI's platform is grounded in the principles of social equity, which supports responsible growth and economic development that benefits (rather than burdens) existing residents, and especially involves low-income residents in the decisions that impact their lives and neighborhoods. These principles can lead to a healthier community through affordable housing, reliable and safe public transportation, a cleaner environment, accessible community amenities, health care, access to healthy food, and greater community stewardship.

For all its rich history, Richmond today finds itself, like other urban areas, faced with many unprecedented challenges: high unemployment, lack of jobs, violence, health disparities, and a housing foreclosure crisis. The root causes of many of these problems lie in a broken educational system, a declining tax base, federal disinvestment in urban areas, predatory lending practices by financial institutions, and a disproportionately high rate of poverty owing to exclusionary housing practices and inequitable development in the region.

An effort to address many of these challenges through revitalization and the active attraction of green industry and businesses is currently underway, spearheaded by REDI and involving Richmond's various sectors and communities. Much work is being done at the grassroots level on the development of strategies to address issues, such as neighborhood safety, violence prevention, improvements to the educational system, job creation, environmental clean-up, and long-term affordable housing.

A Definition of Equitable Development

REDI's platform and framework for equitable development helps piece together the intersections among critical elements of the city's General Plan, which include land use, housing, economic development, transportation, and health through environmental justice.



Richmond Equitable Development Initiative

The six elements of equitable development as defined by REDI are:

1. Commitment to reduction of poverty and social inequities.
2. Revitalization of core neighborhoods.
3. Adequate provision of basic needs and services for all people regardless of socioeconomic status.
4. Awareness of the interdependence of land use, economic development, transportation, housing and health.
5. Development that results in a healthy local environment and strong quality of life for all.
6. Meaningful community engagement and leadership development of those most directly impacted or displaced by development, i.e. low-income communities of color, immigrants, churches, and union members.

The REDI Platform below has emerged as a guiding document for understanding how to incorporate social equity and equitable development policies into the City of Richmond's General Plan. The General Plan provides an opportunity to develop clear, realistic, and forward-looking policies for building a more equitable, healthful, and sustainable future for all those who call Richmond home.

Equitable Land Use strives for a healthier local environment, especially in communities impacted by heavy industry. It provides job centers with accessible, living wage jobs and small business opportunities. It also recognizes the importance of a balance of jobs and housing.

Policies for Equitable Land Use

- Assure comprehensive neighborhood-based planning that engages local residents and integrates land use with planning for schools, housing, and other neighborhood services and improves health.
- Increase density, similar to infill development, along transit corridors San Pablo Ave., Macdonald Ave., Ohio Ave., Cutting Blvd., Carlson Ave. and Harbour Way, to support REDI's housing, transportation, and economic development recommendations.
- Improve access to basic needs and services, such as transportation, education, healthy and nutritious food choices, and open space for all neighborhoods.
- Develop and implement land use criteria, especially in industrial areas, that minimize health and nuisance impacts on residential neighborhoods, schools, recreation and open space, and job centers.
- Prioritize industrial development and retention equally with other forms of development, such as housing, retail, and commercial office space.
- Create clear criteria and a long-term strategic plan for the conversion of industrial land to other uses to remediate and cleanup contaminated sites.

Equitable Housing strives to provide low-income and special needs individual and families decent, safe and affordable housing in mixed-income neighborhoods. It also encourages city incentives or density bonuses to real estate developers that result in community benefits to local residents.

Policies for Equitable Housing:

- The City will work with banks to create long-term sustainability with loan modification and principal reduction programs for homeowners in foreclosure.
- Support credit restoration and “second chance” programs for foreclosure victims who have lost their homes owing to predatory lending.
- The City will work to convert bank-owned properties into affordable rentals.
- Ensure the successful implementation of programs that rehabilitate substandard rental housing without displacing residents or raising rents.
- Ensure rental units are maintained to comply with building regulations and health and safety code standards of the Richmond Municipal Code.
- Promote policies to ensure that contaminated land in proximity to residential or planned residential use areas are remediated to “residential” use levels.
- The City will encourage banks to bundle and sell foreclosed properties at reduced prices to the city, a community land trust, or to nonprofit housing developers.
- The City will support the establishment of a community land trust to keep home ownership permanently affordable for Richmond residents and families.
- Amend the inclusionary housing ordinance to require developers to pay a higher in-lieu fee to adequately cover the cost of construction or rehabilitation of affordable units.
- Support countywide legislation that will require banks to identify, record, and disclose investors in foreclosed properties or pay a non-compliance fine of \$1,000 per day.
- Establish a job-training program for youth and local residents to help rehabilitate homes using green energy efficiency and sustainable building materials. (Possible funding source can be fines from banks in non-compliance with SB 1137: \$1,000 per day fine for properties that are vacant or create blight.)
- The City will work with County Assessor to ensure major corporations pay their share of property taxes after reassessment.
- Provide adequate protections against unjust tenant evictions and rent increases.
- Require redevelopment agency activities to be transparent, in compliance with state law, and benefit low income communities.

Equitable Economic Development strives to conduct strategic planning that establishes long-term priorities and criteria to guide future economic development and growth. It also encourages collaboration with unions, non-profits, educational institutions and major employers to strengthen job training and job opportunities for local residents.

Policies for Equitable Economic Development:

- Develop partnerships with churches to use them as job training sites and recruit congregation members to participate in ongoing energy efficiency programs.
- Establish a dedicated revenue source to support job training programs and partner with the West Contra Costa Unified School District (WCCUSD) to expand vocational training at Richmond High School, Kennedy High School and adult education that helps adults with parent literacy, citizenship and job re-training programs.

Richmond Equitable Development Initiative

- Expand energy efficiency programs to create new jobs through legislation that requires energy upgrades to sold foreclosed homes.
- Use Project Labor Agreements (PLA) to strengthen local employment programs for West Contra Costa Unified School District, Contra Costa College, and the City of Richmond.
- Improve reporting, monitoring, and enforcement of the city's Local Employment Program and impose penalties for non-reporting/non-compliance.
- Give priority to retaining and creating jobs with living or sustainable wages, good benefits, and healthy working conditions for unskilled and semi-skilled workers and low-income residents.
- Promote small and locally owned and/or disadvantaged businesses in neighborhood revitalization efforts that serve healthy and nutritional food choices.
- Support Community Bank efforts to provide financing and loan access for small, minority or women-owned businesses to help in the revitalization of Downtown Richmond.

Equitable Transportation strives to support affordable transit services to the most vulnerable populations of the community. It also promotes alternative transportation modes, and ensures that new transportation investments in amenities and services benefits low-income transit dependent communities in Richmond.

Policies for Equitable Transportation:

- Assess and mitigate the transportation impacts of new construction using funds from a Transportation Services Fee. This fee will be designated to a special fund that will pay for neighborhood amenities, i.e. bike lanes in the affected neighborhood(s).
- Invest in transportation amenities, infrastructure, and networks that benefit and support safe and affordable transit access and services for low-income communities, especially in the urban core.
- Develop better coordination between regional transportation and planning agencies to generate additional resources for transit and alternative transportation modes.
- Promote alternative modes of transportation in new housing development and employment areas.
- Increase density in residential zones that will provide affordable housing units and new development within one half mile of transit stations or one quarter mile of major bus routes.
- Create a municipal point of contact to provide and promote information on transportation services and policy to citizens and businesses.
- Establish goods movement routes and schedules (for truck, rail, and ship) that will minimize health, safety, and noise impacts on the community, and promote adoption of cleaner technology and fuels.

REDI'S Public Health and Environmental Justice approach connects land use, economic development, and transportation policies to health. The following policies help reduce health disparities and the cumulative impacts of pollution.

Policies for Public Health and Environmental Justice:

- Follow the Precautionary Principle—i.e. heed threats of harm to health or environment even if cause-and-effect relationships are not fully established—as the basis for all environmental and public health laws, regulations, and decisions.

Richmond Equitable Development Initiative

- Identify all industrial, municipal, commercial, transportation, and other sources of pollution that result in potential human health and environmental impacts and require them to implement pollution prevention strategies.
- Assess the cumulative impacts caused by the presence of multiple sources of pollution in all neighborhoods using a community-based approach that utilizes local organizations and residents to develop the assessment.
- Identify and prioritize disproportionately impacted communities based on the degree of real or threatened harm to human health and environment with special attention to those pollutants and pollution sources that present the highest risk to children based on toxicity, proximity, and persistence.
- Establish goals and performance measures to reduce the threat of harm in disproportionately impacted communities.
- Use prevention as the primary means for reducing pollution; alternatively, use enhanced emission controls without pollution trading programs.
- Incorporate environmental justice assessment and a cumulative impact analysis into the new or renewal of permitting process.
- Grant greater authority to impacted area residents via community planning groups or other entities to have a voice in the permit process.
- Condition or prohibit issuance of new permits or renewal of permits for projects with significant emissions and releases in disproportionately impacted communities and/or those where cumulative impacts are significant.

REDI's Platform for Equitable Development provides the City of Richmond with a framework for adopting a General Plan that promotes a healthy, prosperous and an inclusive Richmond for all its residents. REDI members understand Equitable Development and the key intersections between land use, housing, economic development, transportation and health; as a result, REDI members are invested as stewards of the Richmond community and its resources. A Richmond General Plan that incorporates Equitable Development policies will provide the blueprint for a new vision today, and will serve as a lasting legacy for future generations.



LETTER 15: Richmond Equitable Development Initiative, Del Price

Response to Comment 15-1

The comment generally states that the Draft EIR includes insufficient information and analysis with regard to transportation, air quality, and health. The comment does not provide information as to the specific perceived inadequacies, which is provided in subsequent comments. Please see responses to the following comments.

Response to Comment 15-2

The comment states that the Draft EIR defers mitigation to the future and includes mitigation measures that are not specific or comprehensive. The proposed General Plan provides a framework or vision for future development; it does not include proposals for development of particular projects. The Draft EIR is a program-level EIR and, therefore, does not speculate as to the specific type of development that would occur in the future or the types of mitigation that might be necessary. As development is proposed, site-specific analyses will be prepared and the City would then determine the extent to which General Plan policies, actions and the EIR mitigation measures would reduce impacts. If the project-specific analysis determines there would be residual effects after implementation of General Plan policies, actions and EIR mitigation measures, the City would impose additional mitigation, if feasible. The comment also states that the Draft EIR imposes precise and strict limitations on the siting of “minor” hazardous waste producing uses, but provides vague limitations on refineries. As discussed in Response to Comment 9-15, the specific references to buffers for certain uses is based upon guidance contained in CARB’s *Air Quality and Land Use Handbook—A Community Health Perspective*. The handbook does not include buffer recommendations for refineries. However, as any new development is proposed, including port or refinery projects, the City would review the operations of the proposed facility and consider specific emissions and locations of receptors relative to the project site, which could include preparation of a health risk assessment, to determine appropriate buffers or setbacks to ensure that operation of the facility does not negatively affect sensitive receptors.

Response to Comment 15-3

The comment states that the Draft EIR should consider the many foreseeable environmental impacts of expanded and intensified industrial land use so that alternatives and mitigation measures can be considered fully. As discussed above, the Draft EIR is a program-level EIR and includes programmatic mitigation to reduce effects of future commercial and industrial development. However, because the City does not know whether commercial or manufacturing industries might choose to develop in the City or the specific sites in which those businesses would choose to locate, a project-specific analysis as requested in the comment cannot be prepared.

Response to Comment 15-4

The comment notes that the Draft EIR’s discussion of hazardous materials is contradictory as the Draft EIR states that industrial and commercial land uses will increase the risk of hazardous

materials impacts, yet concludes that the impacts are less than significant. The comment also states that the Draft EIR relies too heavily on regional, state, and federal regulations. The comment, however, does not suggest any impacts that would not be mitigated by the existing regulations. Although the proposed General Plan would increase the amount of hazardous materials used or stored in the City, their transport, storage, and use would be controlled in the same manner as under current conditions. Control measures to reduce or prevent exposure to hazardous chemical materials currently exist explicitly in federal and State laws to minimize worker and public safety risks. These control measures respond to the materials and wastes handling regulations enforced by county, state, and federal agencies through required reporting procedures and site inspections. Future project sponsors would be required to comply with established control measures.

The comment also states that the Draft EIR acknowledges that commercial and industrial uses pose serious environmental risks, but the EIR still concludes that impacts related to hazardous materials resulting from implementation of the General Plan would be less than significant. While the Draft EIR acknowledges that exposure to hazardous materials can be serious, the EIR determined that existing regulations, which strictly control the handling, transportation, and storage of hazardous materials, as well as provide requirements for siting of land uses and standards, would ensure that the increase in hazardous materials would not substantially increase exposure to the community and surrounding environment. For those reasons, the Draft EIR found that the impact would be less than significant.

Response to Comment 15-5

The comment states that the Draft EIR downplays the role of industrial pollutants relative to other contributing factors in terms of air quality and climate change, noting that more than 60% of the diesel pollution in Richmond comes from ships and commercial vessels and about 20% comes from locomotives. However, these figures represent baseline conditions and are, therefore, already included in the analyses in the Draft EIR. The Draft EIR is a program-level EIR that does not analyze speculative development that could increase the amount of shipping or rail traffic. Because there are not specific known uses on which to impose mitigation measures at this time, the impact associated with the increase in emissions contributing to air quality violations was determined to be significant and unavoidable (see Impacts 3.3-1 and 3.3-2).

The comment also states the Draft EIR defers mitigation by referencing policies that the commenter characterizes as “planning to plan.” However, not only does the City include policies to develop its own guidelines for emissions of new land uses, but would continue to rely on conformance with existing BAAQMD stationary source regulations and requirements and BAAQMD rules and regulations regarding indirect sources (see Mitigation Measure 3.3-2c on Draft EIR page 3.3-25). Thus, the Draft EIR does not rely solely on implementation of policies included in the proposed General Plan. BAAQMD is the primary agency responsible for comprehensive air pollution control in the entire San Francisco Bay Area Air Basin. Compliance with regulations of the BAAQMD, which is responsible for developing rules and regulations, establishing permitting requirements for stationary sources, inspecting emissions sources, and enforcing such measures through educational programs

or fines, represents adequate mitigation in the Draft EIR and does not represent deferral as stated in the comment.

Response to Comment 15-6

The comment states that the Draft EIR could mitigate some of the impacts discussed in previous comments and recommends mitigating actions, some of which include requirements on existing uses. As discussed in previous comments, the General Plan is a vision document to guide future development in the City and is not a regulatory document that places restrictions on existing uses. As discussed above, implementation of the General Plan would not be the cause of the impacts generated by existing uses in the City. Consequently, the Draft EIR need not include mitigation measures for effects of those existing uses, nor is it required to analyze alternatives to reduce the effects of existing uses.

Response to Comment 15-7

The comment states that the Draft EIR should include a transportation needs assessment. The circulation system contained in the General Plan and analyzed in the EIR is based upon the existing and proposed land use patterns in the Land Use and Urban Design Element. Although the intent of the General Plan is to allow for environmentally sensitive development, the timing, location, and intensity of development cannot be determined at this time. It would be premature to assess transportation needs before the uses that would be developed are known. To prepare a transportation needs analysis on the basis of buildout to the maximum intensity of proposed land use designations would provide a worst case scenario, but would not be useful for planning purposes because a scenario in which all land uses would be built to full capacity would be highly unlikely. The General Plan includes policies, described on Draft EIR pages 3.14-40 through 3.14-44, to ensure that the circulation system, including transit and bicycle/pedestrian modes, are suited to the level of development.

Regarding the comment that the Draft EIR “leaves the public and decision-makers in the dark” about transportation priorities and environmentally superior alternatives, it should be noted that the General Plan includes policies addressing transportation priorities and the Draft EIR analyzes the potential impacts of implementing those policies. As a programmatic document, the General Plan EIR does not address the transportation alternatives that may be appropriate for specific development proposals.

Response to Comment 15-8

The comment states the baseline transportation data is too general and too out-of-date. The comment also states that lack of detailed maps of the existing and planned transit improvements presents a barrier to understanding the transit system. Regarding the age of the data, the traffic data is based upon the commute patterns assumed in the General Plan and on information available at the time the Notice of Preparation (NOP) was circulated. As discussed in Response to Comment 28-14, the population data released since publication of the NOP are within less than one percent of the Draft EIR data. As discussed in previous comments, the General Plan EIR is a program-level

EIR, thus the use of general data is appropriate. Similarly, the provision of maps that show improvements to the backbone infrastructure is appropriate for a program EIR; there is currently insufficient detail on the location and intensity of development to determine with any accuracy the improvements that would be depicted in detailed maps.

Response to Comment 15-9

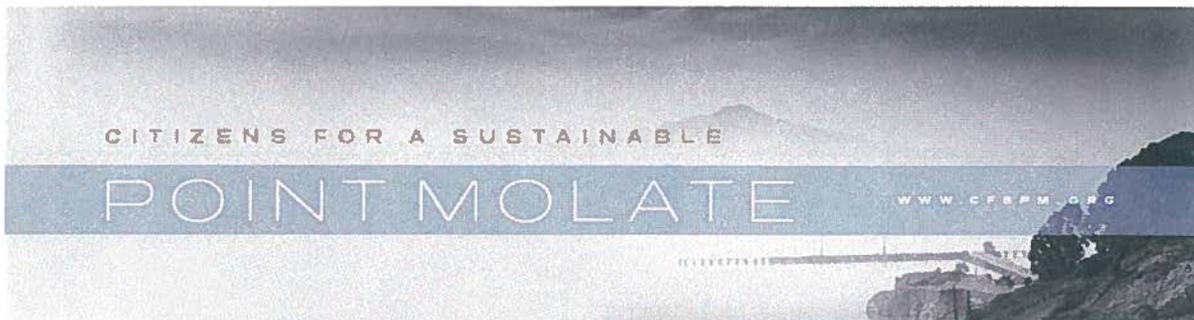
The comment states that the City should include a cumulative health impacts analysis in the Draft EIR, with emphasis on low income and non-white communities in Richmond. The goal of the General Plan is to have new development result in an overall improvement over the existing condition. While certain areas of the City may be exposed to more pollutants than others, a health assessment of the entire City is outside the scope of a program EIR. The Draft EIR does, however, consider health effects that could result from implementation of the General Plan. The Draft EIR acknowledges the presence of industries and businesses that pose public health risks and discusses the substantial regulatory structure already in place to reduce exposure of the public to adverse health effects. These regulations, in addition to the proposed General Plan policies and actions, would ensure that as new development under the proposed General Plan occurs, site-specific effects (those related to a project site or neighboring uses) would be analyzed to ensure sensitive receptors would not be negatively affected by existing hazards. The City would examine proposed non-residential uses to ensure that any hazardous materials used, stored, or handled would comply with existing regulations and would not pose a health risk on neighboring uses (see Impact 3.8-1 on Draft EIR pages 3.8-14 through 3.8-19). In addition, the Draft EIR addresses the potential for exposure to pollutant emissions from new and existing land uses in Impact 3.3-3 on pages 3.3-25 through 3.3-28. Implementation of Mitigation Measure 3.3-3 requires minimum distances between emitters of toxic substances and sensitive receptors, and the preparation of health risk assessments to ensure that receptors are not exposed to harmful levels of toxic air contaminants.

Response to Comment 15-10

The comment notes that implementation of the draft General Plan will increase vehicle trip miles by 50% by 2030, which contributes to significant emission-related impacts. The Draft EIR addresses the effect of increased VMT in Impact 3.3-1 and found that although there are General Plan policies that reduce dependence on single-occupancy vehicles, due to the magnitude of the increase in development that could occur under the General Plan, it cannot be guaranteed that emissions can be reduced to a less-than-significant level. The comment suggests that reducing the number of vehicle trips outside of Richmond should be accomplished through labor and housing policies. The draft General Plan includes a mix of residential and non-residential uses, which would allow residents of Richmond to find employment in the City. An analysis of labor policies is outside the scope of an EIR. However, the reader is referred to the Economic Development Element of the General Plan, which includes strategies to sustain businesses and industries, diversify the economic base, accommodate job growth, and increase access to employment for Richmond residents.

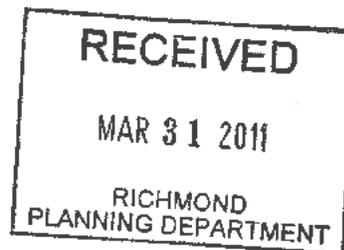
Response to Comment 15-11

The comment states the right to provide comments on the environmental review of the Housing Element once it is completed. The comment is noted. This is not a comment on the adequacy of the analysis contained in the Draft EIR; therefore, the comment is noted without response.



March 31, 2011

Hector Rojas, Associate Planner
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Re: The Draft General Plan and Draft EIR on the General Plan for the City of Richmond

Dear Mr. Rojas,

Citizens for a Sustainable Point Molate, (CFSPM) appreciates the opportunity to comment on the Draft General Plan for the City of Richmond and the Draft EIR for the General Plan. CFSPM is a grass roots organization headquartered in Richmond composed of citizens who advocate for responsible, sustainable land use that will provide social betterment, land stewardship, and community equity at Point Molate.

Our comments are limited to the DEIR. Separate comments on the Draft General Plan and its related elements will be provided via separate letter to the Richmond Planning Division. Areas below in italics are cites from the DEIR and are relied upon for comment provision.

Section 2.0 Project Description – Page 5

General Plan Objectives

The proposed Richmond General Plan objectives address issues related to physical development, growth, and conservation of resources in the City. Richmond’s General Plan expresses the community’s vision and goals for the future. The Plan aims to:

- Present strategies and specific implementing actions to achieve the community’s overarching vision and long-term goals;*
- Establish a basis for determining whether specific development proposals and public projects align with the community’s vision and long-term goals;*

Comment: The Land Use Designations proposed for Point Molate as well as the proposal to designate Point Molate and the San Pablo peninsula as a change area, and to appoint it as a community node are



not in accord with the General Plans objectives and policies, nor do they support the community's vision.

↑ 16-1 (cont.)

Section 2.0 Project Description – Page 8-9

Characteristics of the Proposed General Plan

A preliminary assessment suggests that there are more than 1,200 acres of vacant and underutilized land in Richmond that may be available for infill development.

Richmond's "change areas" are deemed most suitable for a shift in intended use as compared to existing conditions, and may experience significant changes in land use and development character under this General Plan.

16-2

Comment: With 1200 acres of vacant and underutilized land in Richmond and a plan that would create an acres of parkland/capita ratio below the desired threshold, there is no driving need to classify an area –specifically Point Molate and the San Pablo Peninsula from a largely open space utilization today to a change area, particularly when such change of land use designation is in conflict with the SF Bay Plan (BCDC) and Peninsula Open Space Study and recommendations.

Section 2.0 Project Description – Page 25-

Proposed Change Areas

Change Area 13: San Pablo Peninsula Area

The San Pablo Peninsula Area (Figure 2-16) is the easternmost peninsula of the City and includes Point San Pablo and Point Molate. The area is characterized by vacant and underutilized land adjacent to a mix of heavy and light industrial uses, open spaces and the Point San Pablo Yacht Harbor. A significant amount of the area is devoted to parks and open spaces. The overall character of the peninsula is defined by a natural undulating topography. Large groves of eucalyptus trees on steep slopes further contribute to the character of the area. The built environment varies dramatically. Architecturally-distinctive buildings including the historic Winehaven development and the East Brothers Lighthouse add to the overall sense of history in the area. The scale and design of these buildings are in contrast to the industrial tanks on the southwestern end of the peninsula. There is very limited infrastructure and access to this area and the vast open space. The only publicly accessible road to the peninsula is via an off-ramp from Interstate 580 that connects to Western Drive.

16-3

The San Pablo Peninsula Area is envisioned as a new mixed-use neighborhood that takes advantage of its exceptional location and historical resources to enhance the City's economic base and expand open space and recreational opportunities. The City envisions the site recreating the vitality, commerce, and activity reminiscent of its era as a winery and village. Anticipated land uses in this change area are described below.

The former Point Molate Navy Fuel Depot area to be designated as a combination of Business/Light Industrial, Medium-Density Residential, Low-Density Residential, Open Space and Parks and Recreation to reflect the conceptual land uses in the adopted 1997

Point Molate Reuse Plan.

Point San Pablo and the yacht harbor in the north to be designated as Marine and Waterfront Commercial to promote recreational and water-oriented retail and commercial uses.

Comment: The description of the area depicted in figure 2-16 is mostly accurate however despite a correct assessment that the area has little infrastructure and a single road (whose LOS is classified as E at the Western Dr. to San Rafael Bridge on ramp – even without development) the recommended land use for the area is in complete juxtaposition to its current assessment.

↑
16-3
(cont.)

Section 3.0 Environmental Setting and Analysis – Page 1

Environmental Setting, Impact Analysis, and Mitigation

The proposed General Plan EIR is based on the assumption that all policies in the proposed General Plan will be implemented and all development will be consistent with the proposed General Plan Land Use Diagram.

Comment: The proposed Land Use Diagram depicting Land Use Designations for the San Pablo Peninsula and Point Molate could not be implemented under the policies set forth in the proposed General Plan as the proposed Land Use Diagram does not reflect or support the policies as proposed in the draft General Plan.

↑
16-4

Section 3.1 Land Use Consistency and Compatibility – Page

Existing Land Use Plans

Point Molate Reuse Plan

The Point Molate Reuse Plan is a conceptual land use plan adopted in 1997 to guide long-term civilian reuse of the Point Molate Navy Fuel Depot site in Richmond. The plan is intended to expand Richmond’s economic base, regional presence, and recreation opportunities through the creation of a new mixed-use neighborhood. The plan’s overall concept involves retaining and reusing many of the site’s historic buildings and constructing some new buildings while preserving open space areas. The Point Molate area is currently the subject of a joint environmental impact statement/ environmental impact report (EIS/EIR) to address the environmental effects of a proposed 266-acre mixed-use tribal resort and casino project, or alternative use. The EIS/EIR was circulated for public review in July 2009 for a 105-day comment period that ended in October 2009.

Comment: The EIR for the mixed use tribal destination proposal does not reflect the proposed Land Use Designation for Point Molate in the draft General Plan and cannot be applied to land uses as proposed in figure 2-16 and for change area 13. The housing allocation/location and density in option E of the mixed use tribal resort EIR is not consistent with the land use designations proposed in the draft General Plan.

↑
16-5
↓

Section 3.1 Land Use Consistency and Compatibility – Page 8

Conflicts with Existing Plans, Policies, or Regulations

The Point Molate area is identified in the proposed General Plan and is consistent with the Point Molate Reuse Plan and the proposals reviewed in the Point Molate EIR

Comment: As per the previous comment the above declaration is not correct.

↑
16-5
(cont.)

Section 3.4 Biological Resources

Citizens for a Sustainable Point Molate (CFSPM) adopts all comments provided by the East Bay Chapter of the California Native Plant Society on the subject of Biological Resources within the DEIR for the draft General Plan as our own.

16-6

Thank You



Joan Garrett
Director, Policy and Communications

LETTER 16: Citizens for a Sustainable Point Molate, Joan Garrett**Response to Comment 16-1**

The comment refers to the project objectives and notes that designating Point Molate and the San Pablo Peninsula as a change area is not in accord with the General Plan objectives and policies. This is not a comment on the adequacy of the analysis contained in the Draft EIR, but on the draft General Plan. The comment is noted without response.

Response to Comment 16-2

The comment notes that because the General Plan would create a deficiency in the parkland to population ratio, Point Molate and the San Pablo Peninsula should not be changed from an open space land use designation. While the Draft EIR discloses a current deficiency in the parkland ratio (Draft EIR page 3.11-8), as new development occurs, it will be required to provide land or funding for additional parkland at the maximum ratio allowed by the Quimby Act (see Response to Comment 12-1). In addition, there are over 4,300 acres of City, regional, and State parks located in the City of Richmond to serve Richmond residents and other visitors. Considering the availability of these parks, there are adequate park facilities in the City, even with the existing ratio below the three acres-per-1,000-resident goal for City parks.

Response to Comment 16-3

The comment notes that the recommended land use designation for Change Area 13 is in conflict with its current use. The Draft EIR discloses and analyzes the change of land uses within the change areas, thus the change in land use was considered in the Draft EIR.

Response to Comment 16-4

The comment states that the land use designations for Point Molate and the San Pablo Peninsula could not be implemented under the policies set forth in the draft General Plan. The comment does not provide details on how the General Plan policies would prevent development of these properties consistent with the land use designations. No response can be provided.

Response to Comment 16-5

The comment states that the land use designations for Point Molate in the draft General Plan are in conflict with those in the Point Molate Mixed-Use Tribal Destination Resort and Casino Project. At the time of circulation of the Draft EIR for the General Plan, the City had not taken action on the Point Molate Mixed-Use Tribal Destination Resort and Casino Project. However, in April 2011, the Point Molate Mixed-Use Tribal Destination Resort and Casino Project was considered by the City Council. At that time, the EIR was certified, but no project was approved. Instead, the Council voted to not pursue a casino alternative and provided the developer the opportunity to exercise the Land Disposition Agreement (LDA) to develop a new non-casino alternative. No alternative development has been presented to the City for consideration. Because no project has been approved, there

would be no inconsistency with the General Plan and any assumption on the type of project that would be proposed would be speculative.

It should be noted that the Point Molate Mixed-Use Tribal Destination Resort and Casino Project, if approved, would have been under the control of the Guidiville Band of Pomo Indians of the Guidiville Rancheria. Consequently, the project would have been outside of the City's jurisdiction and was not considered part of the General Plan. However, as discussed on page 4-9 of the Draft EIR, the Point Molate Mixed-Use Tribal Destination Resort and Casino Project was considered a reasonably foreseeable project in the future and was considered in the cumulative context.

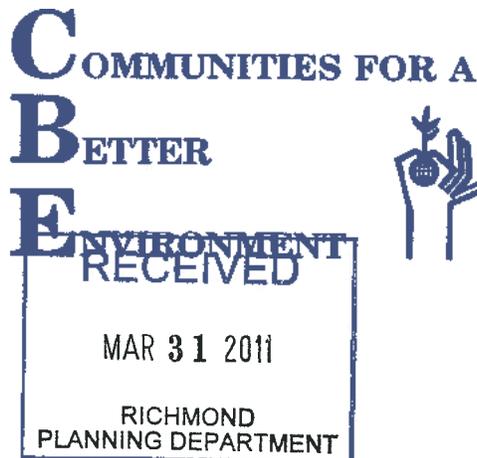
Response to Comment 16-6

Please see Responses to Comments 3-1 through 3-11 for responses to the California Native Plant Society.

31 March 2011

City of Richmond
Planning Division
450 Civic Center Plaza
Richmond, CA 94804-1630

Attention: Hector Rojas, Associate Planner
Email: (hector_rojas@ci.richmond.ca.us)



**Re: Supplemental comments of Communities for a Better Environment (CBE),
General Plan Update Draft Environmental Impact Report (PLN 09-137),
Energy, Climate and Air Quality Review**

Dear Mr. Rojas:

Communities for a Better Environment (“CBE”) seeks energy and climate policies that cut pollutant emissions to prevent potentially catastrophic climate impacts and serious ongoing toxic health impacts locally, thereby creating sustainable “green” jobs locally. CBE asks the City of Richmond to develop and adopt land use policies that support climate justice and ensure that pollution trading will not be used to allow continued or increased emissions from industrial polluters in Richmond.

These comments supplement CBE’s previously submitted detailed technical assessment (“Expert Report”¹) and address deficiencies in the Draft Environmental Impact Report for the proposed General Plan Update (“DEIR”) under the California Environmental Quality Act (“CEQA”). Our comments are focused on the DEIR information and analysis with respect to the Energy and Climate Element of the proposed General Plan Update.

1. Environmental Setting

An Environmental Impact Report (“EIR”) must describe the environmental setting of the project to be analyzed. §§ 2100, subd. (b), 21151; Cal. Code Regs., tit. 14 (“CEQA Guidelines”), § 15125. In this case that includes describing an energy problem.

The proposed General Plan Update (“Project”) proposes to establish City energy and climate protection policies from now until perhaps 2030 through the addition of a new Energy and Climate Element to the General Plan. This will require decisions about the City’s role in the enormous task of replacing fossil fuels with sustainable energy—a task

¹ Expert Report of Greg Karras, Senior Scientist, Communities for a Better Environment (CBE), regarding: The Draft Environmental Impact Report for the Proposed General Plan Update (PLN09-137). Dated 18 March 2011. Submitted 21 March 2011.

17-1

**CBE’s Supplemental Comments
 General Plan Update DEIR (PLN09-137)
 31 March 2011**

that must be done to make the deep cuts in greenhouse gas (“GHG”) emissions needed to avoid potentially catastrophic climate disruption.² Making those decisions wisely will require weighing the enormous economic development and jobs potential of this energy transition³ that could be realized in Richmond, if this transition is achieved here. Making the decisions wisely will also require weighing the reasonably foreseeable potential that, without a strong local policy, under the State’s plan to allow pollution trading,⁴ GHG copollutant emissions could continue or increase locally while the economic and jobs benefits of building the new energy system accrue elsewhere.

17-1
 (cont.)

These considerations are especially important for Richmond. Here, the largest oil refinery in northern California⁵ emitted more GHG in 2008 than any other industrial facility in California.⁶ Exposures to GHG copollutants that are linked to the Richmond refinery and port reach disparately high, health-threatening levels⁷ while unemployment remains worse than even the dismal current statewide average.

This crucial context for environmental analysis of the Project, and for meaningful public participation in the momentous energy and climate decisions the City is now considering, could have been disclosed in the DEIR’s environmental setting description but was not.

2. Project Description

An EIR must describe the proposed project and its environmental setting, state the project objectives, identify and analyze its significant effects on the environment, state how those impacts can be mitigated or avoided, and identify and analyze alternatives to the project. CEQA Guidelines, §§ 15124, 15125, 15126, 15130. An EIR “must present information in such a manner that the foreseeable impacts of pursuing the project can actually be understood and weighed.” *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449–450 (*Vineyard Area Citizens*). A complete project description must address all reasonably foreseeable environmental consequences of the project. *Vineyard Area Citizens*, 40 Cal.4th at 428. “An accurate, stable and finite project description is the *sine qua non* of an informative and legally adequate EIR.’ However, ‘a curtailed, enigmatic or unstable project description draws a red herring across the path of public input.’” *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th at 655 (quoting *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199, 197–98).

17-2

² See Expert Report at 2–5 and attachments 2, 10, 11, 14, and 17–21.

³ See Expert Report at 2, 11, and attachments 14 and 24.

⁴ See Expert Report at 4–5 and Att. 15, pp. 22, 23 (California ARB’s “cap and trade” scheme allows industrial facilities to continue or increase emissions locally by obtaining emission credits representing promises to reduce emissions elsewhere; emissions credits are *expected* to flow from other sectors to the oil sector according to ARB’s own technical advisors).

⁵ Expert Report, Attachment 29.

⁶ Expert Report, Attachment 5.

⁷ Expert Report at 6, 10, Attachment 12, Attachment 23.

**CBE’s Supplemental Comments
 General Plan Update DEIR (PLN09-137)
 31 March 2011**

Here, the first goal of the Project’s Energy and Climate Element—Goal EC1—is to “meet or exceed state requirements for reductions in greenhouse gas emissions.” A City Council Resolution and the City’s prior analysis for the Energy and Climate Element clarify that achieving this Project goal requires cutting GHG emissions back to the 1990 emissions rate by 2020 and 80% below the 1990 rate by 2050.⁸ Since emissions from industrial/commercial sources are now larger than these emission targets (see Expert Report at 2–3), it is a certainty that cuts in these large industrial/commercial emissions will be necessary to achieve this goal in Richmond.

However, the DEIR does not quantify the emission reduction needed to achieve this Project goal, does not disclose or address the need for emission reductions from large industrial/commercial sources to achieve this goal, and does not actually propose to make these emission reductions. It further omits readily available information showing that these industrial emissions are projected to increase, and that other levels of government actually plan to give large industrial emitters the option to continue or increase emissions locally under the State Air Resources Board’s “cap and trade” pollution trading scheme (Expert Report at 4–8).⁹ Moreover, the DEIR does not describe the inevitable emission of GHG together with toxic and smog-forming copollutants¹⁰ that currently impact air quality in Richmond adversely.

As a result of these omissions the DEIR does not inform the public and decision makers about whether the proposed Project would achieve its emission goal *in Richmond*, the feasible options for achieving this emission reduction goal locally, or the likelihood of increased industrial air pollution impacts from the Project locally.

Because its Project description does not reveal whether not major industrial emissions that pose local air quality and health risks could decrease, continue, or increase in Richmond, the DEIR does not give the public enough information to understand and weigh the environmental consequences of the Project. The DEIR thus appears to be deficient as an informational document under CEQA.

↑
 17-2
 (cont.)

⁸ Resolution 108–8; City of Richmond 2005 Greenhouse Gas Emissions Inventory; Building a Framework for a Climate Action Plan in the City of Richmond, Spring 2010.

⁹ The City can and should act to ensure against this perverse outcome. The DEIR’s single unsupported reference suggesting that the City “has no jurisdictional control over” industrial and commercial operations that cause the majority of emissions from within the City (DEIR at 3.6–7) is clearly incorrect in light of the City’s continuing practice of using its land use authority to supplement industrial emissions control actions by other levels of government. See Expert Report at 4, 11 for examples of City actions. See also Expert Report at 11–13 for examples of feasible measures to reduce emissions, including a requirement that could ensure that pollution trading will not cause increased emissions locally and that benefits of regional, state and federal emission requirements applied in Richmond will accrue in Richmond.

¹⁰ Toxic and smog-forming combustion products emit with CO₂ so their emissions can be expected to increase or decrease with GHG emissions locally. See Expert Report at 6.

CBE's Supplemental Comments
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3. Environmental impact analysis

Environmental impact analysis is the heart of an EIR under CEQA. An EIR must identify and analyze the significant effects of a project on the environment, state how those impacts can be mitigated or avoided, and identify and analyze alternatives to the project. CEQA Guidelines, §§ 15126, 15126.2, 15126.4, 15126.6. It must analyze both the direct and indirect impacts of the project. CEQA Guidelines, § 15162.2(a). It must assess the cumulative impacts of a project with similar impacts of related projects. CEQA Guidelines, § 15130 (a)(1),(2). The EIR “shall describe feasible measures which could minimize significant adverse impacts.” CEQA Guidelines, § 15126.4(a)(1). This analysis should be based on scientific and factual data to the extent possible. CEQA Guidelines, see esp. §§ 15064, 15065, 15126.4 (c), 15130. The EIR must present this information in a manner that allows foreseeable impacts to be understood and weighed. *Vineyard Area Citizens*, 40 Cal.4th at 412, 449–450.

The Project as proposed would facilitate and support the continuation or growth of commercial/industrial land use activities that dominate GHG emissions in Richmond. The City’s prior analysis and other substantial evidence shows that emissions from these activities, including but not limited to refinery emissions that dominate emissions from all commercial/industrial sources, can be expected to increase unless controlled.¹¹ Current emissions from commercial/industrial activities at the Richmond refinery and port are linked to health-threatening GHG copollutant exposures in Richmond.¹²

However, the DEIR drastically underestimates the severity of significant potential air quality and climate impacts by omitting potential industrial emissions from its analysis.¹³ Having omitted these impacts of industrial emissions from its analysis, the DEIR then fails to identify any industrial emission control requirements¹⁴ despite readily available evidence that such measures could avoid these impacts while helping to meet the Project’s emission goal in Richmond.¹⁵ Then, having failed to assess these feasible measures, or any industrial emissions measure, the DEIR erroneously concludes that these impacts are unavoidable without citing any evidence to support that conclusion.¹⁶

¹¹ City of Richmond 2005 Greenhouse Gas Emissions Inventory at 19; Building a Framework for a Climate Action Plan in the City of Richmond, Spring 2010 at 29, 65; Expert Report at 6–8. See also Expert Report at 7–8, 13 (total emissions can be expected to increase or decrease with their dominant cause, industrial emissions, in Richmond).

¹² Expert Report at 6, 10, Attachment 12, and Attachment 23.

¹³ Expert Report at 6–10 (potential direct emissions of GHG copollutants that could cause total citywide emissions to increase by 45–108% omitted from air quality analysis; potential indirect GHG emissions associated with Richmond refinery that could be four times citywide emissions disclosed by DEIR omitted from climate analysis).

¹⁴ See DEIR at Table ES-2, pages 5.3 and 5.4.

¹⁵ See Expert Report at 11–13. The ability of these feasible measures to better achieve the Project’s GHG emission goal further supports the finding that they are reasonable.

¹⁶ DEIR at 3.3-17, 3.3-21, 3.3-24, 3.6-14, 3.6-28, 4-1– 4-3; see also Expert Report at 13 (feasible measures could avoid potential air quality and climate impacts).

17-3

**CBE’s Supplemental Comments
General Plan Update DEIR (PLN09-137)
31 March 2011**

It cannot be appropriate to accept the conclusion that significant potential air quality impacts of the Project are unavoidable while ignoring measures that could avoid them.

Because its environmental impact analysis omits information showing that significant impacts are much more severe, ignores feasible mitigation and reasonable alternatives that could lessen or avoid those impacts, and erroneously concludes without any evidence that those impacts are unavoidable, the DEIR appears to be deficient.



17-3
(cont.)

Conclusion

CBE believes that the DEIR should be revised to address the deficiencies described in our comments, and that after it is revised the DEIR may need to be recirculated. We urge the City to consider the feasible measures identified in our detailed technical assessment, and the “integrated plan” and “major industrial/commercial construction/reconstruction requirements” outlined therein (Expert Report at 11–13), as the City considers possible solutions to these problems. We hope to discuss this feasible solution as well as City officials’ ideas for actions to achieve the Project’s emissions reduction goal in order to find the best path toward climate justice for Richmond together.



17-4

In Health,

SS

Ana Orozco
Community Organizer

SS

Jessica Tovar
Community Organizer

SS

Greg Karras
Senior Scientist

LETTER 17: Communities for a Better Environment, Ana Orozco

Response to Comment 17-1

The comment states that the Draft EIR needs to include a discussion of greenhouse gas emissions emitted by industrial facilities, specifically the Chevron Richmond Refinery. Please see Responses to Comments 13-1 through 13-10 for a discussion of industrial emissions from existing facilities. The comment also expresses the opinion that transition from fossil fuels could result in economic and job benefits to the City. As discussed in Responses to Comments 13-1 through 13-10, the General Plan contains numerous policies to reduce energy demands, including those related to fossil fuel use; however, the transition from fossil fuels, including those related to existing operations at the Chevron Refinery, are not within the scope of the EIR.

Response to Comment 17-2

The comment states that the Draft EIR does not discuss the need for emission reductions from large industrial sources to achieve the goal of cutting back greenhouse gas emissions to the 1990 level by 2020 and 80% below the 1990 rate by 2050. As discussed in Responses to Comments 13-1 through 13-10, emissions from existing facilities are assumed as part of the baseline for the City. As a policy document for future development activities in the City, the General Plan is not the appropriate mechanism for regulation of existing facilities.

Response to Comment 17-3

The comment notes that the draft General Plan would facilitate and support the continuation and growth of commercial and industrial uses that generate greenhouse gas emissions in Richmond. The comment also states that the Draft EIR underestimates the severity of significant potential air quality and climate impacts by omitting potential industrial emissions from its analysis. The Draft EIR is a program-level EIR and, therefore, does not speculate on what type of development may occur in the future. Subsequent projects, including those related to any changes at the Chevron Richmond Refinery, will be reviewed by the City on a project-specific basis. Based on the details and specifics of the project, the City would determine the appropriate environmental review and, at that time, determine the extent to which the project is consistent with General Plan policies, and include mitigation measures, as appropriate to reduce emissions. However, because specific projects are not included in the General Plan and are not known at this time, emissions from new sources cannot be quantified at this time.

Response to Comment 17-4

The comment states that the Draft EIR should be revised to include industrial emissions discussions and may need to be recirculated. As discussed in the above responses and Responses to Comments 13-1 through 13-10, the Draft EIR considers the existing operations at the refinery as part of the baseline, and thus, those emission sources are not effects that would be caused by implementation of the General Plan. Consequently, no additional analysis regarding these existing sources needs to be included in the EIR.



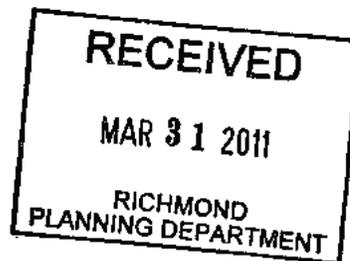
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March 31, 2011

VIA HAND DELIVERY, E-MAIL AND U.S. MAIL

Hector Rojas, Associate Planner
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Planning and Building Services
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Richmond, CA 94804-1630
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Re: Comments on the Richmond General Plan Update DEIR

Dear Mr. Rojas:

On behalf of Richmond landowners Murray Parkway Properties, LLC ("MPP") and Bay Area Wetlands, LLC ("BAW"), we submit the following comments with respect to the Draft Environmental Impact Report ("DEIR") for the Richmond 2030 General Plan Update ("2030 General Plan"). Moreover, by this reference, this letter incorporates all of the comments on the proposed 2030 General Plan, its proposed redesignation of the so-called "Change Area 12" planning area, and the DEIR set forth in that certain letter to you, dated March 31, 2011, from the SSL Law Firm, LLP, on behalf of JHS Properties and Richmond Development Company LLC, attached as Exhibit A, as if such comments were fully set forth herein.

18-1

BAW and MPP collectively own approximately 100 acres of real property located in the northwest industrial area of the City (APN Nos. 408-100-025, 408-100-027, 408-100-028, 408-100-029, 408-100-030, 408-100-033) (collectively, the "Property"). Approximately 80 acres of the Property are owned by MPP and approximately 20 acres are owned by BAW. The Property is located within the boundaries of the current North Richmond Shoreline Specific Plan (the "Specific Plan") and within the Hensley Addition portion of Redevelopment Area 8A, established in 1979/80.

The 2030 General Plan proposes to downzone the Property from its current Industrial/Office Flex land use designation and underlying M-1 Light Industrial zoning to an open space/parks and recreation land use designation. The 2030 General Plan also proposes to rescind the Specific Plan. This proposed action would destroy all economically viable use of the Property and substantially interfere with MPP's and BAW's investment backed expectations, thus causing a severe adverse economic impact and exposing the City to significant damages under a takings claim pursuant to the doctrine of inverse condemnation. For the reasons set forth below, the DEIR does not provide adequate analysis of this significant land use change and violates the California Environmental Quality Act (Pub. Res. Code § 21000 *et seq.*) ("CEQA").

18-2

Hector Rojas, Associate Planner
 March 31, 2011
 Page 2

I. History of the Property

The 20-acre portion of the Property owned by BAW's was originally part of a larger 238-acre parcel purchased by Don Carr in 1999 (the "Carr Property"). Prior to purchase of the Carr Property, Don Carr and/or Stan Davis (then, the Carr Property manager), doing business as BAW, met with the Planning Director to evaluate the City's views with respect to the potential development of the Carr Property. At that time, the Planning Director indicated that portions of the Carr Property could be developed with industrial uses and the balance could be used for mitigation banking. With this in mind, BAW pursued City approval of the Edgewater Industrial Park project on 40 acres of the Carr Property, while simultaneously working to establish a mitigation bank on the balance of the Carr Property. A final environmental impact report for the Edgewater Industrial Park project was withdrawn in 2002 when it became clear that the project was not going to be supported by the City. In 2005, BAW applied to the City for approvals to develop a 2,000 residential-unit on the Carr Property known as Parkway Transit Village.

18-3

In September 2005, the City issued a notice of preparation for the Parkway Transit Village Environmental Impact Report. Around the same time, the East Bay Regional Park District acted to condemn all but a 20-acre portion of the Carr Property for open space uses. The City requested that these 20 acres be spared from condemnation because they were part Redevelopment Area A8 and the Park District agreed. The Park District did, however, include Rheem Creek as part of the condemnation to frustrate BAW's attempt to widen it to convey 100-year flood in conformance with the Contra Costa County Flood Control District's requirements. By taking Rheem Creek, development of the 20-acre parcel would require raising the site one to two feet above the 100-year flood level. Nevertheless, the Park District did grant BAW a 60' wide floating roadway easement to facilitate future urban use of the 20-acre parcel.

The MPP land has a long history of industrial development. Mass Chemical Company purchased the land in 1956 and began manufacturing phosphoric acid in 1958. The facility was subsequently owned by Victor Chemical Company through early 1960s, and then by Stauffer Chemical Company in 1963. In 1988, Rhone-Poulenc purchased the facility from Stauffer and subsequently transferred ownership to Rhodia. The manufacturing facility ceased operations in 1988 and was dismantled between 1988 and 1989. During the facility's operative years, the land contained a phosphoric acid production unit, a chlorinated trisodium phosphate production unit, and a polyphosphoric acid production unit. In the 1990's, the property was subdivided to accommodate the Richmond Parkway. In the late 1990's, a purchase and sale agreement was entered into by MPP and Rhodia. By 2004, all 80 acres had been transferred into MPP's ownership. Over the past few years, MPP worked with the City to aid the completion of the Bay Trail by accommodating the widening of Goodrick Avenue into MPP's property.

II. The 2030 General Plan Mischaracterizes the Property as Wetlands and Suitable Habitat

The 2030 General Plan inaccurately describes and maps some or all of the Property as marsh-lands that are important habitat for endangered plant and wildlife species. This inaccurate mapping started with "conceptual" mapping that appeared in the 1993 Specific Plan, which document acknowledged that its maps were imprecise and called for "precise delineations" to be

18-4

Hector Rojas, Associate Planner
 March 31, 2011
 Page 3

conducted to cure the inaccuracies. Rather than correct the inaccurate Specific Plan maps, however, the City has carried them over to the 1994 General Plan and, now, the 2030 General Plan. This inaccuracy persists despite the fact that the City has repeatedly been provided with substantial evidence in the form of Army Corps of Engineers wetland delineations confirming that the vast majority of those portions of Change Area 12 designated for industrial use is not wetlands. As explained below, a substantial majority of the Property is not wetlands and it is not suitable habitat for special status species. It would appear that many assumptions of the composition of the subject properties are derived from these inaccurate maps. BAW and MPP hereby demand that the City revise the 2030 General Plan and DEIR to accurately reflect the Property's true environmental condition.

On November 29, 2009, the Army Corps of Engineers, San Francisco District ("ACOE"), issued a jurisdictional delineation for MPP's portion of the Property, attached hereto as Exhibit B. As demonstrated by the delineation, only 4.02 acres of 55.6 acres of MPP's property located north of Richmond Parkway qualify as jurisdictional wetlands. No wetlands occur on MPP's property located south of Richmond Parkway. As demonstrated by the attached letter, the ACOE's determination is based on the current conditions on the site as verified during a site inspection performed by ACOE staff on March 12, 2009. Approximately 2 acres of BAW's portion of the Property contain jurisdictional wetlands, but the remaining 94.6-acres (or 69.6 acres north of Richmond Parkway) of our client's property in "Change Area 12" is developable land. This fact must be reflected in the 2030 General Plan and DEIR.

Similarly, the 2030 General Plan and DEIR must be revised to reflect the fact that the Property is not suitable habitat for special status species. In December 2010, Olberding Environmental, Inc. conducted a pre-construction survey of MPP's portion of the Property, as reported in the attached Exhibit C (the "Survey Report"). This survey was conducted to determine the presence or absence of special status plants and animals, including, but not limited to, California red-legged frog, salt marsh harvest mouse, Alameda whipsnake, burrowing owl, northern harrier, short eared owl, California black rail, California clapper rail, pallid Manzanita, soft bird's beak, Loma Preita hoita, and Santa Cruz tarplant.

As explained in the attached Survey Report, based on the habitat assessment of the MPP portion of the Property, the following conclusions were made:

- California red legged frog is presumed absent from the Property based on the lack of suitable habitat and lack of recent occurrences;
- No deep pools occur on the site and the Property lacks suitable refuge habitat in the form of small mammal burrows, precluding suitable habitat for burrowing owl;
- No pickleweed, suitable habitat for the salt marsh harvest mouse, occurs on the Property';

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 (cont.)

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- Habitat does not occur on the Property for the Alameda whipsnake and existing development and highways to the east of the Property acts as obstacles to migration for this species;
- Habitat does not occur on the Property for the California black rail and California clapper rail;
- Regular grazing of the site precludes the use of the Property for northern harrier and short-eared owl;
- None of the special status plant species are expected to occur on the site based on the lack of suitable habitat, soil conditions, and regular grazing disturbance;
- No special status species currently occur on the Property; and
- No tidal marsh occurs on the Property.

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 (cont.)

In short, the Survey Report confirms that the Property is not suitable habitat for any special status species and is not appropriately designated for wildlife conservation purposes. Accordingly, BAW and MPP hereby demand that the City revise the DEIR and 2030 General Plan to reflect the fact that the Property is disturbed land that does not provide any habitat value and is more suitable for urban use than open space use.

The 2030 General Plan also inaccurately states that the Property lacks infrastructure. This is an outright fabrication. A sewer line runs through the Property, power extends to the Property via PG&E, water lines extend to nearby Goodrick Avenue, which road also provides convenient access to the Property. Accordingly, the 2030 General Plan and DEIR must be revised to reflect these facts.

Finally, the 2030 General Plan's maps of Change Area 12 and its written description of Change Area 12 are inconsistent. For example, the text of the 2030 General Plan (as well as the DEIR) describes Change Area 12 as being located "south of Point Pinole Regional Park, west of Parchester Village and between San Pablo Bay and the Richmond Parkway." DEIR at p. 2-25; *see also* 2030 General Plan at p. 3.37 and figure 3.10. According to this written description (as well as figure 3.10 of the 2030 General Plan), 55.6 acres of the MPP property is located within Change Area 12. Map 3.14 of the 2030 General Plan and DEIR Figure 2-15, however, show that 80 acres of the MPP property is located within Change Area 12. Moreover, it appears that the City has changed the zoning of that portion of the MPP property located south of Richmond Parkway from M-3 Heavy Industrial to Business/Light Industrial, even though this portion of the MPP has been excluded from the DEIR's and 2030 General Plan's written description of Change Area 12. All of these inconsistencies between the proposed 2030 General Plan, the DEIR and the zoning map must be clarified.

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III. Comments on the DEIR

In order to comply with CEQA, the DEIR must provide a good faith, reasoned analysis of the 2030 General Plan proposal, including identifying the significant, adverse impacts of the 2030 General Plan and the measures required to avoid or mitigate those impacts. The DEIR must do the following: clearly describe the project, consider all relevant data, analyze the full range of potential impacts, support its analysis with substantial evidence, present that evidence in an accurate and transparent manner, and consider a reasonable range of project alternatives. The analysis must be comprehensive and accessible, so that decision-makers and the public are provided a meaningful opportunity to understand and comment on the impacts of the 2030 General Plan and the feasible means to avoid or mitigate those impacts.

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Identification of the significant environmental effects of a proposed project is one of the primary purposes of CEQA and is necessary to implement CEQA's stated public policy that an agency should not approve a project if there are feasible mitigation measures or project alternatives available to reduce or avoid significant environmental impacts. Pub. Res. Code §§ 21002, 21002.1(a). An EIR must include a sufficient degree of analysis to provide decision-makers with the information needed to make an intelligent judgment concerning a project's environmental impacts. CEQA Guidelines § 15151; *Napa Citizens for Honest Gov't v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 256.

Instead of providing the good faith analysis required by CEQA, the DEIR engages in a result-oriented approach, designing its assumptions, methodologies and analysis in a way that avoids the identification of the full scope of the project's potentially significant impacts. This manipulation of data and analysis misleads readers and conceals impacts, as is evident throughout the document, as explained below.

As a result of the misleading or absent assumptions and analysis contained in the DEIR, decision-makers and the public are denied a meaningful opportunity to understand and comment on the true impacts of the 2030 General Plan and feasible means of avoiding or mitigating those impacts. Ultimately, the City of Richmond will suffer significant adverse environmental impacts, and no one will benefit from the concealment of those impacts in the DEIR.

While we are cognizant of the importance of the 2030 General Plan to Richmond, the City must comply with CEQA. We submit the following comments on the DEIR, and hereby request that the DEIR be revised to address the inadequacies detailed herein, and recirculated for meaningful public comment. The revised DEIR must adequately identify the significant environmental effects of the 2030 General Plan and identify feasible measures to avoid or mitigate those impacts.

A. The DEIR violates CEQA because it does not analyze the environmental effects of "full buildout" of the 2030 General Plan.

When an environmental impact report considers the effects of a general plan update or amendment, the EIR's analysis "must necessarily include a consideration of the larger project, i.e., the future development permitted by the amendment." *City of Redlands v. County of San Bernardino*

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(2002) 96 Cal.App.4th 398, 409. "Not only does CEQA apply to revisions or amendments to an agency's general plan, but CEQA reaches beyond the mere changes in the language in the agency's policy to the ultimate consequences of such changes to the physical environment." *Id.* CEQA requires the DEIR to disclose and consider the full extent of growth permitted by the 2030 General Plan, and to fully quantify and analyze the potential significant effects of that growth. *See* CEQA Guidelines §§ 15126, 15358(a)(1), (a)(2).

The DEIR is fundamentally flawed because it fails to fully disclose and evaluate the environmental effects of the buildout scenario permitted under the 2030 General Plan. Instead, the DEIR expressly limits its analysis to a development scenario based on estimated population and job growth rates far lower than could otherwise be accommodated by full buildout. DEIR at p. 2-40. Although the DEIR never discloses the exact development capacity of the 2030 General Plan, it acknowledges (without any meaningful analysis) that full buildout "would be substantially more intense" than the development scenario assumed by the DEIR, and that resulting impacts "would be substantially greater than analyzed" in the DEIR. *See, e.g.*, DEIR at p. 3.6-29. As a result, *all* of the DEIR's conclusions are fatally flawed and unsupported by substantial evidence. To permit the meaningful opportunity for public comment that CEQA requires, the DEIR's entire analysis must be supplemented to account for the full level of development permitted under the 2030 General Plan and must disclose all related environmental effects. Once revised, the DEIR must be recirculated for additional public review and comment, as discussed below.

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 (cont.)

B. The DEIR fails to provide a meaningful analysis of the 2030 General Plan's potentially significant air quality impacts.

For the following reasons, the DEIR's analysis of the project's potentially significant air quality impacts does not comply with the requirements of CEQA:

1. The DEIR's conclusion that the project would have significant and unavoidable air quality impacts because it would conflict with or obstruct implementation of a clean air plan is not supported by substantial evidence.

According to the Bay Area Air Quality Management District's ("BAAQMD") California Environmental Quality Act Air Quality Guidelines (the "BAAQMD Guidelines"), in order for the project to be considered less than significant with respect to the emission of criteria and precursor air pollutants, the DEIR must determine whether the project is consistent with BAAQMD's 2010 Bay Area Clean Air Plan (the "BAAQMD CAP"). The BAAQMD Guidelines further require the DEIR to determine whether the 2030 General Plan's total projected vehicle miles traveled ("VMT") is less than or equal to its projected population increase. The DEIR may conclude that the project's impacts related to criteria and precursor pollutants is less than significant only if both thresholds of significance are satisfied. The DEIR concludes that that project will have significant and unavoidable impacts related to criteria and precursor pollutants on the basis that the project will both conflict with the BAAQMD CAP and will create VMT in excess of projected population increase. Neither determination, however, is supported by substantial evidence, as required by CEQA.

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Per the BAAQMD Guidelines, to determine whether the project is consistent with the BAAQMD CAP, the DEIR must ascertain whether (a) the project supports the primary goals of the BAAQMD CAP, (b) the project includes applicable control measures from the BAAQMD CAP, and (c) whether the project would disrupt or hinder implementation of any such control measures. The DEIR completely fails to follow this required methodology. First, rather than evaluate the project's consistency with the 2010 BAAQMD CAP, the DEIR compares the project to BAAQMD's outdated 2009 clean air plan. DEIR at p. 3.3-17. Second, the DEIR does not evaluate whether the project supports the primary goals of the BAAQMD CAP, which are (i) the attainment of air quality standards, (ii) the reduction of population exposure and protecting health in the Bay Area, and (iii) the reduction of greenhouse gas emissions. BAAQMD Guidelines at p. 9-2. Third, the DEIR does not evaluate whether the project includes applicable control measures from the BAAQMD CAP or whether the project will disrupt or hinder implementation of such measures, as required by the BAAQMD Guidelines. *Id.* Accordingly, the DEIR's conclusion that the project will conflict with BAAQMD's 2009 clean air plan fails to disclose the project's full potential to conflict with the current BAAQMD CAP and its finding of a significant and unavoidable impact is thus unsupported by substantial evidence.

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Similarly, there is no substantial evidence to support the DEIR's conclusion that the project's criteria and precursor air pollution impacts are significant and unavoidable on the basis that the projected VMT will exceed projected population growth. Rather than analyze the population growth rate that can be accommodated by buildout of the 2030 General Plan, as required by CEQA, the DEIR instead assumes a lower annual growth rate of 13 percent. Although the DEIR concludes that its assumed growth rate would exceed projected VMT, this conclusion is not based on project buildout. As a result, the DEIR understates the full extent of this purported significant and unavoidable effect and deprives the public a meaningful opportunity to comment thereon. Under CEQA, a lead agency cannot simply conclude that there are overriding considerations to justify a significant and unavoidable effect without fully analyzing such effect. *See Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371. Thus, the DEIR's incomplete analysis of this significant and unavoidable effect does not comply with the requirements of CEQA.

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2. The DEIR's conclusion that the project would result in a significant and unavoidable air quality impact because it would contribute substantially to an existing or projected air quality violation is conclusory and is not supported by substantial evidence.

According to the DEIR, the project will result in a significant and unavoidable environmental effect because it contributes substantially to an existing or projected air quality violation. DEIR at p. 3.3-21. Yet, in making this determination, the DEIR fails to describe which applicable air quality standards will be violated by the project, fails to identify the offending pollutant(s), and does not quantify the extent to which the project will cause the offending pollutant(s) to exceed applicable standards. Indeed, the DEIR completely fails to quantify and disclose existing and projected levels of citywide emissions of PM₁₀, PM_{2.5}, NO_x, and ROG, leaving the public and decision-makers in the dark with respect to the project's potential to create

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significant impacts related to these air pollutants. This lack of relevant information deprives the public a meaningful opportunity to comment on the full scope of the project's environmental effects and deprives decision-makers the ability to make an intelligent and informed judgment concerning the project's air quality impacts. It also demonstrates that the DEIR's determination that the project's operational air quality impacts are significant and avoidable is unsupported by substantial evidence. As noted above, CEQA does not permit the City to determine that a project impact is significant and unavoidable without first fully analyzing such effect.

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 (cont.)

3. The DEIR analysis of toxic air contaminants fails to apply the applicable threshold of significance, is conclusory and is not supported by substantial evidence.

BAAQMD's Community Air Risk Evaluation ("CARE") program was initiated in 2004 to evaluate and reduce cancer and non-cancer health risks associated with exposures to outdoor toxic air contaminants ("TACs") in the Bay Area. Per this program, BAAQMD has identified the City as one of the Bay Area's six priority communities, defined by BAAQMD as those regional communities that have a combination of highest exposure of sensitive populations to toxic air contaminants, have significant TAC emitting sources, are nearby low income populations and are bounded by major roadways. Despite the City's status as a CARE priority community, the DEIR concludes that the project will have a less than significant impact related to TAC emissions, a determination that is not supported by substantial evidence.

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The DEIR's discussion of the project's potential TAC impacts is notable for its complete lack of analysis. The DEIR does not establish a baseline of existing TAC emissions against which to measure project impacts and it does not disclose the amount of TAC emissions that the project will generate. DEIR at pp. 3.3-25 through 3.3-26. The DEIR also fails to identify the location of TAC hot spots within the project planning area. The DEIR simply determines, without any analysis, that the project will not have a significant TAC impact because it will comply with BAAQMD's applicable threshold of significance for plan-level TAC impacts. *Id.* This conclusory determination is not only unsupported by substantial evidence, it is in error.

The applicable BAAQMD threshold of significance for plan-level TAC impacts provides that a general plan will not result in a significant effect related to TAC emissions if the general plan includes (i) overlay zones around existing and planned sources of TACs, and (ii) overlay zones of at least 500 feet from all freeways and high volume roads (defined by the BAAQMD Guidelines as roadways that exceed 10,000 trips per day). BAAQMD Guidelines at p. 2-7. Development within such overlay zones are presumed to have significant TAC impacts that expose sensitive receptors to cancer and other health risks. The BAAQMD Guidelines are clear that the required overlay zones must be included in the proposed general plan policies, land use maps and implementing ordinance in order to avoid a significant TAC impact finding. BAAQMD Guidelines at p. 9-6. The project's proposed 2030 General Plan policies do not refer to the required overlay zones, however, and none are depicted on its land use maps. Thus, the DEIR does not comply with the applicable TAC threshold, and its conclusion that project TAC impacts are less than significant is not supported by substantial evidence.



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Rather than include the required overlay zones in the 2030 General Plan and analyze related TAC impacts prior project approval, the DEIR merely imposes a mitigation requirement that TAC overlay zones be incorporated into the general plan at some unspecified future date. DEIR at p. 9-7. By deferring analysis of TAC impacts in this manner, the DEIR fails to disclose the location of the City's significant TAC emitters and those areas of the City where children, the elderly and other sensitive receptors will be exposed to cancer and other health risks. The DEIR also fails to analyze the impact such overlay zones may have on future land use patterns by discouraging development in high TAC neighborhoods. Finally, the DEIR's deferred TAC analysis deprives the public a meaningful opportunity to evaluate and comment on this potentially significant project impact, in violation of CEQA.

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4. The DEIR analysis of the project's odor impacts fails to apply the applicable threshold of significance, is conclusory and unsupported by substantial evidence.

The DEIR determines that project impacts related to the creation of objectionable odors would be less than significant, yet is completely fails to conduct any analysis to support this claim. DEIR at p. 3.3-28. Moreover, the DEIR mischaracterizes the BAAQMD threshold of significance applicable to plan-level odor impacts. *Id.* According to the DEIR, in order for plan-level odor impacts to be considered less than significant, BAAQMD requires that special overlay zones be established around existing and proposed land uses that emit odors. *Id.* In fact, the BAAQMD Guidelines state that, to be considered less than significant with respect to odor impacts, the general plan must identify the location of existing and planned odor sources and include policies to reduce potential odor impacts in the planning area. BAAQMD Guidelines at p. 2-7. The proposed 2030 General Plan, however, fails to identify the location of existing and planned odor sources and it does not include policies to reduce potential odor impacts. It doesn't even include the overlay zones that the DEIR claims are required. Thus, the DEIR's conclusion that the project will have less than significant odor impacts is not supported by substantial evidence. Moreover, the DEIR cannot rely on City's Resources Management Overlay District ordinance to reduce odor impacts because that statute is completely silent with respect to odor impacts and odor-emitting land uses. Thus, the DEIR's reliance on such statute to reduce odor impacts is arbitrary and lacks evidentiary support.

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5. The City's proposed measures for mitigating the project's significant air quality impacts are unenforceable and thus violate CEQA.

CEQA provides that a lead agency should not approve a project as proposed if there are additional feasible mitigation measures that would substantially lessen a project's significant environmental effects. Pub. Res. Code § 21002. Moreover, in order to ensure that mitigation measures are actually implemented, they must be "fully enforceable through permit conditions, agreements, or other measures." Pub. Res. Code § 21081.6(b); *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261. The DEIR refers to various 2030 General Plan policies and other proposed mitigation measures that purport to reduce the project's operational air quality impacts. DEIR at pp. 3.3-18 through 3.3-28. They include, for example, measures "promoting" higher density and mixed-use development, "promoting" a new

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ferry terminal, “promoting” walking and bicycling to reduce vehicle trips, “promoting” reduced transit fares on city buses, and “supporting” regional air quality protection measures. None of the measures are enforceable, however, and thus do not comply with CEQA. Moreover, the DEIR fails to qualitatively or quantitatively analyze the efficacy of such measures, in violation of CEQA. See Pub. Res. Code §§ 21002, 21100; *see also, Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1116 [a reviewing court will not defer to the agency’s determination that mitigation measures will work when their efficacy is not apparent and there is no evidence in the record showing they will be effective]. The DEIR should require implementation of all of its proposed measures to reduce project air quality impacts or explain why they are infeasible.

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C. The DEIR fails to provide a meaningful analysis of the 2030 General Plan’s potentially significant greenhouse gas impacts.

The Legislature has determined that global warming is an environmental effect subject to CEQA review, and that an individual project’s incremental contribution to global warming can be cumulatively considerable and therefore significant. Pub. Res. Code § 21083.05(a); *see also* CEQA Guidelines 15126.4(c), 15183.5(a)-(c). For the reasons set forth below, the DEIR’s analysis of the project’s significant greenhouse gas (“GHG”) effects are legally inadequate and violate CEQA.

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1. The DEIR does not adequately quantify the project’s GHG emissions.

The DEIR fails to properly quantify the project’s potential GHG emissions and thus denies the public a meaningful opportunity to evaluate and comment on this environmental effect. According to the BAAQMD Guidelines, to quantify a general plan’s potential GHG impacts, the lead agency must first prepare a community-wide GHG emission inventory for a base-year at or below the current year of the general plan. BAAQMD Guidelines at p. 9-4. Using this inventory, the lead agency must then project the expected levels of GHG emissions for year 2020 (i.e., the AB 32 benchmark year), and the projected year of plan buildout (i.e., 2030, in this case). *Id.* Two different projections should be prepared for each year: (i) a business-as-usual projection reflecting existing conditions (the “BAU Projection”), and (ii) a projection that accounts for proposed policies, programs, and plans included within the general plan that would reduce GHG from buildout of the plan (the “Reduced Projection”). *Id.* The DEIR purports to establish BAU Projections and Reduced Projections for 2020 and 2030, but its analysis is significantly flawed.

To calculate the required base-year GHG emissions inventory and the 2020 BAU Projection, the DEIR purports to rely on the *City of Richmond 2005 Greenhouse Gas Emission Inventory* prepared in 2009 by ICLEI (the “GHG Inventory”). DEIR at p. 3.6-12. The DEIR only cites the GHG Inventory study in a footnote and does not explain its methodology. While the DEIR’s Appendix C cites a 2005 base-year GHG emissions inventory total, this information is not disclosed in the DEIR itself and there is no explanation how it was derived. CEQA requires that data in the DEIR be presented in a manner calculated to adequately inform the public and decision-makers, who may not be previously familiar with the details of the project. CEQA Guidelines § 15147; *see also Vineyard Area Citizens v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 728. “Information scattered here and there in the EIR appendices or a report buried in an appendix is not a substitute for a good faith reasoned analysis.” *Id.* at p. 729. Since the DEIR text fails to adequately

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disclose its assumed base-year GHG emission inventory total, and provides no information regarding the methodology used to calculate such total, the document fails to provide the good faith reasoned analysis that CEQA requires.

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Although the DEIR's GHG analysis purports to rely on GHG Inventory data, it actually misrepresents such data. According to DEIR Appendix C, the City's 2005 base-year GHG emissions inventory was 2,399,414 million metric tons of carbon dioxide equivalent per year ("MMT CO₂e/yr"). The GHG Inventory, however, indicates the 2005 base-year emissions inventory is much larger than the DEIR reports—i.e., 5,853,020 MMT CO₂e/yr. Moreover, the GHG Inventory demonstrates that the DEIR's base-year emissions inventory does not include an additional 149,816 MMT CO₂e/yr of GHG emissions generated by municipal operations (i.e., city-owned buildings, the city vehicle fleet, city streetlights, etc). Thus, the DEIR underreports the 2005 base-year emissions inventory by at least 3,603,422 MMT CO₂e/yr. Given the substantial discrepancies between the DEIR's GHG analysis and the GHG Inventory data on which it relies, it is apparent that the DEIR's GHG analysis is unsupported by substantial evidence and thus violates CEQA.

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The DEIR also relies on the GHG Inventory to calculate the DEIR's required 2020 BAU Projection. DEIR at p. 3.6-12. According to the DEIR, the 2020 BAU Projection is 3,128,836 MMT CO₂e/yr. DEIR at p. 3.6-17, Table 3.6-1. According to Table 19 of the GHG Inventory, however, the true 2020 BAU Projection is 7,632,423 MMT CO₂e/yr (not including emissions from municipal operations). Thus, the DEIR underreports the 2020 BAU Projection by at least 4,503,587 MMT CO₂e/yr. With respect to the required 2030 BAU Projection, the DEIR forecasts this figure "based on the anticipated increase in population and commercial development" and concludes that it equals 3,647,355 MMT CO₂e/yr. DEIR at p. 3.6-12. Since the 2030 BAU Projection is based only on the DEIR's assumed population growth rate and related commercial development, it does not account for 2030 emissions caused by full buildout of the 2030 General Plan and it ignores GHG emissions generated by the City's industrial, waste and municipal sectors. Moreover, it is unclear whether the 2030 BAU Projection fully accounts for the City's residential and transportation sectors because the DEIR fails to explain its forecasting methodology.

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CEQA requires that the DEIR fully quantify and consider all project GHG emissions. The DEIR fails this requirement because it inaccurately reports data from studies on which it relies, it fails to consider all potential GHG emission sources, and it fails to describe the methodology used to calculate the GHG emissions that it does disclose. As such, the DEIR fails to provide a good faith reasoned analysis of the 2030 General Plan's potential GHG impacts and its conclusions are not supported by substantial evidence, in violation of CEQA.

2. The DEIR does not impose all feasible measures to mitigate the project's operational GHG emissions.

The DEIR refers to various 2030 General Plan policies that purport to reduce the project's operational GHG emissions. DEIR at pp. 3.6-14 through 3.6-16, 3.6-17 through 3.6-28. They include, for example, measures "encouraging" the use of energy efficient vehicles and equipment, "supporting" the use of more efficient fuels, "promoting" the use of energy efficient construction

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materials, and “encouraging” the use green and sustainable development standards. *Id.* While these policies are commendable, they are general and unenforceable and thus do not comply with CEQA. Moreover, the DEIR fails to qualitatively or quantitatively analyze the efficacy of such GHG reduction measures, in violation of CEQA.



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The DEIR also fails to impose all feasible mitigation for GHG-related impacts. For example, the DEIR indicates that the City is in the process of developing a Climate Action Plan (“CAP”) that will provide GHG reduction strategies for the City to attain, at a minimum, the AB 32 goal of 29 percent below business-as-usual. To help mitigate GHG impacts, the DEIR could feasibly require that the CAP (i) be adopted by a date certain, (ii) include defined reduction targets for all emission sources and enforceable measures to meet those targets, and (iii) include defined monitoring and reporting requirements. Similarly, the DEIR could impose mitigation requiring the City to adopt policies by a date certain to ensure that any projects considered before completion of the CAP will not undermine the objectives of the CAP. There are good examples of other potential mitigation measures contained in the BAAQMD Guidelines, the California Air Pollution Control Officer’s Model Policies for Greenhouse Gasses in General Plans (June 2009), the Caltrans Smart Mobility Handbook (Feb. 2010), and the California Energy Commission’s Energy Aware Planning Guide (Dec. 2009). In order to comply with CEQA, these measures should be imposed under the DEIR, or the DEIR should explain why they are not feasible.

3. The DEIR cannot legally conclude that impacts related to the project’s operational GHG emissions are significant and unavoidable without fully analyzing such effects.



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The DEIR concludes that project GHG emissions will be significant and unavoidable. DEIR at p. 3.6-14. This conclusion, however, contravenes CEQA and is not supported by substantial evidence because the DEIR fails to (i) fully quantify and disclose all of the project’s GHG emissions, (ii) impose enforceable mitigation measures, (iii) qualitatively or quantitatively analyze the efficacy of such mitigation measures, and (iv) to adopt all feasible mitigation. *See Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371 [lead agency cannot simply conclude that there are overriding considerations that justify a significant and unavoidable effect without fully analyzing such effect].

- D. The DEIR analysis of traffic impacts is thin and severely underestimates traffic impacts.

For the following reasons, the DEIR’s traffic analysis does not comply with CEQA:

1. The DEIR takes a flawed and inconsistent approach to the “no project” baseline.



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As a preliminary matter, the DEIR significantly underestimates traffic impacts because it does not analyze the development of the entire 2030 General Plan. Instead, the traffic impact analysis constrains the project to development associated with a 13 percent population growth, over which the City has no control. DEIR at p. 3.14-30. CEQA requires that the EIR analyze the entire

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proposed project, not an artificially constrained lesser version of the project in order to understate the project's impacts.

The traffic study's assumptions regarding the "no project" baseline are similarly flawed. The DEIR defines the 2030 No Project case baseline, to which General Plan 2030's impacts are compared, in a manner that violates CEQA. The Alternatives section of the DEIR correctly defines the "no project" alternative as development guided by continued implementation of the existing General Plan. DEIR at p. 5-3. Alternative 1 assumes a lower intensity of development in the City with 8.39 percent of the population growth in Contra Costa County. DEIR at pp. 5-3 through 5-4. However, the Transportation and Circulation combines the "no project" alternative (in name only) with Alternative 1 to create a new "no project" alternative for this section only. DEIR at p. 3.14-30. The traffic chapter's "no project" baseline impermissibly constrains development under the existing general plan in accordance with an assumed 8.39 percent growth rate, thus underreporting baseline traffic conditions. DEIR at p. 3.14-30. The DEIR also presumes, without support, that the artificially constrained population growth in the no project alternative will be "distributed to underutilized parcels in the areas most likely to develop (the change areas)." DEIR at pp. 3.14-30. Using these assumption as the baseline to assess the project traffic impacts makes meaningful analysis of such impacts impossible.

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The DEIR's traffic analysis fails to provide a basis to substantiate its other assumptions. For instance, it assumes that interstate 580 will have an additional high occupancy vehicle lane in both directions throughout the City, that 23rd Street was narrowed to a two-lane bidirectional facility, and that Barrett Avenue was narrowed to a four-lane facility. DEIR at p. 3.14-30. The DEIR does not provide any analysis as to whether these planned roadway projects are funded or even likely to occur, and to what degree they affect the analysis. Accordingly, these assumptions are not supported by substantial evidence.

2. The traffic impact analysis is inadequate and incomplete.

The analysis of traffic impacts resulting from the Project is thin at best. The analysis is limited to only six impacts, and focuses only on a few intersections. While the DEIR identifies 57 road segments, it focuses on only three segments based on level of service ("LOS"). DEIR at p. 3.14-38 through 3.14-40. Then it states that General Plan 2030 "does not include a vehicle-based LOS standards" and therefore "mitigation of the vehicle LOS impacts relative to the current criteria of Richmond and other regional jurisdictions . . . cannot be assured" thereby undermining the very criteria used to justify its narrow focus on only three road segments. DEIR at p. 3.14-40. The DEIR should contain a more thorough description of the impacts to all of the potentially affected road segments.

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Next, the DEIR claims that the 2030 General Plan's "Planned Roadway Improvements would improve mobility and safety for all modes," but fails to analyze how this would occur. DEIR at p. 3.14-45. The DEIR does not define what "all modes" encompasses, nor does it address the scope of these unfunded Planned Roadway Improvements and how they will improve mobility and safety. Instead, the DEIR just draws unsupported conclusions in violation of CEQA. The DEIR

18-21

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similarly concludes that “[i]mplementation of the proposed General Plan would produce higher demand for transit service” but fails to analyze this demand. DEIR at p. 3.14-46.

18-22

The DEIR improperly defers analysis of traffic impacts associated with development contemplated by the 2030 General Plan indefinitely by stating that “the extent of additional growth and the exact nature of future effects from this growth are unknown, and it would be speculative to attempt a more detailed analysis at this time” DEIR at p. 3.14-48. Moreover, “[a]ny future development would be subject to review to determine impacts on traffic in accordance with CEQA.” *Id.* Such deferral of analysis is not permitted under CEQA.

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Furthermore, emergency response time has been a historical problem for the City due to congestion on primary emergency response routes. Instead of addressing this problem, analyzing it with specificity, and identifying the affected neighborhoods, the DEIR summarily concludes that the this impact will be significant and unavoidable. DEIR at p. 3.14-51 through 3.14-52. This analysis is incomplete and warrants further scrutiny as it directly impacts public safety.

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Moreover, as discussed above, the “full buildout analysis” throughout the DEIR is inadequate and faulty. Given that many roadways “would exceed capacity with or without implementation of the proposed General Plan,” the DEIR should discuss the impacts with greater specificity and evaluate all of the critical intersections and roadways. DEIR at p. 3.14-40. That the DEIR states that the 2030 General Plan results in traffic congestion that exceeds the previous general plan, and concludes that the impacts are significant and unavoidable does not preclude the City from conducting a full analysis as required by CEQA. DEIR at p. 3.14-40.

18-25

3. The mitigation measures are unenforceable and inadequate.

The mitigation measures provided in the DEIR do not satisfy CEQA’s requirements. Pub. Res. Code §§ 21002.1(a), 21061. An EIR must describe feasible mitigation measures that can minimize the project’s significant environmental effects. 14 Cal. Code of Regs. §§15121(a), 15126.4(a). “A gloomy forecast of environmental degradation is of little or no value without pragmatic, concrete means to minimize the impacts and restore ecological equilibrium.” *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1039. Although the DEIR can incorporate mitigation measures into the 2030 Richmond General Plan, the City must take steps to make sure that the mitigation measures will actually be implemented as a condition of later development approved under the plan, “not merely adopted and then later neglected or disregarded.” *Federation of Hillside & Canyon Ass’ns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1361. The DEIR has made no attempt to even address the enforceability of the traffic mitigation measures it has proposed. Moreover, it does not provide tangible, effective mitigation measures. Instead, it uses flimsy, noncommittal language to claim it “[e]ncourage[s] multiple circulation options” (Policy CR1.1), “[s]upport[s] enhanced and expanded public transit” (Policy CR1.4), and “[p]romote[s] walking and bicycling” (Policy CR1.5). DEIR at pp. 3.14-40 through 3.14-41.

18-26

Furthermore, the DEIR improperly defers mitigation to future projects without setting out any standards or other specific requirements. A vague statement that “[f]uture projects shall



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incorporate project-specific mitigation measures to reduce traffic impacts” simply does not suffice. DEIR at p. 3.14-45 (Mitigation Measure 3.14-1). In addition, the DEIR contends that the 2030 General Plan’s Planned Roadway Improvements will improve congestion and provide a “multi-modal circulation system.” DEIR at p. 3.14-45. The DEIR concedes, however, that “[w]ithout adequate funding, some of the improvements identified in the proposed General Plan may not be implemented, which could result in inadequate transportation infrastructure to serve the proposed General Plan.” DEIR at p. 3.14-45. It then relies on this unfunded mitigation measure to conclude that Impact 3.14-2 will be less-than-significant. *Id.* The City must either secure funding for the traffic improvements, or propose alternative mitigation measures.

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(cont.)

4. The DEIR omits meaningful discussion of cumulative impacts.

The DEIR’s analysis of cumulative traffic impacts is simply inadequate. DEIR at p. 3.14-52. It is once sentence long, conclusory, and without evidentiary support.

18-27

E. The DEIR’s discussion of visual resources impacts and mitigation does not satisfy CEQA.

As with traffic, the DEIR fails to explain and describe how the policies and actions from General Plan 2030 will mitigate the impacts of the project. Instead, the DEIR provides a laundry list of potentially applicable policies and expects the public to discern how these policies will ultimately lessen the impacts to visual resources. Furthermore, the proposed mitigation measure with respect to directing and shielding light spill is vague and does not include any enforcement mechanism. DEIR at p. 3.15-19. For instance, it does not provide enough detail to draft an implementing ordinance nor does it contain information sufficient for a future project applicant to understand its lighting requirements when proposing a new project. *Id.* This lack of analysis deprives the public a meaningful opportunity to comment on the DEIR.

18-28

F. The DEIR’s noise analysis is incomplete.

As with all other DEIR impacts, the noise impacts have been significantly understated, as they do not analyze full buildout of the 2030 General Plan. As in the traffic analysis, the DEIR improperly defers mitigation measures to future projects. DEIR at p. 3.10-24 through 3.10-25. The DEIR requires that “[f]uture projects shall incorporate project-specific mitigation measures to reduce the impact of construction noise” and “construction related groundbourne vibration.” *Id.* The DEIR should instead list mitigation measures that future projects will be required to implement, and analyze the efficacy of such measures.

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The DEIR’s treatment of noise also suffers from some logical gaps. For instance, Impact 3.10-3 states, without any supporting analysis, that “[i]mplementation of the proposed General Plan could expose sensitive receptors to noise levels in excess of the existing noise standards established by the City. There are no known feasible measures to reduce train noise below a level of significance.” DEIR at p. 3.10-25. Further confusing the issue, it is unclear why the impact discussion only addresses train noise, when the preceding analysis also focuses on rooftop HVAC systems and delivery trucks. DEIR at pp. 3.10-26 through 3.10-27. Moreover, the DEIR fails to identify which

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receptors will be exposed to excess noise and fails to quantify the anticipated levels of such excess noise, thus depriving the public an meaningful opportunity to understand and comment on this impact.

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G. The DEIR's analysis of project impacts related to hazardous materials, geology and cultural resources is not supported by substantial evidence.

Like the other sections of the DEIR, the hazardous materials, geology, and cultural resources sections all underestimate related project impacts by not analyzing full buildout under the 2030 General Plan and fail to provide enforceable mitigation measures by simply incorporating unenforceable General Plan policies. Accordingly, all of the DEIR's related conclusions are not supported by substantial evidence.

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Furthermore, the hazardous materials section in the DEIR should describe and evaluate impacts related to the potential for accidental ammonia release from the Chevron refinery, as described in the Chevron Refinery Risk Management Plan, Offsite Consequences Analysis, on file with the Contra Costa County Department of Health.

18-32

H. The DEIR's alternatives analysis violates the requirements of CEQA.

The DEIR describes two alternatives to the 2030 General Plan, in addition to the required "no project" alternative. DEIR at pp. 5-3, 5-4. Alternative 1 proposes that the City adopt a general plan that is identical to the 2030 General Plan, but it assumes that the City will maintain a 8.39 percent annual population growth rate, rather than the 13 percent growth rate assumed by the project. *Id.* Similarly, Alternative 2 proposes that the City adopt a general plan identical to the 2030 General Plan, but it assumes that the City will maintain a 10.19 percent annual population growth rate. *Id.* at p. 5-4. Thus, the project and both alternatives propose the same density and intensity of development. They only differ with respect to the rate which such development is assumed to occur, based on varying population growth rate assumptions.

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To comply with CEQA, the DEIR must discuss a reasonable range of alternatives that permits decision-makers a "reasoned choice" among such alternatives. CEQA Guidelines § 15126.6(f). As noted, the only difference between the DEIR's proposed alternatives and the project is the assumed rate at which the City's population will grow. Both alternatives propose adoption of the same general plan proposed by the project, and neither propose policies to cap or otherwise limit the City's population growth rate. Thus market forces beyond the City's control will ultimately determine the City's population growth rate. Since decision-makers cannot, in fact, choose the City's growth rate, the DEIR's alternatives analysis permits only a false choice, rather than the "reasoned choice" required by CEQA Guidelines § 15126.6(f).

CEQA also requires that the DEIR identify alternatives to the 2030 General Plan that avoid or substantially lessen the 2030 General Plan's significant environmental effects. Pub. Res. Code §§ 21002, 21002.1(a), 21100(b)(4), 21150. Since Alternatives 1 and 2 both propose adoption of a general plan identical to the project, neither alternative can avoid or lessen the project's significant effects. At best, the two alternatives slow the rate at which the project's significant effects would

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otherwise occur (assuming growth rate projections hold true), but they don't avoid or lessen significant project effects in the long term. This observation is implicit in the DEIR's unsupported conclusion that the project is the environmentally superior alternative. Since the project and both alternatives propose adoption of the same general plan, however, no one proposal is environmentally superior to the others.

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"Since the purpose of an alternatives analysis is to allow the decision maker to determine whether there is an environmentally superior alternative that will meet most of the project's objectives, the key to the selection of the range of alternatives is to identify alternatives that meet most of the project objectives but have a reduced level of environmental impacts." *Watsonville Pilots Ass'n. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1089. Here, the environmental impacts of the project are primarily due to the impacts of future development. To comply with CEQA, the DEIR must be revised to include analysis of an alternative land use plan that avoids or reduces the environmental impacts of the 2030 General Plan's land use plan. *See id.* at p. 1090. One such alternative should propose the use of Change Area 12 in accordance with its existing Industrial/Office Flex land use designation and M-1 Light Industrial zoning. By accommodating new employment opportunities within the City, Change Area 12 development would reduce the City's overall number of vehicle miles traveled and related air and traffic impacts and thus reduce the project's significant environmental effects.

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IV. Conclusion

Based on the foregoing inadequacies, the DEIR must be revised and recirculated to provide decision-makers and the public a meaningful opportunity to comment. Pursuant to CEQA Guidelines § 15088.5, the City is required to recirculate the DEIR when significant new information is added to the DEIR after public notice is given of the availability of the DEIR for public review but before certification. Per CEQA Guidelines § 15088.5(a)(1-4), "significant new information" requiring recirculation includes, but is not limited to, the following:

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- A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented; or
- A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance; or
- A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it; or
- The DEIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

As described above, the DEIR fails to provide a reasonable range of project alternatives and its analysis is so fundamentally and basically inadequate and conclusory in nature that meaningful

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public review and comment have been precluded in this case. Specifically, the DEIR must be revised to set forth adequate project alternatives and to disclose all of the significant impacts associated with full buildout of the 2030 General Plan, identify feasible measures to avoid or mitigate those impacts, and correct errors and omissions identified herein, and be recirculated, so that decision-makers and the public are afforded a meaningful opportunity to comment.

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(cont.)

We appreciate the opportunity to comment on the DEIR and look forward to reviewing a revised and recirculated DEIR that adequately addresses the issues identified herein. In the meantime, please note that our clients reserve their right to submit supplementary comments as additional relevant information becomes available.

Respectfully submitted,

COX, CASTLE & NICHOLSON, LLP



Anne E. Mudge

AEM/HDL

Exhibit A

March 31, 2011

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Re: **Comments Regarding Proposed General Plan and Draft
 Environmental Impact Report -- Down-Zoning of Freethy
 Industrial Park**

Dear Mr. Rojas,

Thank you for the opportunity to provide comments on the City of Richmond's ("City") Draft General Plan 2030 ("2030 General Plan") and General Plan Update Draft Environmental Impact Report ("DEIR"). SSL Law Firm LLP has been retained by two long-term Richmond properties owners, Joe and Heidi Shekou ("JHS") and Richmond Development Company LLC ("RDC"), whose property interests will be unlawfully and adversely impacted by proposed changes reflected in the 2030 General Plan.

JHS owns 8 separate legal lots, and RDC also owns 8 separate legal lots, in the 23.3 acre Freethy Industrial Park ("Property").¹ The 2030 General Plan proposes to amend the Property's long-standing Industrial/Office Flex land use designation to an Open Space designation that would render these lots undevelopable. This is reflected in 2030 General Plan Change Area 12.

As we explain below, the proposed downzoning of the JHS and RDC Property would violate numerous legal principles, including Constitutional protections guaranteeing the right to equal protection and guarding against a taking of private property without just compensation. In addition to exposing the City to potential liability that could run into the tens of millions of dollars, the downzoning of an existing Industrial Flex property to Open Space is bad policy, particularly at a time when Richmond is seeking to revitalize and strengthen its local economy. Accordingly, we

¹ The Property is comprised of 16 legal lots and 18 Assessor's Parcels. The Assessor's Parcel Numbers are 408-220-032, 408-220-033, 408-220-034, 408-220-035, 408-220-036, 408-220-037, 408-220-038, 408-220-039, 408-220-041, 408-220-042, 408-220-043, 408-220-003, 408-220-006, 408-220-007, 408-220-023, 408-220-024, 408-220-025, and 408-220-026.

strongly oppose the proposed Open Space designation set forth in Change Area 12 and urge the City to maintain the Property's existing Industrial/Office Flex designation.

In addition, our clients are deeply concerned by the inadequacies presented in the DEIR which purports to analyze the impacts of General Plan 2030. In order to comply with the California Environmental Quality Act ("CEQA"), the DEIR must provide a good faith, reasoned analysis of the 2030 General Plan proposal, including identifying the significant, adverse impacts of the 2030 General Plan and the measures required to avoid or mitigate those impacts. The DEIR's analysis must be both comprehensive and accessible, so that decision-makers and the public are provided a meaningful opportunity to understand and comment on the impacts of the 2030 General Plan and the feasible means to avoid or mitigate those impacts.

The DEIR fails to meet these CEQA mandates by engaging in a result-oriented approach, designing its assumptions, methodologies and analysis in a way that avoids the identification of the full scope of the project's potentially significant impacts. This has resulted in a material understatement of potential impacts – a foundational flaw that undermines the entire DEIR's analysis. It also undermines CEQA's very purpose, which is to ensure informed decision-making. Ultimately, the City of Richmond will suffer significant adverse environmental impacts, and no one will benefit from the concealment of those impacts in the DEIR.

Below we provide our detailed comments that highlight the illegal nature of the proposed downzoning of the Property and identify the flaws associated with that proposal as well as with the DEIR. In addition, by this reference, we incorporate the comments provided by Cox Castle & Nicholson on behalf of Murray Parkway Properties, LLC and Bay Area Wetlands, LLC, which comment letter is attached hereto as Exhibit A. We respectfully request that the City revise the 2030 General Plan, revise the DEIR, and recirculate the revisions for public comment.

I. Background on the Property and Freethy Industrial Park.

The Property is located in the northwest industrial area of the City and is comprised of 16 lots totaling 23.3 acres within the Freethy Industrial Park, located at the intersection of the Richmond Parkway and Goodrick Avenue. The current General Plan designation is Industrial/Office Flex and the zoning is Light Industrial. The Property is also included in the North Richmond Shoreline Specific Plan ("NRSSP") area which designates the Property for "the exclusive development of modern, non-nuisance industrial space, office, and warehouse facilities which would include uses such as office, high technology sales and services company and supporting retail to serve the immediate area." NRSSP at 47. The use category "accommodates the creation of campus-like environments for corporate headquarters, research and development facilities and office or warehouse uses in high quality single or multi-occupant buildings." NRSSP at 47-48. The Property's M-1 Light Industrial zoning would allow these uses as a matter of right.

The Property has historically and consistently been put to industrial-office flex uses. This dates back to at least 1963-1966 when the then-owner, Elmer Freethy, placed several hundred thousand cubic yards of fill on the property, graded the Property, installed sewer, electric and gas systems and, after issuance of a building permit by the City, constructed three industrial buildings on the Property.²

In the 1980s, Mr. Freethy sought and secured City approval for a revised industrial plan to expand the industrial uses on the Property, which culminated in the certification of an EIR on August 27, 1980 and the recordation of Subdivision Map 5754 on June 18, 1982 approving the Freethy Industrial Park. See Exhibit B (Subdivision Map 5754). The three industrial buildings remained as part of the new 20-lot Freethy Industrial Subdivision.³

Pursuant to those approvals, Mr. Freethy completed a series of subdivision improvements, as reflected in the Subdivision Improvement Agreement dated May 10, 1982. These improvements include the construction of two new roads (Freethy Boulevard and Elmar Court), drainage facilities, power, water, street lighting and grading. These improvements were extended to and served the three existing industrial buildings on the Property. In Resolution No. 185-82, the City (1) confirmed these improvements were completed in accordance with the terms of the Subdivision Improvement Agreement and, (2) accepted the dedication and maintenance responsibilities for Elmar Court and Freethy Boulevard (as public roads) and various drainage easements and concrete lined ditches. To date, the City has entirely ignored its road and drainage maintenance obligations and has allowed this infrastructure to substantially deteriorate – adversely impacting their utility and functionality as well as the value of the Property.

In the early 1990s (1993-1995), the City exercised its eminent domain power to condemn a portion of the Freethy Industrial Park to make way for the Richmond Parkway. City's condemnation had the effect of severing a portion of the Freethy

² In August 1973, the U.S. Army Corps of Engineers filed a lawsuit against Elmer Freethy, the then-owner of the Freethy Industrial Park, seeking removal of prior fill at the site. The U.S. District Court ruled in Mr. Freethy's favor on February 24, 1975, finding that the fill had been lawfully placed on the Property. The primary reasoning underlying the court's decision was that the City had informed Mr. Freethy that the filling of marshland areas was (at that time) exempt from City permit requirements and the Army Corps of Engineers did not require a permit to fill marshland until 1972, long after Mr. Freethy had substantially filled and developed the Property.

³ Lots 13 and 14 of the original 20-lot subdivision are located to the south and west and are predominantly marshland that was preserved as a condition of Subdivision Map 5754. The City owns Lot 14, on which it constructed the Bay Trail segment and habitat mitigation areas for impacts from the Richmond Parkway construction. Lot 13 remains in separate private ownership and is restricted to permanent natural open space.

Industrial Park. Two of the developed lots (lots 16 & 20) are now located south of the Parkway under different ownership. However, the bulk of the original Freethy Industrial Subdivision remains intact north of the Parkway, with only minor modifications to the original lotting and street pattern as a result of Parkway construction. As part of the City's condemnation and construction efforts for the Parkway, the City demolished two of the three industrial buildings on the Property, though their foundations, building pads and the utilities serving those parcels remain.

In 1999/2000, RDC and JHS purchased the Property with the direct and specific intent of developing it for Industrial-Office Flex uses. One of the key attributes that made the Property attractive was the extent of infrastructure and site improvements – particularly the fully developed road, drainage, utility and street lighting. The existing improvements and ongoing industrial use had a significant impact on the market value of the Property. At the time JHS and RDC purchased the Property, they paid approximately six times higher price per square foot as compared to nearby and surrounding properties that lacked this critical infrastructure and long term use patterns. This increase in cost is directly attributable to value of the improvements installed on the Property and the vested right it created for industrial/office flex uses. Kister, Savio, & Rei has performed an Engineer's Cost Estimate (attached as Exhibit C) establishing that the site improvements alone are worth \$3.34 million dollars.

In 2002, JHS filed the Shoreline Tech Center, Phase A application for a portion of the Property which sought to develop Lots 1 through 4 with 48,144 square feet of light industrial buildings, a McDonald's restaurant and a gas station on 4.68 acres. The City processed JHS's application with a Categorical Exemption per CEQA Guideline 15332 (Infill Development Projects), and on June 12, 2002, and July 18, 2002, granted Design Review Permits 01-173, 175, 176 and Conditional Use Permits 01-42, 01-43 authorizing the proposed development of the industrial flex and restaurant/gas station uses. The City also issued JHS a grading permit that authorized the placement of 9,000 cubic yards of fill in order to meet approved building pad heights. JHS completed the fill and grading work, but, due to declining market conditions, the approved structures have yet to be constructed. While the Conditional Use Permits remain valid, the Design Review Permits have expired. As discussed in more detail below, JHS will be re-submitting the Design Review application for this project and hopes that it will proceed expeditiously through the City's design review and approval process.

In 2005, JHS and RDC engaged in new site planning efforts for the Property and developed plans for a live/work project, known as Bayside Village. The project proposed an innovative and green development comprised of a 256-unit contemporary live/work/play community that would facilitate a combined place of residence and working into a single domicile. The project design model would utilize compact, pedestrian friendly neighborhoods with mixed uses in close vertical and/or horizontal relationships and was designed to meet the new LEED Neighborhood Development certification.

This Bayside Village project was prepared in close consultation with City staff, including the City's Planning Director. JHS and RDC representatives met on numerous occasions with the City's Planning Director, and on each occasion, the Director requested substantive, and often contradictory, project changes. Over the course of these meetings, members of the project team came to suspect that the Planning Director was attempting to prevent the application from reaching completion. This was based, in part, on frequent comments by the Planning Director that he was facing political pressure from certain green party members and local open space advocates to prevent development of the Property. The Planning Director then raised the issue that the City was in the process of revising its General Plan and requested that JHS and RDC put the Bayside Village project on hold until a revised draft General Plan was released.

Given the expressed political pressure aimed at preventing development of the Property, JHS and RDC elected to submit the application in September 2007 and requested a "deemed complete" letter. This application was met with an extensive laundry list of additional information the City claimed was necessary, which JHS and RDC responded to in January 2008 at its considerable expense. This should have completed the application. Instead, however, the Planning Director shifted his tactic and claimed the proposed Bayside Village proposal would require a General Plan amendment. JHS and RDC disagreed with that conclusion and requested a formal determination from the Planning Director, which the Director refused to provide for several months. Finally, in July 2008, the Planning Director made a written determination that the Bayside Village Project required a General Plan amendment because it failed to meet the definition of a live/work project under City codes. JHS and RDC appealed that determination to the Planning Commission, and on December 4, 2008 – almost a full year after JHS and RDC had submitted a complete application – the Planning Commission found in favor of JHS and RDC and confirmed that the Bayside Village project was consistent with existing General Plan live/work policies and definitions and did not require any amendment.

Despite the Planning Commission's ruling, the Planning Director continued to stonewall the Bayside Village Project application. The Planning Director unilaterally disputed the Planning Commission's ruling and otherwise maintained a hostile position on the project. During meetings in January 2009, the Planning Director again stated he was under strong political pressure from a certain City Council member and activist open space groups to prevent development of the Property. The Planning Director again urged JHS/RDC to delay its application until the new draft General Plan was released.

Again, JHS/RDC insisted that it would pursue its Bayside Village application and again requested a deemed complete letter. This request was met with yet another letter from City staff requesting a list of information, all of which had been provided a year earlier. This letter also again asserted that the Bayside Village application would require a General Plan amendment, despite the Planning Commission's earlier ruling to the contrary.

JHS and RDC were then invited to join a “working group” of interested stakeholders in the North Shoreline area, where the Property is located. The stakeholders included property owners, nearby residents and open space advocates. The stated purpose was to reach a development compromise for the area that could be incorporated into the new 2030 General Plan. While JHS and RDC attended these meetings with an open mind and willingness to compromise, the open space advocates offered no compromise. Their position was stated clearly – they only wanted to consider the purchase or condemnation of the Property and would not consider any compromise solution that would allow any level of development at the Property or in the North Shoreline area.

Meanwhile, the 2030 General Plan was moving through its public process. In order to obtain a clear understanding of the goals and expectations of a wide spectrum of the Richmond community, the City Council appointed a General Plan Advisory Committee (“GPAC”) which met with the City’s consultant more than twenty times over a period of more than two years. The GPAC included a diverse cross-section of the Richmond community, including representatives of business organizations, environmental groups and neighborhoods. One member of the GPAC was a member of RDC, Joshua Genser.

The City’s consultants identified certain areas of the City as “Change Areas,” those areas where it was possible for land use designations under the new General Plan to differ significantly from the old, and, in consultation with the GPAC, developed three alternatives for each Change Area. The GPAC was told that the EIR for the General Plan would study the three alternatives for each of the Change Areas. The GPAC was also told that it would be voting on which of the three was to be identified as the “preferred” alternative, again for the purposes of study in the EIR, although the City Council would have the final choice. The land owned by JHS and RDC was within the Change Area called “South of Parchester,” which is substantially the same as General Plan Change Area 12. The three alternatives identified for the South of Parchester Change Area were open space, business mix and medium-density residential. In May of 2009, at a public meeting attended by City planning staff, the GPAC voted for the preferred alternative, with 9 preferring open space, 8 preferring business mix and 14 preferring medium-density residential. In other words, the GPAC recommended developed uses in this area at 22 to 9 vote.

In June 2009, the City released the first draft of the 2030 General Plan. This draft proposed designating the Property as “Planned Area District,” a designation containing no development density ranges or list of allowed uses. Instead, this initial draft offered the narrative that the preferred future use is “envisioned as ecologically sensitive to the unique natural assets of the area.” In February 2010, the City Council met in a public study session to discuss the 2030 General Plan designation for the North Shoreline. Councilman Butt made a motion to re-designate the Property as open space, parks and cultural use. This motion failed to pass. Councilman Butt followed this failed effort with an email campaign where he attempted to smear and discredit the North Shoreline property owners and those council members who failed to vote with him. Councilman

Butt went so far as to threaten to withdraw his vote on the wholly unrelated Point Molate Casino project, unless other council members would vote with him on his desired open space designation for the North Shoreline.

Then, on February 11, 2011 the City published the revised 2030 General Plan which proposed for the first time to change the designation of the Property to Open Space/Parks & Recreation. JHS and RDC were informed by staff that the Parks and Recreation land use designation (with a sham 0.5 FAR development allowance) was included as City's attempt to avoid a takings claim by JHS/RDC and the surrounding landowners. This strategy is reflected in correspondence from open space advocates, including Citizens for East Shore Parks ("CESP"). See Exhibit D, (Email from CESP stating: "North Richmond: The area between the Park District's new acquisition at Breuner Marsh and the landfill to the South should be designated in the General Plan [sic] as open space and be zoned to the lowest zoning designation to protect the city from a taking claim.").

In the meantime, JHS and RDC continue to work towards development of the Property. These efforts have, without doubt, become extraordinarily difficult given the stonewalling the owners have experienced from the Planning Director and other isolated City representatives. Nonetheless, the Property and the surrounding North Shoreline areas are viable candidate sites for exciting and innovative development opportunities that will work towards achieving the City's economic and job growth policies. These potential projects include:

- **Salvation Army Regional Campus**

JHS and RDC are currently in contract to sell their land for the potential development of a Salvation Army Regional Campus. This campus would consolidate multiple existing and replicative Salvation Army Bay Area facilities and programs into one state-of-the-art, environmentally sustainable campus. Bay Area wide charitable and faith operations would be headquartered at this facility, which would include a chapel, administrative offices, warehouse and retail facilities, and an innovative Delancey Street type live/work job training and counseling program for at risk men and women with drug and alcohol dependency problems.

This project would facilitate a wide range of local jobs – ranging from construction, administration, management, retail, education, religious and community serving jobs and ultimately long-term employment opportunities for those who move through and complete the job training programs. This facility would employ and serve local Richmond residents, and would be consistent with the Property's current Industrial/Office Flex General Plan designation.

The proposed downzoning of the Property would effectively bar this innovative and community serving project. The immediate impact is that the proposed Salvation Army project will die, with no likelihood that any such facility would be constructed in

the foreseeable future. The long term impact is that members of underserved populations will be denied an important source of job training and support services that would otherwise help these individuals get back on their feet and contribute more to the City and regional economy.

- **Lawrence Berkeley National Laboratory Annex Facilities**

As the City is aware, the Richmond Parkway Research Campus has been identified as a candidate site for the Lawrence Berkeley National Laboratory's ("LBNL") Second Campus. The Richmond Parkway Research Campus is located in the 2030 General Plan Change Area 12, and is directly adjacent to the JHS and RDC Property.

The Richmond Parkway Research Campus' submittal in response to LBNL's Request for Qualifications identified the adjacent RDC/JHS Property (with our client's consent) as additional available land that could support LBNL Campus uses or adjacent supporting uses such as office, industrial, commercial or community supporting retail and services.

Contrary to its proposed downzoning efforts, the City has cast its support in favor of the Richmond Parkway Research Campus proposal for LBNL. In a letter dated March 2, 2011, the City Manager submitted a letter to LBNL "to express the City of Richmond's strong support for the Richmond Parkway Research Campus as a candidate site for the [LBNL] Second Campus." The City Manager committed that "[s]hould the Richmond Parkway Research Campus be selected for LBNL's second campus location, City staff would work closely with LBNL and the Richmond Parkway Research Campus' ownership to accommodate LBNL's needs." See Exhibit E.

Should the City proceed with its proposed downzoning of this property, and the adjacent JHS and RDC Property, contrary to its expressed intent to cooperate with LBNL, the City will unnecessarily construct a significant barrier to development of this exciting and cutting edge campus that could serve as an outstanding source of job creation, innovation and a wide range of supporting uses.

- **Light Industrial/Office Flex Phased Development**

In case the Salvation Army and LBNL Second Campus projects do not proceed, RDC and JHS are also in the process of preparing a re-development application for the Property that fully complies with the Property's existing Industrial/Office Flex designation, zoning, subdivision improvements and the City's 2002 conditional use (and other) approvals for the Shoreline Tech Center. As with that 2002 City approval, JHS and RDC will pursue the Shoreline Tech Center in phases, commencing with the already approved Phase A application for Lots 1 through 4 which would redevelop these parcels with 48,000 square feet of light industrial buildings, a restaurant and a gas station. It is JHS and RDC's position that the categorical exemption adopted by the City in 2002 for the Phase A application would remain valid. The Phase A application would then be

followed by subsequent phased industrial/office flex development on the remaining parcels.

This application is designed to be in full conformance with existing general plan and zoning requirements and JHS and RDC's vested right to redevelop the property for industrial/office flex uses. Ultimately, at full build-out, the Property would contain approximately 400,000 square feet of industrial/office flex uses and community supporting retail services (such as a restaurant and gas station). Our preliminary analysis indicates this would support approximately 1,000 new jobs within the City, thereby contributing to the City's economic and job creation goals. As discussed in more detail below, this development would avoid the small areas of wetland resources located along the Property's border.

The proposed downzoning would run directly contrary to the vested and fully compliant land use development. Because JHS and RDC has a vested right to this use, the proposed general plan cannot serve as a bar to this application. Given these vested rights, it makes little sense for the City to adopt a land use designation that contains a fundamental conflict with the existing and future uses of the Property. Ultimately, it sets the stage for an unnecessarily complex and conflict-ripe redevelopment process. We submit that City resources are much better directed at facilitating the responsible development of this key industrial/office property in order to work towards – rather than against – City goals of economic growth and job creation.

II. The Property Has No Unique Physical Attributes.

From a physical and regulatory perspective, the Property does not possess any unique physical attributes that would stand in the way of achieving the exciting development opportunities outline above. Nearly all of the 23.3 acre site is comprised of filled land that has been graded, improved with roads, utilities, drainage facilities, lighting and other improvements. It is routinely disced for weed and fire control, and thus contains only highly disturbed and primarily invasive vegetation. There are two very small wetland areas along the Property edge – a 340 square foot patch of land at the Property's shoreline border and a small drainage ditch at its border with the Richmond Rod & Gun Club – both areas would be easily avoided as part of any development application. These site conditions are well-documented through biological reports and formal wetland delineations that have been shared with City staff.

These reports include the November 2007 biological survey performed by LSA Associates (attached hereto as Exhibit F). The LSA survey explains that the vast majority of the site is graded and filled, and is highly disturbed as a result of past fill activities, development activity and routine discing practices to control weed growth. The vegetation on the site is primarily comprised of invasive species such as thistle, vetch and burr clover. This has resulted in disturbed habitat conditions on the entire project

site. Accordingly, only a small number of wildlife species can occupy the site, including rodents (mice, rats, gophers), songbirds and transitory hawks who hunt over the Property.

While the western/shoreline edge of the Property is adjacent to tidal salt marsh, the vegetation upslope from the salt marsh to disturbed upland (above the mean high water line) is abrupt rip rap, and corresponds to the historic fill activities on the Property dating back to the early 1960s. While three listed species – the California Clapper Rail, California Black Rail and Salt Marsh Harvest Mouse – can be present in tidal marshes near the Property and can, on occasion, use upland areas adjacent to the marsh as refuge during high tide events, these species have not been identified on the Property. The likelihood of the occurrence of these species on the Property is extraordinarily unlikely given the disturbed site conditions. Specifically, the Property's current value as upland refugia is extremely limited given that the transition between salt marsh and upland is riprap which serves as a refuge for predators and the upland areas lack the critical landscaping cover the listed species require. (We note that previous development applications had proposed inclusion of an 80-foot buffer from the tidal salt marsh, plus fencing and landscaping improvements that would have actually provided improved refuge habitat for these species.)

The Army Corps of Engineers has also confirmed the limited extent of wetland resources on the Property. On August 8, 2007, the Army Corps of Engineers verified a wetland jurisdictional delineation for the site. The Corps exerted jurisdiction over a very small portion of the Property, which is limited to a drainage ditch along the northern and eastern property boundaries and a small patch of salt marsh (approximately 340 square feet) along the western Property boundary (below the rip rap). The Corps confirmed it did not have jurisdiction over the remainder of the Property. See Exhibit G. (We note that the Bayside Village development application would have avoided construction within these two limited areas.)

In addition, the Property as a whole, including its shoreline, is exempt from Bay Conservation and Development Commission (BCDC) jurisdiction. Attached as Exhibit H is a letter from BCDC dated August 15, 1977 which grants a claim of exemption brought by the former property owner Mr. Elmer Freethy. This letter confirms that given the extent of industrial development activities and uses taking place on the Property as of 1965, any future industrial uses are vested and exempt from review by BCDC. In the letter granting the claim of exemption, BCDC explains

[A]s of September 17, 1965, the claimant had prepared and adopted a detailed and specific plan for the development of a light industrial park ... with sufficient utilities, road and rail services to accommodate full development of the property then controlled by claimant.

Ex. H page 2. In addition, the Commission found the then-owner had secured the necessary determination (from the City) to commence construction of the project pursuant to the specific light industrial development plan. This was evidenced by a long

list of approvals and agreements the owner had secured with public agencies and public utilities to service the Property; including the issuance of three building permits by the City of Richmond for three industrial buildings on the Property (which were completed but ultimately demolished by the City when it constructed the Richmond Parkway), the placement of "several hundred thousand cubic yards of fill on the property," the installation of roadways and utilities to service the Property and other substantial expenditures. Ex. H at 4-5. Collectively, these activities have eliminated any potential for significant wetland or protected species habitat to occur on the Property.

III. Proposed Open Space/Parks & Recreation General Plan Designation.

As demonstrated above, the Property has a long-standing industrial history and has been improved with substantial infrastructure. In addition, it contains two industrial building pads that are serviced by utilities and other improvements and is a disturbed site with minimal natural resource value. The Property also presents a ripe opportunity to enhance the City's employment and economic base through several exciting and viable development alternatives that will facilitate local jobs, tax revenue, worker retraining and much needed public services in the North Richmond area.

The 2030 General Plan seeks to negate each of these extraordinary Property attributes and replace its long standing Industrial/Office Flex land use designation with an Open Space designation that would effectively render these 16 industrial lots unbuildable. This drastic change is contained in the 2030 General Plan's Change Area 12 which would rezone 100 acres (including the 23.3 acre Property) from Industrial/Office Flex to Open Space Uses. The 2030 General Plan describes Change Area 12 as follows:

Change Area 12: Northshore

The Northshore change area is located south of Point Pinole Regional Park, west of Parchester Village and between San Pablo Bay and the Richmond Parkway. This bayfront area is representative of historic San Francisco baylands, with marsh-lands and uplands along the shoreline. Portions of the area have been identified as important habitat for endangered plant and wildlife species. The area lacks infrastructure and has long remained undeveloped with the exception of an outdoor shooting range.

General Plan Land Use

The Northshore area is envisioned as a natural open space restored and protected to continue its historic function as vital habitat and provide enhanced opportunities for public access and recreation. The entire area would be designated Open Space/Parks and Recreation to achieve this vision. Allowable uses would include publicly owned local and regional parks as well as privately owned recreational facilities such as golf courses

and other recreational facilities. Small-scale recreation-supporting uses such as rental shops, bike repair facilities, small restaurants, interpretation centers and museums would complement adjacent open space areas.

GP 3.37; DEIR 2-37. The proposed downzoning is also reflected in the 2030 General Plan's land use diagrams. See GP Map 3.14; DEIR Figure 2-3, 2-25 ("The Northshore Area is envisioned as open space, restored and protected to continue its historic function as vital habitat and provide enhanced opportunities for public access and recreation.").

As we detail below, the downzoning reflected in Change Area 12 brings with it a host of legal issues that mandate the City abandon its unlawful attempt to shift a vested industrial/office flex use to open space. Should City continue down this ill-advised path, it will expose itself to significant financial liability in the form of a taking and other constitutional violations. But that is not all – this policy is also contrary to long-standing and contemplated City goals and plans and could result in significant adverse environmental impacts that the DEIR analyzing the 2030 General Plan fails to acknowledge and analyze.

IV. The Proposed Downzoning Is Illegal and Exposes the City to Significant Financial Liability.

A. The Proposed Open Space Designation Is Directly Contrary To the Property's Vested Right to Proceed with Industrial/Office Flex Uses.

The City's proposal to change the Property's General Plan designation from Industrial to Open Space directly interferes with the JHS and RDC's vested right to proceed with development consistent with the current Industrial/Office Flex General Plan designation and subdivision improvements. Under California law, a property owner's right vests once the owner has, as in this case, had a final map approved and completed substantial improvements on the site consistent with the final map and subsequent permits. *Avco Community Developers, Inc. v. South Coast Reg'l Comm'n* (1976) 17 Cal.3d 785, 839-94. Here, the Property readily satisfies all pertinent vesting requirements – it has been improved with roads, drainage, utilities, street lighting, and contains building pads that are served by this infrastructure. In addition, two industrial buildings had been constructed on the site – pursuant to City building permits. They would, in all likelihood, still be present on the Property had the City not demolished them to make way for a construction staging area for the Richmond Parkway.

JHS and RDC have a vested right to proceed with the development of their industrial subdivision and the City cannot now eliminate that right through the General Plan update process.

B. The City's Downzoning of the Property to Open Space Constitutes a "Taking" and the City will be Liable for Inverse Condemnation.

The 2030 General Plan's proposed Open Space downzoning constitutes a "taking" of the Property for which compensation must be paid. The proposed downzoning deprives JHS and RDC of all reasonable use of the Property and prevents them from receiving a fair return on their legitimate investment-backed expectations.

The *Fifth Amendment of the United States Constitution* and *Article 1, section 19, of the California Constitution* guarantee that private property shall not be taken for public use without the payment of just compensation. Governmental land use regulations, including the promulgation of zoning laws, may effect a "taking" when that regulation is "so onerous" and goes "too far" so as to deny the owner any economically viable use or prevent a fair return on reasonable investment backed expectations. *See Twain Harte Associates, Ltd. v. County of Tuolumne* (1990) 217 Cal.App.3d 71, 80-81.

1. The City's Proposed Downzoning Deprives the Owners of All Economically Beneficial or Productive Use of the Property.

The City's downzoning to Open Space constitutes a per se taking of the Property because it compels the JHS and RDC to surrender all economically viable uses of their Property in favor of a public goal to provide open space. The United States Supreme Court held in *Lucas v. So. Carolina Coastal Council* that "regulations that leave the owner of land without economically beneficial or productive options for its use – typically, . . . by requiring land to be left substantially in its natural state – carry with them a heightened risk that private property is being pressed into some form of public service under the guise of mitigating serious public harm." (1992) 505 U.S. 1003, 1018. When an owner of real property "has been called upon to sacrifice *all* economically beneficial uses in the name of the common good, that is, to leave his property economically idle," the owner has suffered a taking and is entitled to compensation. *Id.* at 1019.

That is exactly what the City is asking of JHS and RDC here. The City is attempting to foist upon the Property an Open Space designation that by City's own definition would put the Property to public open space and recreational uses. These uses are described as follows:

"natural open space restored and protected to continue its historic function as vital habitat"

"enhanced opportunities for public access and recreation"

"publicly owned local and regional parks"

“wetlands, mudflats, creek corridors and other natural preservation areas”

“private lands deed restricted for open space preservation”

“Public access should be allowed where appropriate”

“land for preservation of natural resources”

“space for outdoor recreation, space for public health and safety”

GP 3.37, Table 3.5, 7.4; DEIR 2-37. As demonstrated above, all of these contemplated land uses are wholly public in nature and use – such that it is tantamount to total taking of the Property. It is undeniable that this list of authorized uses would completely deprive the Owners of their vested industrial/office flex development rights and any other economically viable use of the Property.

The description of Change Area 12 does include one extraordinarily limited category of private land uses that was purportedly included to ward off a potential taking challenge. See e.g. Exhibit D. These private uses are:

“privately owned recreational facilities such as golf courses and other recreational facilities.”

“Small-scale recreation-supporting uses such as rental shops, bike repair facilities, small restaurants, interpretation centers and museums would complement adjacent open space areas.”

GP 3.37. To that end, the 2030 General Plan purports to authorize a 0.5 FAR development intensity standard to accommodate “small-scale recreation-supporting uses.” This is an unlawful attempt by the City to deflect its uncompensated take of the JHS and RDC Property. The Property is comprised of 16 lots that total almost 24 acres. Utilizing the 0.5 FAR, the General Plan would theoretically authorize up to **12 built acres** of a random assortment of “small-scale recreation supporting uses.” Regardless of their size, this narrow subset of uses is simply not financially viable in any market or setting – and this is particularly true given the Property’s location and its vested industrial uses. In other words, the reference to a 0.5 FAR for small scale recreation serving uses is a sham and an ineffective attempt to avoid compensation for the taking of our client’s Property. Change Area 12 simply “goes too far.”

The City’s proposed 2030 General Plan unequivocally deprives the Owners of any and all economically beneficial or productive uses of the Property, in violation of the United States Supreme Court’s decision in *Lucas*.

2. The Proposed Downzoning Prevents the Owners From Receiving a Fair Return on Their Legitimate Investment-Backed Expectations.

Even if the City's taking does not deprive the Owners of *all* economic use of the Property, the proposed downzoning constitutes an impermissible taking without compensation under the factors enunciated by the United States Supreme Court in *Penn Central Transportation Co. v. New York City* (1978) 438 U.S. 104. *Penn Central* emphasized the following three factors in particular:

- (1) the economic impact of the regulation on the claimant;
- (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and
- (3) the character of the governmental expectation.

Id. at 124; see also *Kavanau v. Santa Monica Rent Control Board* (1997) 16 Cal.4th 761, 775.

Application of the *Penn Central* balancing test weighs heavily in favor of the finding that the proposed downzoning would deprive JHS and RDC a fair return on their reasonable investment-backed expectations, and therefore constitutes a compensable taking.

First, the proposed downzoning has a severe "economic impact" as the Open Space/Parks and Recreation designation – with its heavy emphasis on public uses and extraordinarily limited private uses – could not support any economically viable use.

Second, the proposed downzoning stands in stark contrast to the JHS and RDC's reasonable investment-backed expectation that the Property could be built out as an industrial/office complex. This reasonable expectation is supported by a number of factors including: (a) the Property's long-standing General Plan, Specific Plan and zoning designations all of which encourage industrial and office flex uses; (b) the presence of substantial infrastructure improvements that support these uses; (c) the City's acceptance and approval of these improvements; (d) the presence of foundations and building pads that are served by utilities and other infrastructure; and (e) the premium JHS and RDC paid for the Property because of its improved and vested condition as an industrial subdivision.

Finally, the character of the City's expectation of the use of the Property is wholly unreasonable. Implementation of Change Area 12 would circumscribe the Property to an unjustifiably narrow set of public open space uses, without any corresponding benefit to JHS and RDC. In other words, the proposed downzoning fails to provide any benefits or rights that "mitigate whatever financial burdens the law has imposed." *Kavanau*, 16 Cal.4th at 775.

Ultimately, it cannot be disputed that the proposed downzoning to Open Space prevents JHS and RDC from receiving a fair return on their legitimate investment-backed expectations. It stands in the way of achieving the best use of the land and effectively extinguishes the fundamental right of ownership in the Property.

Courts have acknowledged a full taking in circumstances much less egregious. For example, in *Twain Harie Assocs. v. County of Tuolumne* (1990) 217 Cal.App.3d 71, the County downzoned a 1.7-acre portion of a larger parcel, the remainder of which had already been developed as a shopping center. As here, the downzoning moved the parcel from light industrial to open spaces uses. The effect of the downzoning was to limit the authorized uses to only recreational, public utility, or agricultural uses and prevent the plaintiffs from receiving a fair return on their investment-backed expectations by effectively precluding property development. The Court held that the plaintiff has stated a viable inverse condemnation claim and denied the County's motion for summary judgment. As in *Twain Harie Assocs.*, the downzoning here goes "too far" and constitutes a taking since it deprives the JHS and RDC of all economically viable uses of the Property, runs contrary to their distinct and reasonable investment backed expectations and is contrary to the Property's long standing and vested industrial/office flex uses.

3. **The Proposed Public Access Corridors Could Destroy the Property's Development Potential.**

The 2030 General Plan and DEIR propose to include a Class 1 bicycle route and public access trail running from the existing Bay Trail spur trail, along the Property's bayside border and up along its boundary adjacent to the Richmond Rod & Gun Club. See GP 4.53; DEIR 3.14-9. The City makes no effort to disguise the purely public use expectations for this land. While JHS and RDC may be willing to consider implementation and dedication of a public access trail as a component of future economically viable industrial/office flex development of the Property, the City may not mandate the dedication of this land to serve public access uses. See e.g., *Nollan v. California Coastal Comm.* (1987) 483 U.S. 825; *Dolan v City of Tigard* (1994) 512 U.S. 374. Otherwise, should City wish to construct this public trail, it must acquire this land under its eminent domain powers and pay for its fair market value.

Similarly, to the extent the City attempts to mandate the dedication (and improvement of) a public access corridor, City should correct and confirm its anticipated scope of this corridor. Otherwise, property owners such as JHS and RDC, are not able to determine the impact a proposed corridor may have on the development potential of a property and how it may interfere with reasonable investment-backed expectations.

This issue is well illustrated by the conflicting maps presented in the DEIR, 2030 General Plan and the North Richmond Shoreline Specific Plan (NRSSP). The DEIR and

2030 General Plan maps contain identical renditions of “planned pedestrian improvements” that closely trace the Property’s shoreline and northern borders with a planned Class 1 bicycle route. These maps appear to track the text of the NRSSP which establishes a public access corridor along this portion of the Property, but limits it to the 100-foot shoreline band (in order to correspond to BCDC’s jurisdictional band). See NRSSP at 40, 58, 60. Unfortunately, Figure 6 of the NRSSP grossly expands the proposed public access corridor and reaches well-inland of the 100 foot band, reaching even further inland along the Property’s northern border. If applied literally, it would dramatically impact the Property, including rendering two large parcels completely unbuildable. And while the Figure 6 acknowledges that its delineation is “not precise” and must be “verified by the regulatory agencies,” the erroneous extension of the corridor has been repeated and amplified in City maps, most notably its online GIS zoning maps.

Moreover, the NRSSP, General Plan and DEIR do not address how this overlay will interact with the Property’s exempt status from BCDC’s jurisdiction. As explained above, in 1977, BCDC granted the Property a claim of exemption based on the Property’s historic industrial uses that pre-date 1965.⁴ Where the public access overlay is contingent on the BCDC’s extent of jurisdiction, and no such jurisdiction exists over the Property, there is no legitimate basis to impose this overlay on the Property.

Accordingly, Figure 6 (and Figure 4) must be revised to accurately depict the scope of the City’s proposed public access corridor so as to allow JHS and RDC to determine the impacts of this proposed public use.

C. The City’s Proposed Action Constitutes a Denial of the Right to Equal Protection.

The proposed downzoning would also violate JHS’s and RDC’s right to equal protection. The Fourteenth Amendment provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” *See also* California Const. art I, § 7(a). “The Equal Protection Clause ensures that ‘all persons similarly situated should be treated alike.’” *City of Cleburne v. Cleburne Living Center, Inc.* (1985) 473 U.S. 432, 439.

Here, the General Plan 2030 has unfairly targeted the properties in Change Area 12 to bear the full burden of the City’s perceived open space needs. The Equal Protection Clause forbids the City from placing this disproportionate burden of alleviating widespread community concerns on a small and discrete group of property owners. *Squaw*

⁴ We note that Figure 4 of the NRSSP contains an inaccurate mapping of BCDC jurisdictional band, in that it shows BCDC jurisdiction extending along the Property’s full bayside border. Figure 4 also purports to extend the 100 foot shoreline band inland along a drainage ditch – an area well outside BCDC’s jurisdiction. Accordingly, this Figure should likewise be revised to reflect an accurate portrayal of BCDC jurisdiction.

Valley Dev. Co. v. Goldberg (9th Cir. 2004) 375 F.3d 936, 944. This is particularly problematic where, as here, the City attempts to do so by prohibiting existing and established industrial/office flex uses.

Ultimately, the proposed downzoning is a pretext by which the City is attempting to secure an additional 100 acres of public open space at reduced or no cost in order to satisfy political pressure from open space advocates. The 2030 General Plan makes no attempt to disguise the intended uses of Change Area 12 as public open spaces uses: it contemplates “natural open space” and “enhanced opportunities for public access and recreation.” GP 3.37. When these intentions are coupled with the statements provided by the Planning Director to representatives of JHS and RDC (i.e., that the Director was under intense political pressure to ensure no development occurs on the site), a clear strategy emerges: downzone the properties in the North Shoreline area in order to depress their market value so that they may be acquired by the City or the East Bay Regional Park District at a reduced price, or no cost at all.

As recognized in *Kissinger v. City of Los Angeles* (1958) 161 Cal.App.2d 454 and *Gypsum Resources, LLC v. Masto* (2009) 672 F.Supp.2d 1127, these unlawful attempts to reduce development potential and/or property value for public purposes runs directly contrary to the Equal Protection Clause. In *Kissinger*, the court overturned a spot zoning ordinance that rezoned plaintiff’s property from R-3 to R-1 because “the inference is clear that the true purpose of the ordinance was to prevent the improvement of the subject property in order that it might be acquired at a lesser price for airport purposes.” *Kissinger*, 161 Cal.App.2d at 461-62. In *Gypsum Resources*, the court found that a downzoning effort targeted to create an economically unviable land use classification constituted a violation of equal protection. *Gypsum Resources*, 672 F.Supp.2d at 1143.

Through this letter, our goal is to inform the City of the consequences of its contemplated downzoning of the Property in the hopes that the City will change course and thus avoid significant financial exposure. While JHS and RDC do not wish to engage in protracted litigation, JHS and RDC will have no other option should the City proceed with downzoning in violation of JHS and RDC’s constitutional rights.

It bears reinforcing that City is contemplating a very expensive mistake – should our clients be forced to litigate this case, the City could be faced with a seven to eight figure damages award, in addition to attorneys’ fees and its own costs. See, e.g., *Yamaguchi v. City of Half Moon Bay* (2007) 523 F. Supp. 2d 1036 (awarding a judgment of \$36.8 million against a city for an inverse condemnation claim). We urge the City to abandon its unconstitutional attempts to downzone the Property and maintain its current and long-standing Industrial/Office Flex land use designation in the 2030 General Plan.

V. The Proposed Downzoning Conflicts with City Policies and Directives.

A. Downzoning Change Area 12 to Open Space Uses Conflicts with the 2030 General Plan's Primary Goal of Stimulating Higher-Intensity Development within the City.

California requires that all cities maintain a general plan as a "constitution for future development." *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540. The general plan is "atop the hierarchy of local government law regulating land uses." *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1183. This serves as a blueprint for all future development in the jurisdiction. Because the general plan is so critical to future development, the state holds general plans to exacting standards. Not only must they contain seven mandatory elements (Gov't Code § 65302), but these elements must comprise an internally consistent whole general plan (Gov't Code § 65300.5). "If a general plan is to fulfill its function as a constitution guiding an effective planning process, a general plan must be reasonably consistent and integrated on its face." *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 97. *See also Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332. Only where a general plan contains all of the necessary elements in an internally consistent manner can it adequately guide development within a city.

The 2030 General Plan and DEIR both acknowledge that the "primary goal of the proposed General Plan is to stimulate higher-intensity development within the City." and to "expand economic opportunities in existing commercial and industrial areas and develop new opportunities to diversify the local economy." DEIR at 3.2-7; GP Goal LU3, 3.46. Contrary to these goals, the 2030 General Plan proposes to remove a significant portion of the City's existing commercial and industrial base and replace it with open space uses.

This is especially problematic considering the adverse impact the removal of this land from commercially developable uses will have on the City's current downward economic trend, whereby the City has experienced job loss and unemployment at rates that far exceed the surrounding community. Table 5.7 of the draft Housing Element notes that between 2000 and 2010, unemployment rates for the City and County remained high. Though much of this is due to the recession, the City's unemployment rate is still 2.5 to 6.6 percent higher than the County unemployment rate. Also, as noted on page 5.68 of the 2030 General Plan, these official unemployment statistics do not reflect the dramatic impact of the loss of "informal" jobs that many of the City's residents have suffered.

The 2030 General Plan must address and reconcile how the proposed significant narrowing in commercial/industrial development opportunities will affect the goals, policies and objectives within the rest of the Plan. Otherwise, the 2030 General Plan is

internally inconsistent and cannot serve as an effective guide for meeting primary City's goals and policies favoring economic growth.

B. The 2030 General Plan Is Internally Inconsistent.

Without uniformity between General Plan elements, the General Plan cannot serve as a clear guide and does not meet basic legal requirements. Decision makers will face conflicting directives, citizens will be confused as to policy standards and methods of implementation, findings of fact required for discretionary permits will be impossible to make, and owners and business people will not be able to rely on the document for business decisions. *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 97. Inconsistencies expose jurisdictions to expensive and lengthy litigation.

These consistency mandates extend to the General Plan's texts, charts, diagrams, and support information: all are integral pieces of the plan. Gov't Code § 65300.5. Internal consistency requires that the diagrams of land use, circulation systems, open space and natural resources areas reflect the written policies and programs in the text for each element.

The 2030 General Plan contains several critical inconsistencies, particularly as it relates to Change Area 12. These inconsistencies are as follows:

1. Inconsistent Land Use Designations. The draft Land Use element maps designate the Change Area 12 properties as "Open Space." The text in the same element indicates a different designation of "Open Space/Parks and Recreation." GP 3.37. The General Plan must consistently and accurately reflect the land use designation for the Property. If the intent is to designate the Property "Open Space/Parks and Recreation" the General Plan must include a description of this proposed designation, as none currently exists, which takes into account these dual designations. If it intends to limit the properties to open space, it must state so clearly and consistently throughout the document.

2. Identifies Improved Industrial/Flex Developed Land as Open Space. The JHS and RDC Property cannot meet the 2030 General Plan's definition of Open Space. The Conservation, Natural Resources and Open Space Element defines "open space" as "any parcel or area of land or water in public or private ownership that is **essentially unimproved** and is **designated in a local, regional or state open space plan** for open spaces uses. These uses are broadly defined and include the following: land for preservation of natural resources, space for outdoor recreation, space for public health and safety (including fault zones and flood plains)." GP 7.4.

As described in detail above, the Property is certainly not "unimproved," and the City has admitted as much. For example, the Agenda Report for the March 9, 2010 City Council meeting acknowledges that the Property has "some existing improvements."

Consistent with the Property's Subdivision Improvement Plan, the previous owner has completed a comprehensive list of subdivision improvements – including curb, gutter, sidewalk, roadways, street lighting, public right of way storm drainage, individual lot storm drainage, water, sewer, gas, electricity infrastructure, cable, etc. – that were designed to accommodate industrial/office flex uses. These improvements were conveyed to and accepted by the City on December 6, 1982. [See Resolution 185-82 (which resolution (1) confirmed the improvements were completed and (2) accepted the dedication and maintenance responsibilities).]. This has created a vested right to industrial/office flex uses. Accordingly, statements within the 2030 General Plan that the Property is unimproved are clearly false. In addition, the Property contains two building pads that are served by this infrastructure.

The Land Use Element includes another definition of "Open Space," which is defined as "wetlands, mudflats, creek corridors and other natural preservation areas, as well as private lands deed restricted for open space preservation. Public access should be allowed where appropriate. Except in delineated wetlands and other resources preservation areas, uses permitted in the Parks and Recreation designation are allowed." GP 3.21

The Property does not meet this definition, either. The Property is not a wetland, mudflat, or creek corridor. Likewise, the Property is not in a natural state under any definition as it was graded, filled, and improved as an industrial subdivision. Moreover, public access would not be allowed as the Property (and the other parcels in Change Area 12) is private property and does not contain any private recreational uses.

Designating the Property as an Open Space use is like attempting to fit a square peg in a round hole – the Property is far removed from the open space lands defined and envisioned in the 2030 General Plan.

3. Incorrect Description of Baseline Conditions of Change Area 12. Page 3.37 of the draft Land Use Element states that the Change Area 12 "lacks infrastructure and has long remained undeveloped."⁵ This is incorrect.

As noted, the Property contains significant site infrastructure including storm water, sanitary sewer and water distribution systems, streets and sidewalks, a street lighting system, electric and gas distribution, telephone and cablevision, and street and boundary monuments. It contains rough-graded building pads that are served by this infrastructure, as well as building foundations. Moreover, as recognized by BCDC, the Property's long-term industrial uses reach as far back as the early 1960s.

⁵ Page 16.4 of the Draft General Plan Glossary defines "infrastructure" as encompassing a wide range of public services including "water, sewer, garbage collection, flood control, gas and electricity, solid waste disposal, wastewater treatment, and streets."

4. Fails to Identify Strategies to Acquire Open Space. Pursuant to Government Code Section 65564, every local open space element is required to contain a specific action program which discusses specific techniques to be employed to acquire open space. There is no such detailed discussion.

5. Fails to Address Economic Impact of Downzoning A Significant Portion of City's Developable Land. There is no discussion in the draft Economic Element, the Conservation, Natural Resources, and Open Space element, or any other element of the 2030 General Plan relative to city services or economic issues related to this proposed change from the existing Industrial/Office Flex classification to Open Space. For example, a change to open space would have the following unaddressed consequences: loss of property tax revenues to the County and the City as a result of a reassessment of appraised value, increased police and City maintenance costs, a reduction in City development fees, a reduction in future construction work, a reduction of future employment opportunities, legal costs to defend this taking of a vested project, and costs to acquire the property from the owners.

6. Fails to Accurately Identify Wetland Resources. As noted above, the Army Corps of Engineers has made a formal determination that the site contains only limited wetland resources. We note that the General Plan Map 7.1 and DEIR Figure 3.4-1 contain vague and imprecise mapping of wetland resources, which could possibly be interpreted as expanding the actual and confirmed extent of jurisdictional wetlands on the Property. It is critical that these resources are mapped carefully and precisely to reflect actual conditions. Otherwise, to the extent this erroneous mapping impacts the development potential of the Property (or any other erroneously mapped parcel), the City could face substantial liability. *See Adam Bros. Farming, Inc. v. County of Santa Barbara* (9th Cir. 2010) 604 F.3d 1142.

C. The Proposed Downzoning Conflicts with the North Richmond Shoreline Specific Plan.

The North Richmond Shoreline Specific Plan ("NRSSP") is a comprehensive land use plan, approved by the City and Contra Costa County in 1993, to guide development of the North Richmond Shoreline, which includes Change Area 12. The NRSSP designates the Property as Industrial/Office Flex in order to provide for the exclusive development of modern, non-nuisance industrial space, office, and warehouse facilities to enhance the Richmond employment base. The concern driving these industrial and office flex uses are the same concerns the 2030 General Plan purports to address in its pro-development policies -- underemployment in the City is chronic problem and the City has an intense need to increase employment opportunities and expand its tax base.⁶ By stabilizing the existing industrial base, encouraging new light industrial uses, and

⁶ For example, page 31 of the NRSSP notes that unemployment in Richmond "is historically higher than the County as a whole." Unemployment was estimated at 6.6 percent in 1991 while County unemployment was 3.8 percent for the same year.

providing the potential for quality office, research and development uses, the NRSSP's objective is to increase jobs for the local unemployed and underemployed. See NRSSP at 31.

The NRSSP recognizes the Property as an ideal site to work towards reducing this chronic problem. To that end, the NRSSP envisions the Property as a job creating site that would draw from the local labor pool to help address unemployment and underemployment. The NRSSP recognizes important market factors that would facilitate development here -- notably the existence of accessible less expensive land (as compared to Marin, Berkeley and San Francisco) in close proximity to major transportation networks, labor pools and affordable housing and with existing infrastructure.

Despite the 2030 General Plan's primary focus on job creation within the City, it proposes to rescind the NRSSP and the important job creating uses and policies contained therein. GP 3.71. This comes at a time when, more than ever, the City needs to take advantage of its economic opportunity sites, particularly when those sites can be developed in an environmentally responsible manner and also achieve critical goals that will reduce vehicle miles travelled and improve the jobs/housing ratio.

D. Downzoning the Property Is Inconsistent with Redevelopment Area Funding Obligations.

The Property, as well as the remainder of Change Area 12, is included in the Hensley Addition of Redevelopment Area 8A of the Joint City/Contra Costa County Redevelopment District. As reflected in the Contra Costa County and City Redevelopment Agency Property ("RDA") Tax Increment Fiscal Year 2007/2008 Report, Redevelopment Area 8A, and the Hensley Addition, both carry with them substantial tax increment financing potential. Our research indicates the Property was added to the Redevelopment Area 8A in 1998/1999. According to the Tax Increment Report, the redevelopment area value increase total \$148,302,734, and will result in the provision of \$1,702,515.39 in redevelopment area tax increments. This substantial tax increment is used to secure the RDA's bond financing efforts.

Thus, to the extent the RDA has issued bonds that are reliant on this tax increment financing, the RDA's ability to meet its bond obligations will be significantly hampered by the proposed downzoning of this significant redevelopment area from industrial/office flex uses to open space. This adverse impact will happen immediately. The Property value will plummet, with a corresponding decrease in its tax assessment (i.e., secured value). In addition, the RDA will be denied the future significant increase in Property values associated with redevelopment of the Property and thus denied a critical share of tax increment financing (again to service existing and future bond obligations).

We also note that this Redevelopment Area 8A is a joint City/County redevelopment district. As such, this adverse financial impact extends to both jurisdictions.

The General Plan fails to acknowledge or discuss – let alone reconcile – the conflict with City and County redevelopment policies and financing structures that will result from the downzoning of the Property to open space uses.

VI. The Proposed Downzoning is Bad Policy.

Given the City's financial difficulties and limited resources, it would be a violation of the City's duty to its constituents to pursue a downzoning of the Property that so blatantly violates Constitutional and other legal protections and exposes the City to significant liability. As reflected in the *Yamagiwa v. City of Half Moon Bay* and *Adam Brothers* cases, should the City move forward with the downzoning of the Property, City faces financial liability that will run into the tens of millions of dollars. The City must consider whether it is worth the risk of draining limited resources, and potentially bankrupting the City, in order to satisfy the whims of few to convert long-standing industrial land (with no unique wetland or natural resource features) into a public open space resource. We submit that that the risk is an unreasonable one that no responsible government would undertake.

The City must also consider whether it has a need for and can support this additional 100 acres of open space land. As stated in the DEIR, "Open space uses comprise approximately 49% of the land are in the City, making it the largest overall land use category." DEIR 3.1-3. Richmond already has more than 4,000 acres of regional and state parklands, and more than 250 acres of urban parks. DEIR 3.11-8. This far exceeds the state and City guideline of 1 acre for every 3,000 people. DEIR 3.11-6. In fact, the City's existing parks and open space could support a city of more than 12 million people.

In fact, the City itself has officially opposed adding new parkland within the City. In 2005, it adopted a resolution that stated its opposition to the East Bay Regional Park District plan to condemn the land just north of the Property. Redevelopment Resolution No. 05-31; City Council Resolution No. 124-05 (attached hereto as Exhibit I). The City explained its position clearly.

- The City found that its "parklands and other open space areas are abundant for a city the size of Richmond and many parks, including Point Pinole Regional Park, are very underutilized."
- "The loss of additional land from the tax roll would be a hardship on the City because it would further reduce the City's ability to provide the services that the people of Richmond deserve."
- A new park would not "be compatible with the greatest public good and the least private injury."
- The creation of new parks requires CEQA review.

- The Redevelopment Agency “has no intention of allowing land designated under a Project Plan for redevelopment to be use for purposes contrary to the Project Plan and Implemental Plan without an appropriate public process and approval of the Agency Board.”

There is no justification for an about-face now: the City has plenty of parkland and cannot afford to lose the tax revenues nor the redevelopment potential of additional parkland.

We submit the downzoning of an economically viable industrial property is a bad policy choice given the City’s overarching desire to further develop its commercial and industrial base within its own border. Accordingly, for all the reasons stated above, we urge the City to abandon this risky, expensive and bad policy choice and maintain the Property’s current Industrial/Office Flex designation.

VII. The DEIR Contains Fundamental Analytical Flaws That Mandate a Full Revision and Recirculation.

One of CEQA’s primary functions is to ensure that decision makers and the public are provided with a sufficient degree of analysis and information to make intelligent judgments concerning a project’s environmental impacts. CEQA Guidelines § 15151; *Napa Citizens for Honest Gov’t v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 256. To that end, the DEIR must adequately identify the significant environmental effects of the 2030 General Plan, identify feasible measures to avoid or mitigate those impacts and to the extent those impacts cannot be mitigated, provide a complete analysis of the extent of the project’s adverse impacts.

Unfortunately, the DEIR fails in its duties. While we recognize the importance of the 2030 General Plan, and are generally supportive of many of its policies (excluding, of course, Change Area 12), it is critical that the DEIR accurately assess and analyze the environmental impacts that will flow from the policies and action items contained in the Plan. Accordingly, we submit the following comments on the DEIR, and hereby request that the DEIR be revised to address the inadequacies detailed herein, and re-circulated for meaningful public comment.

A. The DEIR Ignores Impacts Associated with the Downzoning of Change Area 12.

1. The DEIR Contains an Inaccurate Description of the Baseline Setting of Change Area 12.

The DEIR contains an inaccurate description of the environmental setting and baseline in its description of the Proposed Change Area 12, particularly as it relates to the Property. “The baseline is critical to a meaningful assessment of the environmental

impacts of a project.” *Kostka & Zische, Practice Under the California Environmental Quality Act*, (2d, 2011), §12.16; *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 119; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 955.

The DEIR states that this area has “been identified as important habitat for endangered plant and wildlife species ...lacks infrastructure and has remain undeveloped with the exception of an outdoor shooting range” and envisions its use as “open space, restored and protected to continue its historic function as vital habitat and provide enhanced opportunities for public access and recreation.” DEIR 2-25; see also, GP 3.37 (explaining Change Area 12 is recommended for designation as open space because the land is “historic baylands”); Figure 3.4-1, DEIR 3.4-1.

The Property conditions are completely contrary to the 2030 General Plan and DEIR’s baseline descriptions.

- **Habitat Conditions:** recent biological surveys confirm the Property contains no suitable habitat for endangered plant or wildlife species given its disturbed condition and routine land management practices.
- **Infrastructure:** The Property contains full build-out of infrastructure, including roads, utilities, drainage, lighting, and other key infrastructure necessary to support a full industrial/office flex subdivision. The City accepted these improvements as complete on December 6, 1982.
- **Development:** The Property has long been put to industrial uses, reaching back to the 1960s when three industrial buildings were constructed on the site. These buildings were demolished by the City as part of the Richmond Parkway construction project/ eminent domain proceedings, but their building pads and the Property’s infrastructure remain.
- **Public Access and Recreation:** the Property is privately held and not suitable for public access or recreation.

Thus, the Property’s condition is far removed from the almost pristine state the 2030 General Plan and DEIR portray.

Where, as here, an EIR misstates the environmental setting, the EIR must be revised and re-circulated in order to account for an accurate analysis. Failure to do so will require the document be set aside. *Galante Vineyards v. Monterey Peninsula Water Management District* (1988) 60 Cal.App.4th 1109, 1122 (“Due to the inadequate description of the environmental setting for the project, a proper analysis of project impacts was impossible.”). *Id.*

2. By Ignoring the Downzoning of Change Area 12, The EIR's Project Description Is Inaccurate and Insufficient.

CEQA requires that an EIR contain an accurate project description that provides “enough information to ascertain the project’s environmentally significant effects, assess ways of mitigating them, and consider project alternatives.” *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523. Failure to include a component in the project description leads to a flawed impact analysis. *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645; *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 27; *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818.

The DEIR project description is confusing and incomplete. It omits any mention of the portions of the 2030 General Plan that propose downzoning a significant portion of the City’s industrial base to open space uses.⁷ Even in its description of Change Area 12, the DEIR fails to inform the reader of the current Industrial/Office Flex designation, thereby depriving the reader of critical information as to the scope and extent of the proposed change.⁸

Instead, the DEIR focuses exclusively on the ways in which the General Plan will induce growth within the City. The DEIR repeatedly categorizes all change areas (including Change Area 12) as areas that would provide and facilitate development and growth to meet the City’s housing and job related goals.

Indeed, the DEIR’s analysis reflects a contrary approach where the singular focus is the growth impacts associated with the proposed change areas and acknowledges that restoring change areas to less developed conditions would be inconsistent with the General Plan’s goals. This is well illustrated on DEIR page 4-5:

⁷ It should also be noted that Tables 2-3 and 2-4 purport to describe overall changes in land use designations, but they are misleading because they do not show changes within the change areas between the existing and proposed land uses. 2-41-42. This hides the fact that some land is downzoned even though the General Plan calls for growth.

⁸ Nor does the DEIR contain a clear description of the shift in land uses between the existing and proposed General Plan. For example, Tables 2-3 and 2-4 attempt to show the existing and proposed breakdown of zoning designations throughout the City and quantify the number of acres within each category under the existing and proposed General Plan. DEIR 2-41 to 2-42. Unfortunately, these tables are almost impossible to track to determine how much land is being transitioned from existing to new uses – including Industrial/Office Flex and Open Space/Parks and Recreation uses. Adding further confusion, the two tables have inconsistent zoning categories. As a result, it is impossible for the reader to determine the actual shift in land uses throughout the City.

The proposed General Plan would result in the commitment of concentrated development resources within the identified change areas. The General Plan would increase building densities, population concentration, and transit oriented development opportunities, providing more walkable urban development context, thereby precluding any other proposed development opportunities for the lifespan of the plan. Restoration of the change areas to a less developed condition would be inconsistent with the goals and policies of the General Plan, which focus on the development of a dense and concentrated urban core. Restoration of the area to natural (undeveloped) state would not be feasible given the degree of disturbance, the urbanization of the area, and the level of capital investment.

See also DEIR 2-40 (“the General Plan focuses on 16 change areas within the City where future growth is most likely to occur.”); ES-2 (“the change areas would experience the most drastic change in land uses and would be the focus of development and redevelopment efforts.”); ES-1 (“majority of development planned within the 16 change areas”); 3.5-22 to 26 (re-designation of change areas to accomplish growth and increase density (3.10-26)); 4-8 (describing the commercial, residential, retail, and transportation development resulting from the 2030 General Plan). The DEIR altogether ignores the General Plan’s reductions in density, constraints on growth, or limits on new development. This omission from the project description renders the resulting environmental analysis incomplete.

Because of the inadequate project description, the DEIR ignores the potential impacts caused by downzoning. Eliminating this critical source of commercially developable land will have a significant negative impact on future employment, the jobs/housing balance and will facilitate urban blight. There are additional significant secondary impacts by making this land unavailable for its long-standing industrial and commercial uses – such as worsened air quality and traffic impacts associated with pushing more jobs out of the City and lengthening commutes and vehicle miles traveled. In addition, the City will be denied important tax revenues (including a source of redevelopment tax increment financing funds) that are currently generated by the properties within Change Area 12, which would no doubt increase as these lands are redeveloped for enhanced industrial and office flex uses. At the same time, transitioning the land in Change Area 12 to open space will result in increased demands on City resources, such as police and fire to protect against vandalism, unlawful camping, and wildfires. Moreover, given that the DEIR relies on new development to fund additional public services, preventing new development thwarts the collection of revenue necessary to fund this increased demand on public services. None of these consequences were contemplated, much less adequately analyzed in the DEIR.

The DEIR also assumes, without data or analysis, that less intensive land uses would create fewer significant environmental impacts. DEIR 2-1. In fact, less intensive

land uses create different environmental effects, as described above, and can even create greater environmental impacts. For instance, less intensive development can facilitate urban blight and would mean fewer people living and working in the City. With fewer people, there would be less demand for transit services and lower transit revenue, thwarting transit improvements and thereby discouraging transit use. Discouraging people from transit to individual automobiles would have a negative effect on air quality, greenhouse gas emissions, and traffic. Modern urban planning is based on the idea of higher densities in cities specifically to avoid the negative impacts associate with dispersed population and job centers.

The DEIR's failure to analyze downzoning means that the public and the decisionmakers lack the information necessary to make an informed decision about the General Plan.

3. The DEIR Does Not Accurately Describe Impacts of Downzoning the Change Area 12.

Because the DEIR contains an inaccurate baseline and project description regarding the downzoning impacts associated with Change Area 12, the DEIR fails to accurately describe or analyze the impact of removing 100 acres of historic industrial/office flex land from the City's development base.

For example, Table ES-1 reports that there will be no change to Parks and Open Space resources under any of the scenarios analyzed in the DEIR (Proposed Project, No Project, Alternative 1, Alternative 2). CEQA requires that all impacts, even those that could be potentially beneficial, be analyzed in order to ensure the public and the decision makers have a full appreciation of the environmental consequences of their proposed actions. CEQA Guideline 15063(b)(1) (requiring analysis of adverse and beneficial effects); *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1580.

The DEIR also contains false information on the categories of land that the 2030 General Plan designates as public open space resources. The DEIR erroneously reports that those properties proposed for open space, parks and recreational resources and agricultural land have been designated as priority conservation areas. See DEIR ES-3, 2-9. Yet, none of the land included in Change Area 12 has ever been classified as a priority conservation area. The JHS and RDC Property in particular is ineligible for this classification given its improved condition and historic industrial uses.

4. The Land Use Analysis Fails to Address the North Richmond Shoreline Specific Plan.

The 2030 General Plan proposes to rescind the long-standing North Richmond Shoreline Specific Plan, which was created in 1993 to guide development in this area of the City.

Yet, the DEIR altogether ignores the existence of this NRSSP and makes no reference of City's apparent intent to rescind this critical planning document. This stands in contrast to the DEIR's express reference to and discussion of numerous other City specific plans (such as the Macdonald Avenue Revitalization Plan, Civic Center Master Plan and Point Molate Reuse Plan), including analysis of whether and to what extent these plans are compatible with the 2030 General Plan policies. See DEIR 3.1-8.

The DEIR must contain a full and detailed analysis of the impact of rescinding a critical land use plan that has guided development of this portion of the City, including the Property and Change Area 12, for eighteen years. The DEIR must be revised and re-circulated to reflect a full and complete analysis of the potential environmental impacts of rescinding this long-standing specific plan.

5. Implementation of the Proposed Downzoning Will Physically Divide North Richmond.

The DEIR acknowledges that one basis for finding a significant land use consistency and compatibility impact is if a proposed action creates a barrier that will result in the physical division of an established community. DEIR 3.1-6. The DEIR identifies "open space that is not developed for recreational use" as an example of a land use control that can result in an adverse physical division.

Yet, the DEIR undertakes absolutely no analysis to determine whether downzoning 100 acres from Industrial/Office Flex to Open Space would result in a physical division of the North Richmond Community. It is arbitrary and capricious for the EIR to ignore this potential impact, particularly given that the proposed open space land is private property that will be subjected to a land use designation that would allow no economically viable use. Common sense dictates that impact of this land use designation will create an island of unimproved, and publicly inaccessible land, that is otherwise surrounded by developed uses. This will facilitate physical blight and run contrary to the General Plan's often repeated goals of creating mixed-use, walkable, integrated neighborhoods with an equitable distribution of retail, public amenities, community facilities and infrastructure. See DEIR 3.1-6; GP Policy LU2.1 – LU2.4.

B. The DEIR's Flawed Growth Rate Assumptions and Impact Analysis Methodology Results in Significantly Understated Impacts.

The DEIR adopts a flawed growth rate assumption that results in significantly understated impacts throughout the document. This runs contrary to CEQA, which is meant to "afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259. "The EIR has been aptly described as the 'heart of CEQA.' Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'" *Citizens of Goleta Valley v. Board of Supervisors*

(1990) 52 Cal.3d 553 [internal citations omitted]. To this end, an EIR may not artificially narrow the scope of a proposed project simply to reduce the potential for environmental impacts. *See, e.g., City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1450; *Rural Land Owners Ass'n v. City Council* (1983) 143 Cal.App.3d 1013; *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193. Rather, it must consider all “reasonably foreseeable” future consequences of the project. *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376. An EIR “must necessarily include a consideration of the larger project, i.e., the future development permitted by the amendment.” *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 409. “While it might be argued that not building a portion of the project is the ultimate mitigation, it must be borne in mind that **the EIR must address the project and assume the project will be built.**” *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 206. The DEIR has failed to do so.

The DEIR contends it “has provided a ‘worst-case’ scenario level of analysis to ensure that all potential impacts are accounted for” and acknowledges “it is the responsibility of this EIR to remain conservative in its assumptions.” DEIR ES-5. Yet, the DEIR fails in this obligation by ignoring full general plan build out, instead using shifting and unsupported growth rate assumptions.

Instead of evaluating the environmental impacts of full build-out as would be allowed under the General Plan, the DEIR evaluates impacts based on an “adjusted build-out scenario.” Apparently, this scenario is based on a City concept that “‘build-out’ of the Proposed General Plan would not occur for many years beyond the 2030 horizon.” DEIR 3.0-4; see also DEIR 1-1. Accordingly, the DEIR adopts a hybrid growth rate that looks at Association of Bay Area Government (ABAG) growth projections from 2007, plus some additional unexplained growth allocation, and assumes an arbitrary 13% population growth projection. According to the DEIR, this would result in an increase in population of 30,147 with an additional 22,488 jobs and 15,548 housing units. DEIR 2-40; see also 3.0-1 to 3.0-2, 3.2-7. While the DEIR utilizes these projections to determine the significance and proposed mitigation for all General Plan impacts, the 2030 General Plan and DEIR contains no institutional controls, mitigation measures or other policies that would limit growth to the assumed reduced growth projections.

Consequently, the DEIR contains no calculation or quantification of the population, job or housing growth under a full build out scenario and thus by default contains no substantive analysis of how this level of growth could impact the environment. This is particularly problematic in the context of infrastructure demand and planning. Indeed, the DEIR boldly admits that its analysis does not account for full build out demands and defers any analysis of future infrastructure needs to some undetermined date:

For some impact areas, including all of those that involve demand/capacity increase, it is acknowledged that the magnitude of

additional demand that could occur under full buildout is greater than the demand of development anticipated during the General Plan's planning horizon. Where applicable, the DEIR acknowledges that capacity does not exist for that additional demand. It should be noted, however, that the additional demand of full buildout of the Plan would occur in a time period beyond the horizon of the plan, and future planning efforts would address that growth, the implications of the growth, how to provide additional capacity if necessary to accommodate the growth. Environmental analysis will be conducted for those future plans as they are proposed.

DEIR 3.0-4 to 3.0-5.

The chief and critical role of an EIR, especially one analyzing a general plan, is to provide information revealing the impacts of the planned growth. This is particularly important when the EIR is evaluating impacts associated with a new general plan whose fundamental purpose is to direct growth and to identify and address the core-infrastructure needs. This DEIR completely fails this to meet this fundamental mandate. The failure to contain a detailed analysis of the full 2030 General Plan build out renders the DEIR's analysis of each of the impact areas (Chapters 3.1 through 3.15) inadequate.

C. The DEIR's Demographic Estimates and Analysis Are Not Supported by Substantial Evidence.

Chapter 3.2 of the DEIR contains a discussion of existing and anticipated demographics in the City in terms of population, employment and housing. According to the DEIR, the purpose of this chapter is "to identify, estimate and evaluate population, employment, and housing changes that would be caused by development under the proposed General Plan and have the potential to cause environmental effects." DEIR 3.2-1. The DEIR then utilizes these demographic estimates to analyze projected growth, jobs/housing balances and also as the foundation for quantifying General Plan impacts in the various resource categories.

In addition to failing to account for full 2030 General Plan build out, this demographic data is fundamentally flawed. Because this data serves as the foundation for the DEIR's impact analysis in all categories, the DEIR as a whole must be revised and re-circulated.

1. The DEIR Relies Upon Stale Census, Employment and Population Data.

The DEIR's demographic analysis relies on dated census, employment and population data. For example, the DEIR utilizes the 1990-2000 Census data rather than more recent 2000-2010 Census data. See DEIR 3.2-1 to 3.2-3. In between these two census periods, the City and County have experienced substantial population growth that

is not accounted for in the DEIR. The result is another occurrence of undercounting population levels and a corresponding under-estimation of potential environmental impacts. See DEIR 3.2-1.

The DEIR also relies on dated economic information reporting employment levels from 2001 to 2004 from the Employment Development Department (“EDD”) and the City’s Issues and Opportunities Paper 9: Economic Trends and Market Analysis. DEIR 3.2-4. The Issues and Opportunities paper draws on EDD data. Given that EDD data through 2009 are available; such up-to-date information must be used to inform the DEIR’s demographic and impact analyses.

In addition, the DEIR utilizes dated ABAG Projections data, relying on the 2007 Projections data rather than the more current 2009 Projections data. See DEIR 3.2-2.⁹ A critical aspect of ABAG’s 2009 Projections is the first time inclusion of “Performance Targets” which identify environmental, land-use and transportation related impacts of growth, as well as alternative land use scenarios to test how these objectives can be addressed and balanced through land use policies. By relying on the 2007 Projects, the DEIR failed to incorporate these key policies and goals for guiding growth in the region. Moreover, the ABAG Projections in and of themselves are not a sufficient stand-alone source for growth forecasting. ABAG’s Projections are based, in part, on the existing City General Plan. Thus, these Projections do not account for the changing development patterns and increased jobs, housing and population growth that would be authorized in the Draft General Plan.¹⁰

As a result, the DEIR’s analysis is fundamentally flawed for its failure to use the most recent and best data available, which would constitute the proper CEQA baseline. This entirely undermines the DEIR’s analysis of the 2030 General Plan’s impacts on population, employment and housing growth as well as its analysis of all population/demand related impact categories (such as air quality, hydrology, climate change, parks and recreation, and transportation among others). The DEIR must be revised to reflect the most recent and best available data.

2. The DEIR Contains an Inaccurate and Incomplete Assessment of the 2030 General Plan’s Impacts to the City’s Jobs/Housing Balance.

The DEIR’s demographic analysis also purports to undertake an analysis of the jobs/housing balance. As with the other impact sections, this analysis is based upon dated information and thus does not accurately reflect the most recent market and population conditions. See e.g., 3.2-6 (relying on US Census data collected in 2000, rather than more recent 2010 Census data). For this factor alone, the analysis must be

⁹ See <http://www.abag.ca.gov/planning/currentfcst/#>

¹⁰ See <http://www.abag.ca.gov/planning/currentfcst/modeling1.html>

revised to ensure the DEIR has utilized the best available information and the DEIR must be recirculated so that the decision-makers and the public will have an accurate portrayal of General Plan impacts.

We also note that the DEIR's analysis of jobs within the City is based on dramatic variations in data. According to the DEIR, the US Census reported there were 35,625 jobs within the City in 2000; but according to the EDD, in 2004, the City had a total of 26,507 jobs – reflecting the loss of over 9,000 jobs in a four year period. The DEIR then latches onto the EDD data to conclude that, as of 2004 at least, the City had a jobs/housing ratio of .75, which is well below the goal of a 1.0. The DEIR then asserts, again without any data or analysis, that implementation of the proposed General Plan could improve the City's job/housing ratio to be more in line with County statistics (at a 0.93 ratio). Later, the DEIR adopts a hybrid mix of ABAG and EDD employment and housing projections (based on dated information), and concludes that with implementation of the 2030 General Plan, the City will achieve a 1.24 jobs/housing ratio – a dramatic .50 shift over the purported current ratio.

Given this dramatic shift in the jobs/housing ratio, and the continued imbalance (albeit in contradictory directions), one would expect the DEIR to contain a detailed analysis to support the dramatic shift in jobs and housing between the existing and 2030 General Plan. Yet, again, all the DEIR offers is a conclusory statement that the General Plan will achieve an improved jobs/housing ratio. DEIR 3.2-6. CEQA requires that EIRs be prepared “with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental differences.” Guideline 15151. Where, as here, the DEIR contains bare conclusions and opinions, without adequate facts and analysis, the EIR is inadequate. *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 404.

Even a superficial review of the DEIR's analysis and conclusions reveals its inherent flaws. The DEIR fails to explain how the 2030 General Plan's commercial/industrial development policies will interact with its residential growth policies, and whether the housing supply will be affordable to the City's residents. This is well illustrated by the City's proposed shift in land use policies for Change Area 12. According to the DEIR, the City will experience significant growth in jobs, yet the DEIR proposed to rezone 100 acres of long-standing industrial/office flex land to open space. Where and how will this job growth occur under the General Plan if it cannot occur in these key industrial/flex development areas?

One of the chief functions of the 2030 General Plan is to address, plan for and balance jobs and housing. The DEIR fails to provide an accurate assessment of whether the 2030 General Plan policies are capable of achieving the desired balance, and outright ignores the environmental impacts of failing to do so (such as increased vehicle miles travelled, higher energy consumption rates and road congestion).

3. There Is No Evidence to Support the DEIR's Conclusions Statement that Buildout Under the General Plan Will Not Exert Housing Pressure Outside City Limits.

The EIR's demographics chapter also purports to analyze the potential for 2030 General Plan policies to create housing pressure in adjacent and nearby communities. Yet again, instead of providing any substantive analysis on this topic, the DEIR proffers a bare conclusion that "new housing would not have to be built outside of Richmond to accommodate the City's growth," and thus "[t]his issue is not addressed further in the EIR." DEIR 3.2-1 to 3.2-2. This conclusion is entirely lacking in analysis and evidentiary support, and thus is not supported by substantial evidence. "Conclusions comments" are inappropriate, particularly where "the EIR provides no information to the public to enable it to understand, evaluate, and respond to the bare assertion." *Laurel Heights*, 47 Cal.3d at 404.

Indeed, the DEIR's bald conclusion fails to account for a later conclusion in the very same chapter that, under the 2030 General Plan, the City will experience a jobs to housing ratio of 1.24 jobs per household. Where will these new employees live given the apparent shortage of housing?

The DEIR must engage in a substantive discussion which reflects accurate population, housing and job growth levels authorized under the 2030 General Plan, how this growth will affect existing and planned housing stocks within the City, whether those stocks are sufficient to meet the anticipated demand in a range of income categories (including very low, low and moderate income categories), and whether the authorized growth will require housing to be built outside Richmond City's limit. The DEIR's one sentence summary dismissal of this potential impact is wholly inadequate.

D. DEIR Improperly Relies Upon Full Compliance with General Plan Policies to Mitigate Impacts – Where Such Policies are Vague and Unenforceable.

The DEIR's analysis of environmental impacts hinges upon the suspect assumption that all future projects will achieve full compliance with all General Plan policies and that the City will fully implement all General Plan policies. See DEIR 3.0-1 ("The proposed General Plan EIR is based on the assumption that all policies in the proposed General Plan will be implemented and all development will be consistent with the proposed General Plan Land Use Diagram"); see also 3.0-3 (Significant defined as "An adverse and substantial effect on the environment, where even with application of proposed General Plan policies, it cannot be reduced to levels that are less than significant.").

The flaw with this approach is that many of the General Plan policies that the DEIR had deemed will be fully complied with (and thus in most instances will mitigate all impacts) are vague, amorphous, and unenforceable policies that lack any form of an

implementation plan, performance standard or mandatory element to ensure that they will be complied with.

This is wholly inadequate and unjustified assumption. “Lead agencies should avoid vague, incomplete, or untested mitigation measures. Mitigation measures must not be remote and speculative.” Kostka & Zische, *Practice Under the California Environmental Quality Act* (2d Ed. 2011) §14.11, (citing *Federation of Hillside & Canyon Assns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260). Mitigation measures that are so undefined as to render it impossible to estimate their effectiveness are legally inadequate. *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 79; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727. Mitigation measures must be “fully enforceable through permit conditions, agreements, or other measures.” Pub.Res.Code § 21081.6(b). A city must ensure that mitigation measures are “not merely adopted and then later neglected or disregarded.” *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261. The city must analyze the efficacy of proposed mitigation measures. See Pub.Res.Code sections 21002, 21100; *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099.

Here, the DEIR fails in each of these mandates. The following list highlights examples of vague and unenforceable policies upon which the DEIR relies:

- Mitigation Measure 3.3-1 asks that the City “encourage a ferry terminal,” provide “bicycle and pedestrian amenities;” and “promote” reduced transit fares.
- The Best Management Practices identified for climate change avoidance like use of alternative fuels, local building materials, and significant recycling of construction waste are expensive, and may not even be possible. 3.6-12. There is no evidence in the DEIR that there are enough local building materials to make any difference in emissions.
- For greenhouse gas emissions, the City adopts such policies as “take a leadership role in advocating for local, regional, and national solutions to climate change,” “raise awareness,” “continue to collaborate,” and “explore the potential.” 3.6-17 through -29.
- With regard to hazardous materials, the City vows to do such things as “develop an awareness program,” and “educate the community.” 3.8-18.
- For schools, the City intends to “continue to track and evaluate,” “support” the school district in providing quality education; and “support the school district’s “efforts to collaborate with community colleges and other educational institutions.” 3.12-15.

The DEIR offers a number of mitigation measures that would be very expensive, but for which the City clearly lacks funding and none is identified in the DEIR. For example, the DEIR admits that the existing stormwater drainage facilities in the City are inadequate to meet the baseline requirement of handling the 10-year 24-hour storm. 3.9-2; 3.9-24. There is no basis, therefore, for the City to rely as mitigation on an unfunded promise to “maintain municipal infrastructure or “provide storm drainage in accordance with best management practices and guidelines” - particularly when it is not capable of doing so now, without the increased demand that will occur under the 2030 General Plan. 3.9-19. Similarly, the DEIR relies on significant infrastructure work on railroad crossings to make them safer, but there is no guarantee that there will be funding. 3.14-5.

E. The DEIR Improperly Defers Key Infrastructure Improvements.

The DEIR acknowledges that the City’s existing public infrastructure is unable to meet current needs, and that development under the General Plan would exacerbate these failing conditions. This is particularly of concern in the impact categories of Hydrology/Water Quality (stormwater system), Public Utilities and Transportation. Yet, the DEIR concludes impacts associated with these impact categories will be less than significant by relying on an amorphous requirement that future development provide proportionate facilities and infrastructure improvements to mitigate project-specific impacts. See DEIR 3.0-3.

In essence, the DEIR relies exclusively on a vague reference to implementation of fair share contributions by future developers to fully mitigate impacts to infrastructure. But CEQA requires more. The DEIR fails to meet CEQA’s demand that the DEIR: (1) quantify existing infrastructure conditions and whether it is sufficient; (2) anticipated future infrastructure needs; (3) identify an infrastructure improvement plan with specific actions and performance standards; (4) mandate the implementation of the infrastructure plan as a condition to development; (5) identify how such plans will be funded, including both development and city generated fees; (6) and provide an accurate assessment of whether, with implementation of the infrastructure plans and other feasible mitigation, impacts can be fully mitigated; and (7) if such impacts cannot be fully mitigated, identify that impact and the extent of the impact. The DEIR fails in each of these steps.

What is the most problematic is the DEIR’s methodology has resulted in the deferral of mitigation of core City-infrastructure; CEQA prohibits the deferral of mitigation measures. Guideline 15126.4(a)(1)(B) states, “formulation of mitigation measures should not be deferred until some future time.” “Impermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR.” *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 915. A mitigation plan may not be based on future studies. *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 95. Moreover, a plan to develop mitigation measures after future analysis is inadequate.

Endangered Habitats League, Inc. v. County of Orange (2005) 131 Cal.App.4th 777, 794.

This concept is further explained in *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, where the court rejected mitigation measures in the form of a “generalized goal” because “no specific criteria or standard of performance is committed to in the EIR.” *Id.* at 670. There, as here, the EIR “leaves the reader in the dark about what ... steps will be taken, or what specific criteria or performance standard will be met...the success or failure of mitigation efforts...may largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review within the EIR.” *Id.*

The instant DEIR falls far short of the mark: it has no specific criteria, no plan in place, no commitment to implement any particular course of action, no enforcement mechanism to ensure that infrastructure will be provided, and no performance standard. Nor does the DEIR articulate any rationale for deferring mitigation. Such an amorphous approach improperly defers mitigation.

The fundamental lack of commitment is also evident elsewhere in the DEIR, including at page 2-43, where the DEIR blatantly defers the identification of key performance standards and confirms that future infrastructure improvements are optional:

The Zoning Ordinance would further define land use designations and the performance standard applicable to the land use designations. Additional approvals may include:

- Adoption of financing or fee programs for public infrastructure.
- Construction of public infrastructure projects or consideration of private development requests for infrastructure projects such as transit and roadway improvements, water distribution facilities, wastewater facilities, drainage improvements, other capital improvements, and natural resource preservation and/or restoration. ...

DEIR 2-43. CEQA does not permit the City to put off developing such critical performance standards until the future.

The City’s approach is strikingly similar to the approach the court struck down in *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, the Calaveras County General Plan land use element included proposals that would result in increased population. In that matter, the circulation element of the plan failed to provide feasible mitigation for the anticipated traffic impacts that would follow the anticipated buildout under the general plan; instead, the County stated it would lobby for funds to solve the future traffic problems. The court held this vague response was

insufficient. The court reasoned that “all conflicts between the various elements of a general plan – no matter how obvious, severe or dramatic – could be made magically to disappear by inclusion in the plan of the incantation, ‘We will lobby for funds to solve the problems causing the conflicts.’” *Id.* at 103. Such an incantation would be an “abracadabra,” eviscerating statutory requirements.

The DEIR’s critical function is to predict (based on an accurate growth assessment that accounts for full build out potential) the potential extent and need for these important infrastructure projects, determine if such needs can be met, identify feasible mitigation measures to minimize impacts to infrastructure, and if such impacts cannot be mitigated to a less than significant level inform the City and the public of this fact. The DEIR must be revised and recirculated to reflect this critical missing analysis.

F. The DEIR Fails to Analyze the 2030 General Plan’s Consistency With Local and Regional Plans.

CEQA mandates that the DEIR analyze the 2030 General Plan’s consistency with existing land use plans and policies, including regional plans. CEQA Guidelines § 15125(d). Here, that means the DEIR is required to analyze the General Plan’s consistency with existing specific plans – including the NRSSP (a City/County plan) – as well as regional plans such as the San Francisco Seaport Plan, the San Francisco Bay Plan, San Francisco Bay Area Housing Needs Plan, ABAG’s Regional Land Use Policy Framework, BAAQMD Bay Area 2010 Clean Air Plan, the Metropolitan Transportation Commission’s Transportation 2030 (including greenhouse gas reduction targets), the Integrated Regional Water Management Plan for the San Francisco Bay Area; the RWQCB Basin Plan for the San Francisco Bay Basin, West Contra Costa County Transportation Advisory Committee plans, Contra Costa Congestion Management Program, and 511 Contra Costa Comprehensive Transportation Demand Management Program plans.

The DEIR improperly punts on this analysis: “If there are potential inconsistencies with other regional land use plans that could result in physical environmental effects, those effects are addressed in applicable technical sections in this EIR.” DEIR 3.1-1. The DEIR never undertakes the requisite analysis to determine whether – and to what extent – the General Plan conflicts with these other local and regional plans and what modifications must be made to the 2030 General Plan in order to ensure future compliance. Thus, the City and the public are denied the analysis and information that CEQA mandates.

Indeed, the only reference to any analysis of compatibility with local or regional plans is a brief two sentence statement that asserts, without any evidence or explanation, that the 2030 General Plan “would not conflict the San Francisco Bay Plan” and “would not be inconsistent with the [San Francisco Seaport Plan].” There is no mention of the local and regional plans listed above; nor is there a description of how these plans relate to the proposed uses in the 2030 General Plan or evidence or analysis to support the

DEIR's findings of consistency. This violates CEQA's requirement that an EIR must identify the basis for its environmental conclusions. "An EIR must set forth the bases for its findings; a bare conclusion regarding an environmental impact without an explanation of its factual and analytical basis is not sufficient." *Laurel Heights Improvement Assn* (1988) 47 Cal.3d 376, 404). See also *Berkeley Keep Jets Over The Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371 (rejecting an EIR that failed "to support its many conclusory statements by scientific or objective data").

The DEIR likewise ignores the 2030 General Plan's compatibility with the surrounding jurisdictions that share borders with the City, including the cities of El Cerrito, San Pablo, Pinole and the unincorporated areas of the County. Nowhere does the EIR explain how the proposed policies of the General Plan will interplay and impact the key connection points, housing or other potential impacts with these surrounding jurisdictions.

The closest the DEIR gets to any level of analysis is the bare assertion that "depending on the specific location of certain uses that could be developed under the proposed General plan, potential incompatibilities could occur." DEIR 3.1-9. The DEIR does not describe what those "potential incompatibilities" might be, or how they could be mitigated. Nonetheless, without any further discussion, the DEIR somehow leaps to the conclusion that the implementation of the General Plan "would not result in substantial land use incompatibilities" and thus finds there is no significant impact.

This is a wholly deficient analysis. The DEIR artificially conscribed the scope of review and engaged in a purely superficial analysis which ultimately concludes the General Plan could result in "potential incompatibilities" Despite this acknowledgement, but without any analysis or identification of mitigation measures, the DEIR leaps to the unsupported conclusion that land use impacts will not be significant. CEQA mandates the City correct these critical errors through a completely revised and recirculated land use compatibility analysis.

G. The DEIR's Hydrology and Water Quality Analysis Is Not Supported By Substantial Evidence.

The DEIR's analysis of hydrology and water quality impacts is fundamentally flawed, particularly as it relates to impacts and mitigation related to storm drain systems, groundwater impacts, of City's storm drainage system.

1. The DEIR Fails To Analyze or Mitigate Known Existing Storm Drainage Infrastructure Impacts.

As acknowledged in the DIER, the City's existing storm drain system cannot handle existing stormwater flows, resulting in frequent and severe flooding. "The storm drain system is designed to handle the flow of a 10-year, 24-hour storm event. However, ...the existing system is generally inadequate for collecting and conveying that storm

event.” DEIR 3.9-2. According to the 2005 Storm Drainage Master Plan for the City, the City routinely experiences “[s]everal flooding problem areas” as a result of the following factors:

- Undersized pipes for runoff, even for minor storms
- Damaged curb and gutters where raised gutters and other obstructions disrupt the flow
- Area(s) without a storm drainage system
- Damaged pipes or debris/large solids build up within pipes

According to City reports, this flooding is frequent and often severe. At best only 40% of the pipes have capacity to convey the 2-year storm event and only 29% have capacity to convey the mandatory design level 10-year storm event. See 3.9-7. Only 20% of the pipes and channels have the capacity to convey the 100-year storm event. In each of these storm events, there are high occurrences of severe street flooding, including 7% of the time during a 2-year storm event, 20% of the time during the 10-year storm event and 32% of the time during a 100-year storm event. This violates Clean Water Act stormwater permit mandates and poses a hazard to public safety.

In other words, the City has an existing severe problem with the capacity of its stormwater system – yet, somehow the DEIR concludes that development under the General Plan will not result in a significant adverse impact to drainage infrastructure or result in flooding.

The DEIR does so by relying an unrealistic assumption that the City will be able to comply with various General Plan policies related to stormwater management and infrastructure improvements. For example, the DEIR cites to General Plan Policy CN3.1, which addresses stormwater management and includes action items that would require the City to “continue to comply with the City’s National Pollution Discharge Elimination System (NPDES) Permit” and to “maintain municipal infrastructure.” DEIR 3.9-18. Yet, as demonstrated in the City’s own reports and the DEIR, the City has failed to comply with its NPDES stormwater permit requirements and its infrastructure has not been maintained or improved to meet mandatory flow requirements. With increased growth under the General Plan, the City will experience increased demand on the City’s already taxed stormwater infrastructure – yet the DEIR provides no explanation as to how the City might cure the current deficient system and improve it to accommodate the growth the General Plan favors. Mere compliance with regulatory standards is not sufficient mitigation without a project-specific analysis of potential impacts of regulatory compliance. *Californians for Alternatives to Toxics v. Department of Food and Agriculture* (2005) 136 Cal.App.4th 1 (“compliance with regulatory standards is not sufficient mitigation without a project-specific analysis of potential impacts of regulatory compliance.”); *Ebbetts Pass Forest Watch v. California Department of Forestry & Fire Protection* (2008) 43 Cal.4th 936, 956.

The DEIR also appears to adopt a deferred mitigation approach to its stormwater management issues, by relying on General Plan Policy CF 1-1 which would require the City to “maintain high-quality facilities and infrastructure to sever diverse community needs.” This would theoretically be accomplished through action items CF1.D and CF1.E which would require the City to (1) assess its stormwater drainage systems and capacity to serve new development, (2) to recommend improvements to the system, (3) adopt a plan that will address deficiencies in the system, (4) and identify funding mechanisms to implement the needed stormwater infrastructure improvements. See DEIR 3.9-19.

This is classic deferred analysis and mitigation that violates CEQA’s full disclosure mandates. See *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1187 (where there is evidence that a given mitigation measure lacks funding and is therefore infeasible, the mitigation measure is inadequate). Each of the steps identified in Policy CF 1-1 are the substantive heart of what the DEIR’s analysis of impacts to stormdrainage facilities should have contained. See e.g., *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 670. (See above for further discussion of deferred mitigation.)

The DEIR wholly fails in its duty to accurately define the scope of existing stormwater management problems, assess how the new development promoted in the 2030 General Plan will contribute to this problem, quantify those impacts, identify mitigation (a plan and funding) that will alleviate this impact to the extent feasible, and if those impacts cannot be mitigated inform the City and the public of the presence and extent of this significant impact to allow an informed and politically responsible decision.

Nonetheless, despite acknowledgement of existing infrastructure failures and the lack of any improvement plan or funding mechanisms in place to address significant storm water quality impacts, the DEIR somehow concludes that the 2030 General Plan will have a less than significant impact on the City’s ability to comply with its stormwater discharge requirements (or WDRs). This conclusion cannot be supported by the evidence.

2. The DEIR Fails to Analyze Potential Groundwater Infiltration Impacts.

The DEIR repeats its analytical missteps in its analysis of potential groundwater impacts by omitting substantive analysis in favor of a conclusory statement. The DEIR acknowledges that new development under the 2030 General Plan would increase the amount of impervious surfaces, “[b]ecause the infiltration rate of soils in the City tends to be quite slow, stormwater runoff would be naturally high and infiltration relatively low. Thus, changes in pervious surfaces would not substantially affect groundwater recharge.” DEIR 3.9-20.

The DEIR goes on to rely on vague and unenforceable General Plan policies and action items designed to protect and increase open space as a means to further reduce groundwater recharge impacts. For the reasons stated above, this is inadequate mitigation.

The DEIR's analysis of groundwater infiltration impacts is entirely contradictory. On one hand the DEIR concludes that groundwater impacts will not be significant because of low infiltration rates. DEIR 3.9-20. On the other hand, the DEIR relies upon vague General Plan policies and action items that encourage the preservation, acquisition and expansion of open spaces uses, presumably because such uses will facilitate better groundwater recharge rates. Both cannot be correct – an actual analysis must be performed to understand development impacts on groundwater recharge rates utilizing the full General Plan build out scenario. Anything less is inadequate.

3. The DEIR Improperly Defers Mitigation of Erosion Impacts.

The DEIR acknowledges that development under the 2030 General Plan “would substantially alter drainage patterns by changing the land cover, land slope, drainage pathways and susceptibility of materials to erosive forces.” DEIR 3.9-22. Yet, again, the DEIR concludes that through implementation of General Plan policies, this impact will be less than significant.

For the reasons stated above, the analysis is wholly lacking and the reliance on vague and unenforceable General Plan policies is not sufficient. In particular, the DEIR relies upon compliance with Policy CN1.1, which would simply call for the City to “Establish performance standards for creek corridors that accomplish” a vague set of design, herbicide management and best management practices for creek corridors. DEIR 3.9-23. The same flaws are present in the DEIR's reliance on Policy CN2.3 addressing “natural topography protection.” The DEIR's mere reference to these future planning efforts are inadequate mitigation. As explained in *SOCA*, 229 Cal.App.3d 1011, CEQA demands the existence of established and enforceable standards in order to qualify as legitimate mitigation.

In addition, the DEIR wholly fails to account for construction related impacts to drainage patterns and erosion levels.

This pattern is repeated throughout the DEIR's discussion of hydrology impacts including 3.9-4 (alter drainage patterns), 3.9-5 (increase the amount of runoff and pollution in runoff), 3.9-6 (groundwater quality degradation), 3.9-7 (exposure to people and structures to flood hazards), 3.9-8 (exposure of people to sea level rise).

4. The DEIR Fails to Analyze Potential Impacts Associated with Construction of Needed Storm Water Infrastructure.

The DEIR acknowledges that new storm drains and infrastructure to serve new and existing development would be constructed under the proposed General Plan. The DEIR again concludes – without any supporting analysis – that construction impacts associated with these infrastructure improvements would be less than significance in reliance on various General Plan policies. DEIR 3.9-37.

This analysis is anemic. It fails to account for the extent of upgrades required, where those will be located, whether there is a plan in place for the needed improvements and the source of funding (particularly for improvements necessary to address currently deficient capacity levels). While the mitigation measures set forth a plan to collect fair share contributions for improvements necessary to accommodate new development, the DEIR contains no mention of any plans, funding sources, or other assurance that the City will have the ability to fix the current capacity crisis.

Moreover, without a plan in place, the DEIR fails to meet the requirement set forth in CEQA Guidelines Appendix G that the DEIR evaluate the constructed related impacts associated with this substantial infrastructure improvement.

H. The DEIR's Analysis of General Plan Impacts on Parks and Recreation Is Inadequate.

1. The DEIR's Analysis Ignores Impacts of Additional Parkland.

The DEIR fails to analyze whether additional parkland in the City will have an environmental impact. The City estimates that an additional 90.4 acres of new parkland will need to be created in order to accommodate anticipated General Plan growth and maintain parkland ratios. DEIR 3.11-8. CEQA Appendix G, Environmental Checklist Form requires the lead agency to consider “does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?” The DEIR properly asks this question, but summarily concludes “the physical impacts of the construction of new parks within the City are assumed as part of the proposed General Plan and analyzed in the technical sections of this EIR at a program level.” DEIR 3.11-9.

The technical section most directly related to the effects of parkland development is the section on Parks and Recreation, which does not consider any physical impacts associated with new recreational facilities. Nor do any other technical sections discuss the possible ramifications of constructing new parks. The DEIR does not identify the potential or planned locations for new local parks to be constructed, much less discuss the potential impacts of such new parks.

The City may not blithely ignore the potential physical impacts of constructing 90.4 acres of new parkland. DEIR 3.11-8. This is particularly true where, as here, the City anticipates interactions between new parkland and “travel routes, infrastructure improvement needs and barriers.” DEIR 3.11-9. These are interactions and impacts that CEQA requires a lead agency to consider.

2. The DEIR Improperly Defers Mitigation.

The City also improperly defers mitigation by calling for an amorphous “parks master plan” at some unspecified time to guide future development of parks. 3.11-9-10. “Mitigation measures calling for a mitigation plan to be devised based on future studies are legally inadequate if they do not describe the nature of the actions expected to be incorporated in the plan.” *Kostka & Zische, supra*, (2d Ed. 2011) §14.12, (citing *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 95). Here, the DEIR calls for just such a plan to formulate the City’s vision for new parks.

3. The DEIR Uses The Wrong Geographic Context For Cumulative Impacts on Parks and Recreation.

CEQA requires that a DEIR must view the project’s impacts “in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” Guideline 15065(a)(3); 15355(b); *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61; *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 409. In any event, cumulative impacts analyses often require the lead agency to consider projects outside of its control. Guideline 15130(b)(1)(A).

The DEIR states that the “geographic context for the analysis of cumulative impacts associated with parks and recreational facilities is the City of Richmond.” By artificially limiting the geographical context, the DEIR understates cumulative impacts. The irregular geographic shape of the City means that the City’s residents cross into other jurisdictions, even when simply traveling from one part of the City to another. This creates a unique fluidity which in turn requires a larger geographic context in order to accurately and adequately analyze cumulative impacts.

The City’s analysis discusses “joint use” facilities, like those that are shared with the West Contra Costa Unified School District (“WCCUSD”). DEIR 3.11-3, -10. Certainly the impacts of other projects within the WCCUSD must be considered in the cumulative impacts analysis, as must other projects within the East Bay Regional Parks District jurisdiction (3.11-4, -10). The proximity of nearby jurisdictions like El Cerrito, San Pablo, Pinole, Hercules, and Contra Costa County (including the unincorporated areas of Bayview-Montalvin Manor, East Richmond Heights, El Sobrante, Kensington, North Richmond, and Tara Hills) means that they, too, must be considered part of the geographic context in order to have an adequate cumulative impacts analysis of park land

impacts. At a minimum, the DEIR should include the neighboring jurisdictions, and all of the jurisdictions that participate in the joint-use agreements referenced in General Plan action PR1.F (upon which the DEIR relies to find a less-than-significant impact). DEIR 3.11-10.

I. The DEIR's Analysis of Effects on Public Services Is Not Supported By Substantial Evidence

1. The DEIR's Analysis Ignores Impacts Of New Public Services.

As with parkland, the DEIR fails to analyze whether additional public services necessitated by the General Plan will have an environmental impact. The key question is whether the project, through increasing demand for public services, would require new or different facilities, the construction of which could cause environmental effects. CEQA Appendix G, requires the lead agency to consider whether the proposed project would:

...result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services.

Appendix G requires the lead agency to analyze this question with regard to fire protection, police protection, schools, parks, and other public facilities. Although the DEIR purports to analyze fire, police, schools, and libraries, it misstates the standard, erroneously focusing on response times rather than physical impacts, and improperly concludes without evidence or analysis that there is no significant impact.

a. **Fire Protection.** The DEIR summarily concludes without evidence or analysis that since the General Plan anticipates development in already-developed neighborhoods, the new development would not impact fire protection resources. DEIR 3.12-5. Even in its cursory review of fire protection impacts, the DEIR fails to focus on relevant physical impacts of an increased demand – namely whether new fire facilities will be required, and if so, where will those facilities be located; and will that result in potential environmental impacts? There is no discussion of the capacity of existing fire fighting facilities to accommodate new fire fighters or new equipment. The DEIR simply assumes without evidence that it can be done. DEIR 3.12-5.

To the extent that development under the General Plan would require new firefighters and the construction of new facilities, the DEIR simply states “fire staffing and facilities would be expanded commensurately to serve the needs of new development to maintain the current response time.” DEIR 3.12-6. DEIR fails to consider the physical impacts that would be caused by expanding fire staffing and facilities. 3.12-6. And yet, this is the key question to be answered via environmental analysis. There is simply no

analysis of the matter, despite CEQA's dictates that the lead agency analyze such potential physical impacts. Yet again, the DEIR improperly defers any analysis to some unspecified future date. 3.12-7.

Finally, the fire protection analysis ignores the DEIR's conclusion elsewhere that the General Plan may cause a significant and unavoidable impact on primary emergency response routes. DEIR 3.14-51, -52. Such an impact on traffic would affect response times.

b. Police Services. As with fire protection, the DEIR summarily concludes that since the General Plan anticipates development in already-developed neighborhoods, the new development would not affect police services. DEIR 3.12-9. The DEIR states that "RPD's ability to support the needs of future growth is dependent upon its ability to hire and train police personnel and redefine district and patrol beats to maintain a manageable call load." DEIR 3.12-9. This assumes without analysis that additional police officers can be squeezed into existing facilities, which crowding will not cause a physical impact on the environment. The DEIR ignores any impacts that additional equipment (like police cars) would have on the physical environment, even though such vehicles have known air quality, greenhouse gas, traffic, and noise impacts.

Again mirroring the fire protection section, to the extent that the General Plan would require new police officers and stations, the DEIR simply states "police staffing and facilities would be expanded commensurately to serve the needs of new development to maintain the current response time." DEIR 3.12-10. This fails to consider the physical impacts caused by expanding staffing and facilities, much less the feasibility of such expansion.

Finally, the police protection analysis ignores the DEIR's conclusion elsewhere that the General Plan may cause a significant and unavoidable impact on primary emergency response routes. DEIR 3.14-51, -52. Such an impact on traffic would affect response times.

c. Schools. The DEIR concludes with insufficient analysis that growth under the General Plan will generate up to 10,448 students by 2030. This estimate is apparently based on out-dated district-wide data from 2007-08 as well as projected housing data, but the projected housing data are not included in Table 3.12-14, so it is impossible to know. DEIR 3.12-14. There is no discussion as to why outdated numbers, from before the real estate crash and mortgage lending crisis, would still apply. There is no discussion of why district-wide numbers provide an accurate count for Richmond, when Richmond's demographics are not necessarily representative of the rest of the district. Nor is there any rational basis for assuming that the ratio of students per housing unit will remain the same until 2030, particularly given the many new policies embodied in the General Plan.

To the extent that the General Plan would require new teachers and schools, the DEIR concludes “school staffing and facilities would be expanded to serve the needs of new development to maintain adequate service levels.” DEIR 3.12-15. This is not enough. The DEIR must evaluate the extent of needed facilities, anticipate the location of those facilities, analyze the potential impacts associated with their construction and use and propose mitigation of those impacts to the extent feasible. It entirely fails to do so.

d. Libraries. The DEIR summarily concludes that because the City has no standards for providing library service, increased development would not equate to a need to increase the number of books or square footage of libraries. Therefore, the effect of the General Plan on the City’s libraries would be less than significant. This entirely ignores the large population growth anticipated and facilitated by the General Plan. There is no discussion of whether the existing square footage, volumes, and library programs can accommodate large population growth. Without any such analysis, it is improper for the DEIR to conclude that there would be less-than-significant impacts on libraries.

2. The DEIR Improperly Defers Mitigation.

For fire protection, schools, and library – the DEIR improperly defers mitigation by assuming that development fees will be collected, and such fees will offset the costs of any new public services, the provision of which will then be analyzed for environmental impacts. DEIR 3.12-5, -6 (fire); DEIR 3.12-15 (schools), DEIR 3.12-18, -19 (library).

The analysis for police protection even more egregiously defers mitigation—it does not even provide for the collection of development fees to pay for additional staffing and facilities. It simply assumes that such staffing and facilities will occur, without any provision for funding them. DEIR 3.12-9, -10.

Finally, the DEIR also improperly defers mitigation by relying on the future creation of a “Library Strategic Plan.” DEIR 3.12-19.

3. The DEIR Uses The Wrong Geographic Context For Cumulative Impacts on Public Services.

The City systematically understates the geographic context for cumulative impact analyses with regard to public services. For each public service, the DEIR acknowledges that the City coordinates and cooperates with affiliated jurisdictions to provide service, and then ignores those affiliated jurisdictions to find less-than-significant cumulative impacts. However, such a limited view inaccurately understates real effects.

a. Fire Protection. The cumulative impacts analysis considers only the service area for the Richmond Fire Department, even though the General Plan provides for collaboration with neighboring jurisdictions, partner agencies, and regional agencies. DEIR 3.12-5 to 3.12-6. Such collaboration bears the risk that should the needs

of the other jurisdictions increase due to projects in those other jurisdictions, it could significantly impact the performance measures in Richmond and potentially facilitate the construction of new facilities – particularly along the City’s less urban edges. Failing to include those jurisdictions in the cumulative impacts analysis understates the environmental effect of the General Plan.

b. Police Protection. The cumulative impacts analysis only considers the City limits, even though the General Plan, incorporated into the DEIR, provides for collaboration with neighboring jurisdictions and regional agencies. DEIR 3.12-10, -11. As above, such collaboration carries the risk of affecting performance measures and potentially a need to construct new police facilities, and thus this impact must be addressed in the DEIR’s cumulative impacts analysis.

c. Schools. The WCCUSD provides schools to the residents of Richmond, along with the residents of El Cerrito, San Pablo, Pinole, Hercules, and Contra Costa County (including the unincorporated areas of Bayview-Montalvin Manor, East Richmond Heights, El Sobrante, Kensington, North Richmond, and Tara Hills). Although the DEIR properly defines the geographical context to include these jurisdictions, it dismisses their effect summarily, stating without any evidence that “students in other areas of the district would be distributed throughout the district instead of being focused on Richmond.” DEIR 3.12-16. This ignores the real consequences of the combined effect of WCCUSD district wide growth, including the potential need for additional school facilities within the City limits or alternatively, increased vehicle miles travelled for students who may experience longer commutes to attend a school with capacity. Again, the DEIR fails to analyze and understates the project’s potential cumulative impacts.

d. Libraries. The cumulative impacts analysis only considers the City limits (DEIR 3.12-20), even though any California resident can get a library card to any jurisdiction. Where, as here, the failure to provide adequate new facilities would have the likely impact of pushing Richmond’s population to neighboring libraries with adequate space and volumes, the cumulative impacts analysis must include those neighboring jurisdictions to determine whether there would be a cumulative impact.

J. The DEIR’s Analysis of Effects on Public Utilities Is Inadequate.

1. The DEIR’s Analysis of Water Supply and Infrastructure Is Not Supported By Substantial Evidence.

CEQA requires that a local agency consider whether a project would “require or result in the construction of new water... facilities or expansion of existing facilities, the construction of which would cause significant environmental effects.” Appendix G. It also requires a consideration of whether “sufficient water supplies [are] available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?” Appendix G. The DEIR falls short of these standards.

The DEIR contains no water supply assessment, as is required by Water Code sections 10910 and 10912. *See also* Guideline 15155. Before a lead agency may approve a large project it must have the public water system that will be supplying water to the project conduct a water supply assessment. This assessment must be included in the EIR. Water Code §10911(b). *See California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1480-81; *O.W.L. Foundation v. City of Rohnert Park* (2008) 168 Cal.App.4th 568, 576. Conducting water supply assessments prior to project approval ensures that “local land use authorities will thoroughly consider the availability of water supplies before approving major new developments,” thereby avoiding “putting the cart before the horse.” *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 887.

Here, the General Plan far exceeds the thresholds for a “large project” in that it proposes more than 500 dwelling units, more than 500,000 square feet of shopping centers and business establishments, more than 650,000 square feet of proposed industrial, manufacturing, and processing, and will demand water in excess of that which would be required by a 500-dwelling unit project. Water Code §10912; Guideline 15155(a)(1). And yet, the DEIR does not include a water supply assessment. DEIR admits that water supply assessments are necessary (DEIR 3.13-7), but improperly pushes them off until future projects are proposed (DEIR 3.13-8, -11). Water supply planning is a critical part of state-wide land use planning and must be done at this critical juncture when the growth of the City for the next 20 years is being charted.

The DEIR also admits that East Bay Municipal Utilities District (“EBMUD”) “would be unable to meet water demands” in severe droughts. 3.13-4. Even with the Freeport Regional Water Project, which according to the DEIR is not yet functioning, EBMUD will not be able to meet its supply standards unless there is “aggressive conservation.” DEIR 3.13-5. There is no description of what “aggressive conservation” is, or whether it is even possible. The DEIR mentions other projects that are in the “feasibility phase,” but that may not ever be constructed. DEIR 3.13-5. In this analysis, the DEIR never quantifies the precise level of water shortfall, which means that neither the public nor the decision makers have the information to which they are entitled under CEQA. Guidelines 15002(a)(1); 15151.

Nonetheless, despite this clear water shortfall and the uncertainty of future water supply, the DEIR concludes that General Plan growth would have a less than significant impact. To do so, the DEIR improperly relies on future projects that may never even be built. 3.13.-18, -19. It says, “EBMUD’s WSMP 2040 policies are designed to provide sufficient water supplies to serve future development out to 2040, including development associated with the proposed General Plan, so the proposed General Plan would not require new or expanded water entitlements.” DEIR 3.13-10. This ignores the fact that some of EBMUD’s projects may not even happen. If they do not, then the General Plan growth will require the construction of new infrastructure, which the DEIR does not consider. CEQA does not permit the reliance on speculative or “paper” water supplies.

Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova (2007) 40 Cal.4th 412, 432.

The DEIR blithely asserts that if new development under the General Plan did require additional water infrastructure, developers would provide it. General Plan policy CF1.4 reads “Require new development to provide proportionate facilities and infrastructure improvements as it occurs. New developments must mitigate impacts or contribute adequate infrastructure to meet additional demand...” DEIR 3.13-9. The DEIR ignores the physical impacts that such water infrastructure would have. As more fully described above, CEQA does not permit such deferred mitigation.

The cumulative impacts analysis is similarly flawed, in that it relies on the implementation of EBMUD infrastructure that is merely in feasibility planning stages now. 3.13-11. This understates the cumulative impact and results in an improper finding of a less-than-significant impact.

The DEIR also relies on compliance with vague and unenforceable policies as mitigation for anticipated water shortages. 3.13-9, -10. For example, the City will “support efforts” to recycle water, “work with water providers and water conservation agencies to create an incentives program,” “encourage use of drought-tolerant and native vegetation,” and “promote water conservation.” 3.13-9. Such unenforceable plans to plan do not satisfy CEQA’s mitigation requirements.

2. The DEIR’s Mitigation of Impacts on Wastewater Treatment Is Inadequate.

As with many other sections of the DEIR, and as stated in the discussion of Hydrology impacts, the discussion of wastewater treatment improperly defers mitigation by asserting vague, unenforceable General Plan policies to mitigate wastewater treatment effects. To avoid a finding of a significant impact due to violation of wastewater discharge requirements (“WDR”s), the General Plan states the City will continue to comply with discharge requirements. DEIR 3.13-17, -19, -20. There is no discussion of the challenges to doing so (let alone an acknowledgement that City has failed to comply with its WDRs), or what affirmative steps the City will take to ensure that it can do so. The DEIR states that “any request for service resulting from new development would be subject to a site-specific evaluation of the existing wastewater system’s capacity to service the development. If improvements to the existing wastewater system are required or additional facilities are needed, the property developer would be required to pay its fair share of the cost of needed improvements.” DEIR 3.13-20. The City does not explain what will happen if fair share contributions are insufficient to cover infrastructure costs, but development proceeds without the needed improvements. DEIR 3.13-20. This is inadequate.

The DEIR admits that the Richmond Municipal Sewer District experiences peak wet weather flows that exceed its treatment capacity by more than 16 million gallons per

day. DEIR 3.13-12. The DEIR ignores this problem, asserting instead that the City's "sewer system has the adequate capacity to carry its wastewater flows from its existing customers during the normal rainfall event." DEIR 3.13-13. The DEIR should have addressed the 2, 10, and 100 year rain events. The DEIR also mentions that the City upgraded the Richmond wastewater treatment plant more than 20 years ago, in 1988. DEIR 3.13-13. Since that time, Richmond has had one of the highest sewage spill rates in the state, dumping millions of gallons of sewage into tributaries to the San Francisco Bay. Notwithstanding this torrid history, the City's DEIR asks the public to trust that it will "maintain municipal infrastructure" (GP Action CN3.A, DEIR 3.13-17) and there will be no significant impacts going forward.

The DEIR does not account for the existing system deficiencies at the Richmond Municipal Sewer District. The DEIR fails to specify the peak flows that run through EBMUD's Wastewater Treatment Plant. DEIR 3.13-14. It omits the wet weather capacities of RMSD, WCWD and EBMUD, and neglects to explain where each of the EBMUD regional flows are directed between the various facilities. As with the hydrology section of the DEIR, the public utilities section fails to address the infrastructure, planning, funding, and impacts of new infrastructure projects, choosing instead to put this off to the future. As such, the findings of no significant impact with regard to 3.13-2 and 3.13-4 were understated and not supported by analysis or the evidence.

Mitigation Measure 3.13-4 explains that "future projects shall incorporate project-specific mitigation measures to reduce impacts," without specifying what those measures will be, or even providing a menu of possible measures. This violates CEQA's mandate to identify all feasible mitigation measures and to conduct analyses at the earliest possible time. Guideline 15126.4(a)(1).

3. There Is No Substantial Evidence To Support the DEIR's Analysis of Solid Waste.

CEQA requires that a lead agency determine that the project will be "served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs" and comply with all laws regarding solid waste. Appendix G. The DEIR's analysis inadequately considers these issues.

There is no evidence to conclude that there is enough capacity to accommodate the growth in solid waste caused by the General Plan. Five of the 14 solid waste disposal facilities listed in Table 3.13-2 are expected to close within the General Plan timeframe. 3.13-23. Moreover, the DEIR relies on landfills outside of the jurisdiction, without any consideration of what other localities those landfills serve. There is no discussion of whether the landfill space has been otherwise committed to different localities. 3.13-25, -26. This failure to consider other obligations is likely to lead to double, triple, or quadruple counting landfill space. Furthermore, the analysis switches between units,

discussing both tons and cubic yards without articulating their relationship. DEIR 3.13-25.

The full buildout analysis fails to analyze or quantify what constitutes “substantial increase” at buildout. DEIR 3.13-26. Therefore, there is no way to determine if capacity exists.

The cumulative impacts analysis finds a “considerable” impact, but that analysis is insufficient to make such a determination. It relies on sweeping generalizations -- “because future development will contribute to the finite capacity of area landfills [sic], which could require new or expanded landfills, development associated with cumulative projec within and around the city would be significant.” DEIR 3.13-28. This lacks the careful factual analysis required by CEQA.

4. The DEIR’s Analysis of Energy Is Inadequate.

As with other impacts, the DEIR acknowledges the existing shortage of energy, and proceeds to incongruously find that increased demand for energy will have a less-than-significant impact on energy. The DEIR states “the state has experienced constraints related to energy supply and delivery.” DEIR 3.13-31. It continues, “the construction of new electric facilities could be required to serve new development within the City. The physical impacts from the construction of these facilities are assumed as part of the General Plan development and are analyzed in this EIR.” DEIR 3.13-33. However, the DEIR does not in fact consider any physical impacts of new electric facilities. Moreover, this statement conflicts with the very next page, which says, “the General Plan would not require or result in the construction of new energy production or transmission facilities, the construction of which could cause a significant environmental impact.” DEIR 3.13-34. There is no consideration of where the facilities would be located, how they would generate electricity, or the physical impacts that would result. It is improper to conclude, without conducting any such analysis, that the impacts related to electricity supply would be less than significant. DEIR 3.13-33.

The analysis of natural gas is similarly lacking. The DEIR concludes that because PG&E promises to deliver the natural gas needed by the City, there will be no significant impact. DEIR 3.13-34. There is no discussion of where PG&E might obtain that natural gas, whether sufficient natural gas will be available, or what the physical impacts of obtaining and delivering that natural gas might be. DEIR 3.13-34.

The cumulative impacts analysis of energy use also ignores the physical impacts of providing additional electricity and natural gas. DEIR 3.13-36. It simply assumes that such power will be provided by PG&E. This is an inadequate analysis. The cumulative impacts is thus narrowly focused on transmission facilities, and comes to the illogical and surprising conclusion that PG&E will probably need to build new transmission facilities, but such construction will not have significant impacts. DEIR 3.13-36. There is no basis for such a conclusion. It is also internally inconsistent, concluding both that there will be

no significant impact, and that the impact would be less than significant. DEIR 3.13-36. They cannot both be true.

Conclusion

JHS and RDC are fully committed to protecting their property interest. It is our deep and sincere hope that in light of the information presented in this letter, the City reconsiders its proposed downzoning of the Property and maintains the Property's current Industrial Office Flex designation, as it has for the past half century. Ultimately, JHS and RDC remain optimistic about the development opportunities at the Property, and in the City of Richmond as a whole, and hope to work cooperatively and productively with the City in bringing these expanded uses to fruition. Development of the Property will bring important local serving jobs and revenues to the City and will further the primary goals outlined in the 2030 General Plan, Northern Richmond Shoreline Specific Plan and other guiding documents to create a viable and desirable North Richmond community. Again, we urge the City to abandon any downzoning effort, correct the maps, and get on the right path to encouraging development at the Property.

In addition, the City must revisit its DEIR analysis of the impacts associated with 2030 General Plan. This DEIR does not meet the minimum threshold of CEQA compliance. This revised analysis must account for the full build out potential under the General Plan and contain a substantive discussion of the various impact categories, identify well defined and enforceable mitigation measures and generally inform decision makers and the public of the environmental consequences of the proposed General Plan. After such revisions, the city must recirculate the DEIR for comment on the new information.

Respectfully submitted,

SSL Law Firm LLP

Diane K. Hanna

Enclosures

cc Planning Commission
 City Council
 City Attorney

Ex. B

SUBDIVISION 5754

PORTION OF LOT 204 TWP OF SAN PABLO RANCHO
1/4 E 1/4 Sec 10, T 12N, R 10W
A PORTION OF SECTIONS 35 & 36 T24N, R0W N204

RICMOND, CONTRA COSTA COUNTY, CALIFORNIA
KISTNER, SAUNDERS & CO., INC. LAND SURVEYORS & CIVIL ENGINEERS
21 CENTRAL
MARCH, 1922

STATEMENT OF SMALL SHAREHOLDERS

WE, THE UNDERSIGNED, BEING THE SMALL SHAREHOLDERS OF THE RICMOND SUBDIVISION, DO HEREBY CERTIFY THAT WE HAVE READ THE DECLARATION AND THE MAP THEREON, AND WE APPROVE THE SAME, AND WE AGREE TO BE BOUND BY THE TERMS THEREOF.

STATEMENT OF CITY CLERK

I, MARGA J. LUTON, CITY CLERK AND EX-OFFICIO CLERK OF THE CITY COUNCIL OF THE CITY OF OAKLAND, DO HEREBY CERTIFY THAT THE DECLARATION AND THE MAP THEREON, AS SUBMITTED TO THE CITY COUNCIL, HAVE BEEN READ AND APPROVED BY THE CITY COUNCIL OF THE CITY OF OAKLAND, AND THAT SAID CITY COUNCIL HAS RESOLVED TO ACCEPT SAID DECLARATION AND MAP, AND TO AUTHORIZE THE CITY ENGINEER TO RECORD SAID DECLARATION AND MAP IN THE PUBLIC OFFICE OF THE COUNTY, UNDER THE NAME OF RICMOND, AS DECLARED TO PUBLIC USE.

IN WITNESS WHEREOF, I HAVE SIGNED MY NAME AND THE SEAL OF SAID CITY OF OAKLAND, THIS 12th DAY OF MAY, 1922.

Marga J. Luton
CITY CLERK OF THE CITY OF OAKLAND,
STATE OF CALIFORNIA

STATEMENT OF ALDERMAN OF RICHMOND

I HEREBY CERTIFY THAT THE PLANNING COMMISSION OF THE CITY OF RICHMOND, COUNTY OF CONTRA COSTA, CALIFORNIA, HAS APPROVED THE TENTATIVE MAP UPON WHICH THIS PLAN IS BASED.

4/22/22
DATE

Charles E. Johnson
CITY ENGINEER, RICHMOND,
COUNTY OF CONTRA COSTA,
CALIFORNIA

STATEMENT OF CITY ENGINEER

I, LEONARD H. LUND, CITY ENGINEER OF THE CITY OF RICHMOND, COUNTY OF CONTRA COSTA, CALIFORNIA, DO HEREBY CERTIFY THAT I HAVE EXAMINED THE DECLARATION AND THE MAP THEREON, AND THAT SAID DECLARATION AND MAP COMPLY WITH THE REQUIREMENTS OF THE PLANNING COMMISSION OF SAID CITY, AND THAT SAID DECLARATION AND MAP COMPLY WITH THE REQUIREMENTS OF THE PLANNING COMMISSION OF SAID CITY, AND THAT SAID DECLARATION AND MAP COMPLY WITH THE REQUIREMENTS OF THE PLANNING COMMISSION OF SAID CITY, AND THAT SAID DECLARATION AND MAP COMPLY WITH THE REQUIREMENTS OF THE PLANNING COMMISSION OF SAID CITY.

April 22, 1922
DATE

Leonard H. Lund
CITY ENGINEER, RICHMOND,
COUNTY OF CONTRA COSTA,
CALIFORNIA

STATEMENT OF ENGINEER

I HEREBY CERTIFY THAT THE DECLARATION AND THE MAP THEREON, AS SUBMITTED TO THE CITY COUNCIL OF THE CITY OF OAKLAND, HAVE BEEN READ AND APPROVED BY THE CITY COUNCIL OF THE CITY OF OAKLAND, AND THAT SAID CITY COUNCIL HAS RESOLVED TO ACCEPT SAID DECLARATION AND MAP, AND TO AUTHORIZE THE CITY ENGINEER TO RECORD SAID DECLARATION AND MAP IN THE PUBLIC OFFICE OF THE COUNTY, UNDER THE NAME OF RICMOND, AS DECLARED TO PUBLIC USE.

IN WITNESS WHEREOF, I HAVE SIGNED MY NAME AND THE SEAL OF SAID CITY OF OAKLAND, THIS 12th DAY OF MAY, 1922.

Charles E. Johnson
CITY ENGINEER, RICHMOND,
COUNTY OF CONTRA COSTA,
CALIFORNIA

STATEMENT OF ALDERMAN OF RICHMOND

I HEREBY CERTIFY THAT THE PLANNING COMMISSION OF THE CITY OF RICHMOND, COUNTY OF CONTRA COSTA, CALIFORNIA, HAS APPROVED THE TENTATIVE MAP UPON WHICH THIS PLAN IS BASED.

4/22/22
DATE

Charles E. Johnson
CITY ENGINEER, RICHMOND,
COUNTY OF CONTRA COSTA,
CALIFORNIA

STATEMENT OF CITY ENGINEER

I, LEONARD H. LUND, CITY ENGINEER OF THE CITY OF RICHMOND, COUNTY OF CONTRA COSTA, CALIFORNIA, DO HEREBY CERTIFY THAT I HAVE EXAMINED THE DECLARATION AND THE MAP THEREON, AND THAT SAID DECLARATION AND MAP COMPLY WITH THE REQUIREMENTS OF THE PLANNING COMMISSION OF SAID CITY, AND THAT SAID DECLARATION AND MAP COMPLY WITH THE REQUIREMENTS OF THE PLANNING COMMISSION OF SAID CITY.

April 22, 1922
DATE

Leonard H. Lund
CITY ENGINEER, RICHMOND,
COUNTY OF CONTRA COSTA,
CALIFORNIA

STATEMENT OF REGISTERED CIVIL ENGINEER

I HEREBY CERTIFY THAT THIS MAP AND THE DECLARATION THEREON WERE PREPARED UNDER MY SUPERVISION UNDER THE PLAN OF SAID CITY, AND THAT THE DECLARATION AND MAP COMPLY WITH THE REQUIREMENTS OF THE PLANNING COMMISSION OF SAID CITY, AND THAT SAID DECLARATION AND MAP COMPLY WITH THE REQUIREMENTS OF THE PLANNING COMMISSION OF SAID CITY.

April 22, 1922
DATE

Charles E. Johnson
REGISTERED CIVIL ENGINEER NO. 12810
COUNTY OF CONTRA COSTA,
CALIFORNIA

STATEMENT OF REGISTERED ENGINEER

I HEREBY CERTIFY THAT THE DECLARATION AND THE MAP THEREON, AS SUBMITTED TO THE CITY COUNCIL OF THE CITY OF OAKLAND, HAVE BEEN READ AND APPROVED BY THE CITY COUNCIL OF THE CITY OF OAKLAND, AND THAT SAID CITY COUNCIL HAS RESOLVED TO ACCEPT SAID DECLARATION AND MAP, AND TO AUTHORIZE THE CITY ENGINEER TO RECORD SAID DECLARATION AND MAP IN THE PUBLIC OFFICE OF THE COUNTY, UNDER THE NAME OF RICMOND, AS DECLARED TO PUBLIC USE.

4/22/22
DATE

Charles E. Johnson
CITY ENGINEER, RICHMOND,
COUNTY OF CONTRA COSTA,
CALIFORNIA

STATEMENT OF COUNTY CLERK

I HEREBY CERTIFY AS FOLLOWS BELOW THAT THE DECLARATION AND THE MAP THEREON, AS SUBMITTED TO THE CITY COUNCIL OF THE CITY OF OAKLAND, HAVE BEEN READ AND APPROVED BY THE CITY COUNCIL OF THE CITY OF OAKLAND, AND THAT SAID CITY COUNCIL HAS RESOLVED TO ACCEPT SAID DECLARATION AND MAP, AND TO AUTHORIZE THE CITY ENGINEER TO RECORD SAID DECLARATION AND MAP IN THE PUBLIC OFFICE OF THE COUNTY, UNDER THE NAME OF RICMOND, AS DECLARED TO PUBLIC USE.

IN WITNESS WHEREOF, I HAVE SIGNED MY NAME AND THE SEAL OF SAID COUNTY OF CONTRA COSTA, THIS 12th DAY OF MAY, 1922.

Charles E. Johnson
COUNTY CLERK OF CONTRA COSTA COUNTY, CALIFORNIA

STATEMENT OF COUNTY ENGINEER

THE MAP ATTACHED SUBSCRIBING \$750 IS HEREBY ACCEPTED BY THE PLANNING COMMISSION OF SAID CITY, AND THAT SAID DECLARATION AND MAP COMPLY WITH THE REQUIREMENTS OF THE PLANNING COMMISSION OF SAID CITY, AND THAT SAID DECLARATION AND MAP COMPLY WITH THE REQUIREMENTS OF THE PLANNING COMMISSION OF SAID CITY.

4/22/22
DATE

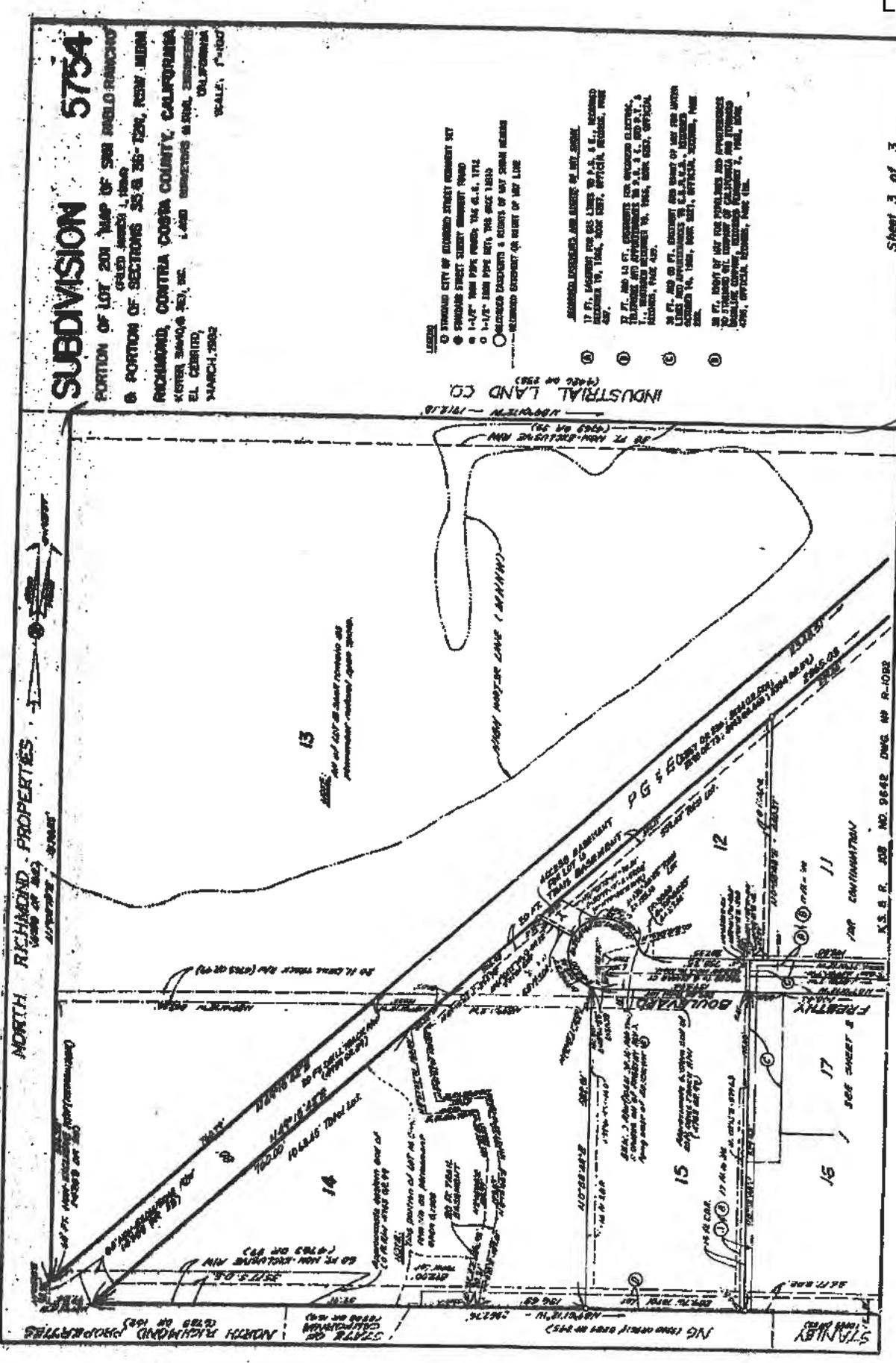
Charles E. Johnson
CITY ENGINEER, RICHMOND,
COUNTY OF CONTRA COSTA,
CALIFORNIA

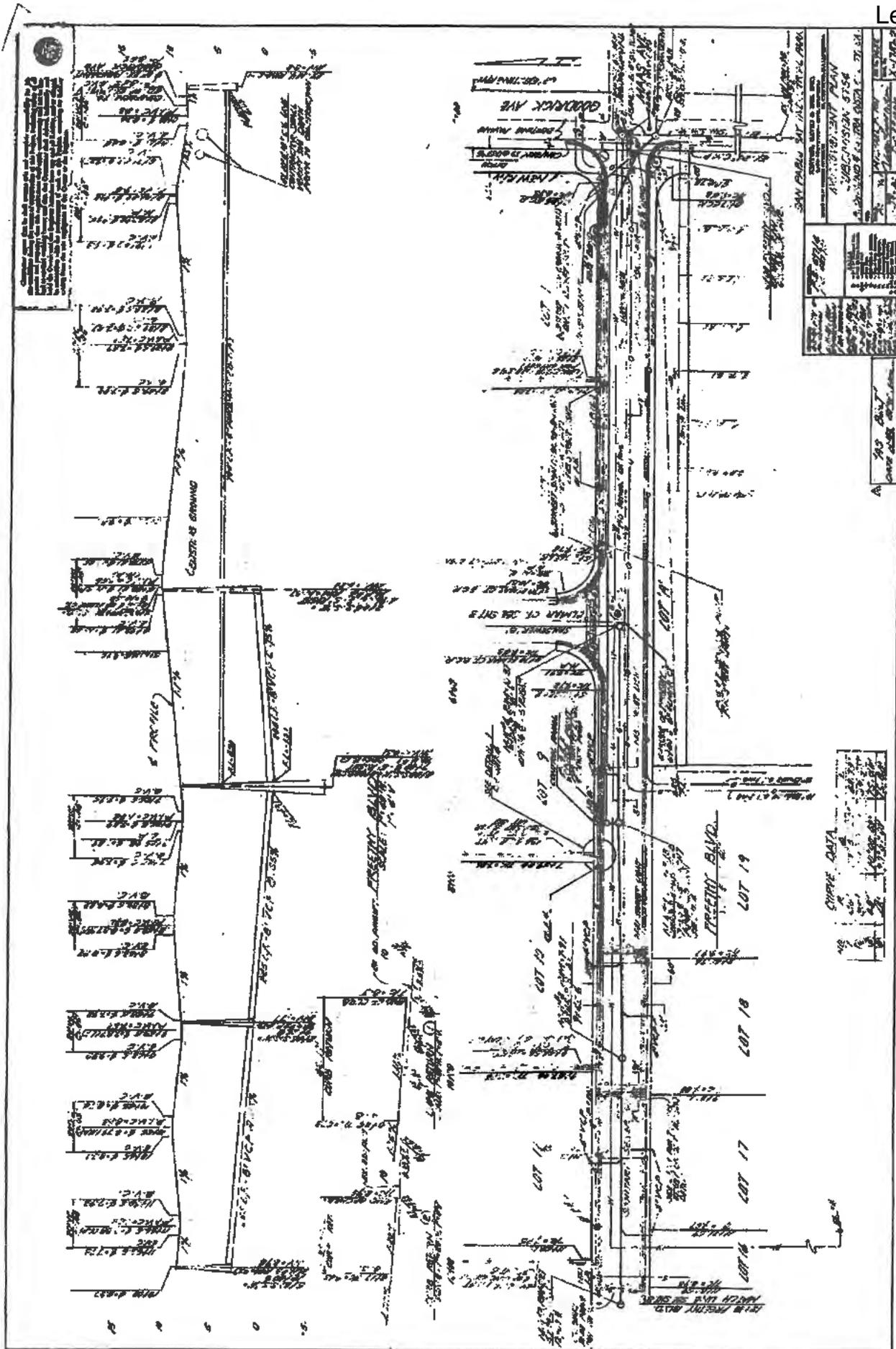
SUBDIVISION 5754

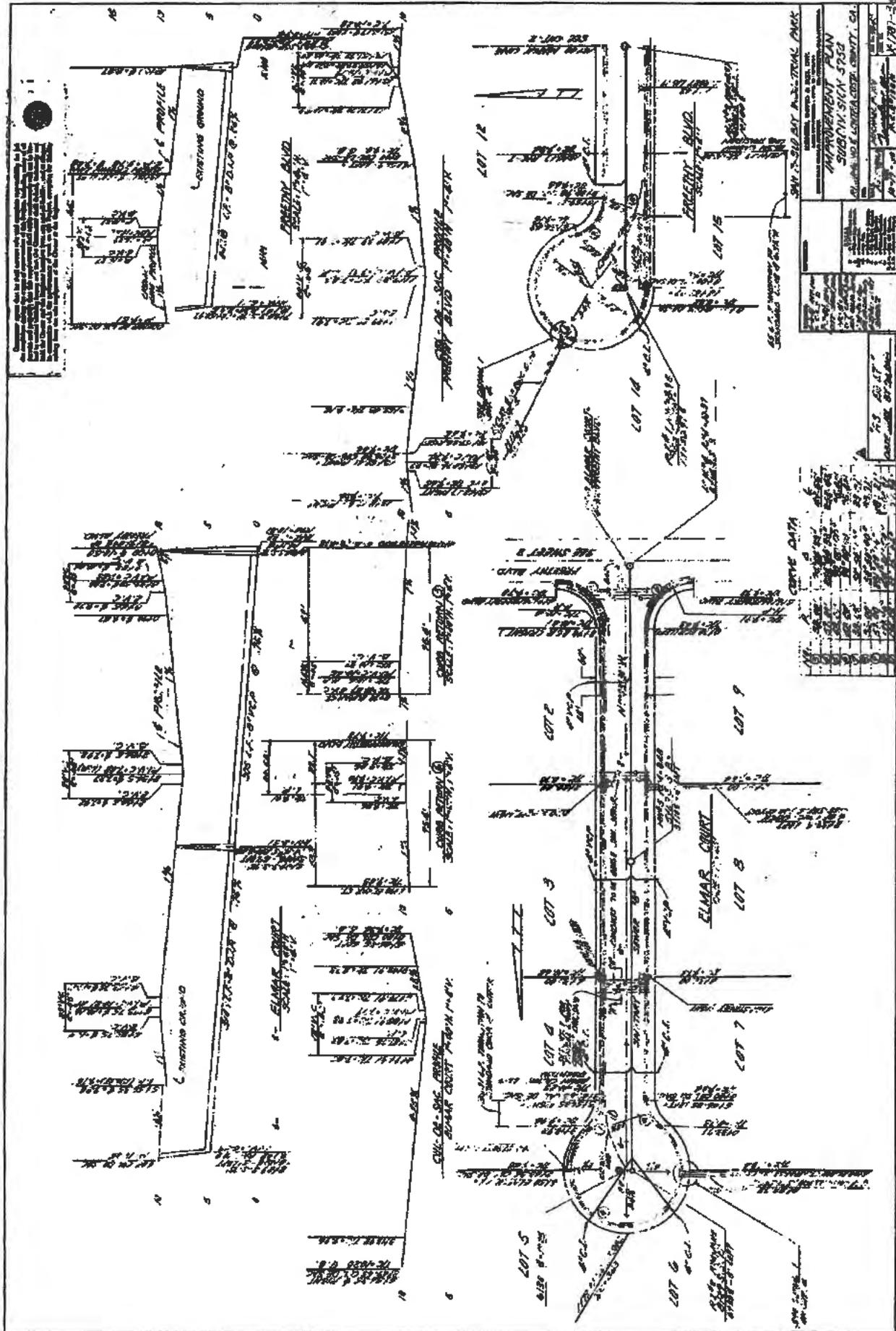
PORTION OF LOT 201 MAP OF SAN JUAN RANCHINO
 CATED March 1, 1880
 & PORTION OF SECTIONS 35 & 36-12N, 12W, 11E
 RICHMOND, CONTRA COSTA COUNTY, CALIFORNIA
 KISTNER 344048 20, INC. LAND SURVEYORS 61801, 22822
 EL CERRITO, CALIFORNIA
 14MARCH, 1982
 SCALE: 1"=100'

- LEGEND**
- ① EXISTING CITY OF RICHMOND STREET CORNER SET
 - ② EXISTING STREET CORNER SET
 - ③ 14.47' BEAR 194° 00' 00" TO S. 0.2, 1974
 - ④ 1.12' BEAR 194° 00' 00" TO S. 0.2, 1974
 - EXISTING CORNER SET
 - EXISTING CORNER SET

- ① 17 FT. EASEMENT FOR GAS LINES TO S.A. & E. BOUNDARY DECEMBER 19, 1981, 1987, OFFICIAL RECORD, PAGE 427
- ② 27 FT. AND 12 FT. EASEMENTS FOR GAS LINES TO S.A. & E. BOUNDARY DECEMBER 19, 1981, 1987, OFFICIAL RECORD, PAGE 427
- ③ 20 FT. AND 20 FT. EASEMENT AND RIGHT OF WAY FOR WATER LINES AND APPURTENANCES TO S.A. & E. BOUNDARY DECEMBER 19, 1981, 1987, OFFICIAL RECORD, PAGE 427
- ④ 20 FT. RIGHT OF WAY FOR UTILITIES AND APPURTENANCES TO S.A. & E. BOUNDARY DECEMBER 19, 1981, 1987, OFFICIAL RECORD, PAGE 427







EX.C

KISTER, SAVIO & REI INC.

LAND SURVEYORS & CIVIL ENGINEERS

DONALD E. KISTER (1905-1989)

CHARLES J. SAVIO
LICENSED LAND SURVEYOR

MICHAEL P. REI
REGISTERED CIVIL ENGINEER

11518 SAN PABLO AVENUE

EL CERRITO, CALIF. 94530

TELEPHONE 294-7888

January 28, 1980

Job No. 9642

PRELIMINARY ESTIMATE FREETHY INDUSTRIAL PARK

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>TOTAL</u>
1.	Grading: Import	28,500	C.Y.	5.00	142,500.00
2.	Regrading Lots	16,000	C.Y.	1.50	24,000.00
3.	Finish Grading Street	140,850	S.F.	0.15	21,127.50
4.	Drainage Ditches (Earth)	3,000	L.F.	10.00	30,000.00
5.	Concrete Valley Gutters	4	Ea.	600.00	2,400.00
6.	8" Sanitary Sewer	2,150	L.F.	20.00	43,000.00
7.	4" Sanitary Sewer	540	L.F.	10.00	5,400.00
8.	Manholes	8	Ea.	1,300.00	10,400.00
9.	Sanitary Sewer Pump Station	1	Ea.	6,000.00	6,000.00
10.	Tie Into Existing Manhole	1	Ea.	500.00	500.00
11.	Underground Trenching/Structures	3,640	L.F.	7.00	25,480.00
12.	Electroliers	10	Ea.	1,800.00	18,000.00
13.	Water Main Extension - 8"	990	L.F.	22.00	21,780.00
14.	Fire Hydrants	4	Ea.	1,800.00	7,200.00
15.	Water Services (3/4)	17	Ea.	575.00	9,775.00
16.	E.B.M.U.D. Standard Participation Charge	17	Ea.	100.00	1,700.00
17.	Concrete Curb & Gutter (Incl. Cushion)	4,280	L.F.	6.00	25,680.00
18.	Concrete Sidewalk	17,120	S.F.	1.75	29,960.00
19.	Paving - 2" A.C., 6" A.B., 12" A.S.B.	102,000	S.F.	1.50	153,000.00
20.	Street Name Signs	8	Ea.	100.00	800.00
21.	Street Monuments	4	Ea.	100.00	400.00
22.	Street Trees	30	Ea.	50.00	1,500.00
					<u>\$580,602.50</u>
					<u>58,060.25</u>
					<u>\$638,662.75</u>
	Sanitary District Annexation Fees				
	3.6 acres @ \$785.00 per acre				2,826.00
	Annexation Cost (Minimum)				200.00
	Sanitary District Inspection Fees 3% of \$65,300.00				1,959.00
	City Inspection Fees - 4% of \$211,340.00				8,454.00
	Civil Engineering & Land Surveying				20,000.00
	Soils Engineering				5,000.00
	P.G. & E. Refundable Advance (3640 L.F. @ \$12.00)				43,680.00
					<u>\$720,781.75</u>

NOTE: E.B.M.U.D. water meters are minimum size,
since actual customer requirements are not known.

KISTER, SAVIO & REI INC.

LAND SURVEYORS & CIVIL ENGINEERS



MATTHEW L. REI, PRES.
R.C.E. 20063 - L.S. 7118

PATRICK M. REI, V.P.
L.S. 8178

DONALD E. KISTER (1906-1988)

CHARLES J. SAVIO (1921-2006)

MICHAEL P. REI (Retired)

835 SAN PABLO AVENUE
PUNICO, CA 94664
PHONE (916) 222 - 4020
FAX (916) 222 - 5718
E-MAIL info@ksrinc.net

January 28, 1980

March 24, 2011

Revised

Preliminary Estimate
Freethey Industrial Park

Item	Description	1980		1980		2011	
		Quantity	Unit	Unit Cost	Total	Unit Cost	Total
1	Grading: Import	28,500	C.Y.	5.00	142,500.00	10.00	285,000.00
2	Regrading Lots	16,000	C.Y.	1.50	24,000.00	7.50	120,000.00
3	Finish Grading Street	140,850	S.F.	0.15	21,127.50	0.30	42,255.00
4	Drainage Ditches	3,000	L.F.	10.00	30,000.00	70.00	210,000.00
5	Concrete Valley Gutters	4	Ea.	600.00	2,400.00	3,500.00	14,000.00
6	8" Sanitary Sewer	2,150	L.F.	20.00	43,000.00	80.00	172,000.00
7	4" Sanitary Sewer	540	L.F.	10.00	5,400.00	60.00	32,400.00
8	Manholes	8	Ea.	1,300.00	10,400.00	4,000.00	32,000.00
9	Sanitary Sewer Pump Station	1	Ea.	6,000.00	6,000.00	25,000.00	25,000.00
10	Tie into Existing Manhole	1	Ea.	500.00	500.00	1,500.00	1,500.00
11	Underground Trenching/Structures	3,640	L.F.	7.00	25,480.00	25.00	91,000.00
12	Electroliners	10	Ea.	1,800.00	18,000.00	15,000.00	150,000.00
13	Water Main Extensions - 8"	990	L.F.	22.00	21,780.00	135.00	133,850.00
14	Fire Hydrants	4	Ea.	1,800.00	7,200.00	7,832.00	31,328.00
15	Water Services - 3/4"	17	Ea.	575.00	9,775.00	948.00	16,116.00
16a	Standard Participation Charge	17	Ea.	100.00	1,700.00		
16b	System Capacity Charge	17	Ea.			21,720.00	369,240.00
17	Concrete Curb & Gutter	4,280	L.F.	6.00	25,680.00	30.00	128,400.00
18	Concrete Sidewalk	17,120	S.F.	1.75	29,960.00	15.00	256,680.00
19a	Paving - 2"AC, 6"AB, 12"ASB	102,000	S.F.	1.50	153,000.00		
19b	Paving Base - 6"AB, 12" ASB	11,100	Tons			40.00	444,000.00
19c	Paving - 2"AC	1,275	Tons			75.00	95,625.00
20	Street Name Signs	8	Ea.	100.00	800.00	500.00	4,000.00
21	Street Monuments	4	Ea.	100.00	400.00	1,000.00	4,000.00
22	Street Trees	30	Ea.	50.00	1,500.00	500.00	15,000.00
				Total	\$580,902.50		\$2,673,194.00
				10% Contingency	58,090.25		267,319.40
					\$638,992.75		\$2,940,513.40
	Sanitary District Annexation Fee	3.6	Acre	785.00	2,826.00	2,271.00	8,175.60
	Annexation Cost (LAFCO & State Filing, Min.)				200.00		5,000.00
	Sanitary District Inspection Fee	3%	of	\$ 65,300.00	1,959.00		
	Sanitary District Inspection Fee	5%	of			\$262,900.00	13,145.00
	City Inspection Fees	4%	of	\$ 211,340.00	8,454.00		
	City Inspection Fees	3%	of			\$ 947,705.00	\$ 28,431.15
	Civil Engineering & Land Surveying				20,000.00	Est.	100,000.00
	Soils Engineering				5,000.00	Est.	30,000.00
	P.G. & E. Refundable Advance	3,640	L.F.	12.00	43,680.00	60.00	218,400.00
					\$720,781.75		\$ 3,343,665.15

Note: 2011 unit costs per Contra Costa County Public Works Department Guide; EBMUD rates & fees; West County Wastewater rates & fees; and PG&E rates & fees

Ex. D



Dear Jeff,

**Please comment on the
Richmond General Plan & Draft Environmental
Impact Report (DEIR)**

6:30 pm, Thursday, March 17

CESP is pleased to see improved shoreline protections in the General Plan & DEIR. CESP urges you to attend the March 17 Planning Commission meeting and support the following shoreline protections/suggested improvements:

- **North Richmond:** The area between the Park District's new acquisition at Breuner Marsh and the landfill to the South should be designated in the General Plan as open space and be zoned to the lowest zoning designation to protect the city from a taking claim. This shoreline area is far too precious a resource to be developed and needs as much protection as you can provide it under the law.
- **Hoffman Marsh:** This area should be handled the same way as the North Richmond shoreline. Hoffman Marsh is too precious a resource to be squandered on development.
- **Zaneca Site:** This area should not be designated for housing. Additionally, development here should have a sufficiently wide set back, at least 500 feet, from the shoreline to protect shorebirds and the shoreline.
- **UC Field Station:** Any expansion of this development should protect the coastal prairie and allow for a substantial set-back from the shoreline.
- **Sea Level Rise:** Rising sea levels caused by global warming threaten the natural habitat of many endangered flora and fauna along the shoreline. CESP urges the City to commit itself to adopting and implementing a plan that would mitigate the loss of shoreline habitat by protecting adjacent upland areas.

Comments can be submitted in writing or in person to the Richmond Planning Division in City Hall. Written comments must cite the official project name and number: Richmond General Plan 2030; PLN09-137.

Come out to voice your opinions in order to preserve the environment and wildlife along the Richmond shoreline.

DEIR comments will be heard at 6:30 pm, Thursday, March 17.
450 Civic Center Plaza, Richmond, CA 94804

Citizens for East Shore Parks
P.O. Box 6087
Albany, CA 94706
(510) 524 - 5000 (office)
(510) 524 - 6008 (fax)

EXE

CITY MANAGER'S OFFICE



March 2, 2011

Ms. Laura B. Crosby
University of California
Lawrence Berkeley National Laboratory
1 Cyclotron Road
Berkeley, CA 94720-8280

Dear Ms. Crosby:

This letter serves to express the City of Richmond's strong support for the Richmond Parkway Research Campus as a candidate site for Lawrence Berkeley National Laboratory's (LBNL) Second Campus.

The respondents have worked alongside the City of Richmond and civic minded groups for years. The City of Richmond is especially appreciative for their cooperation with the City, County, and community groups in recent years. They were instrumental in aiding the extension of the Bay Trail along its property.

Should the Richmond Parkway Research Campus be selected for LBNL's second campus location, City staff would seek to work closely with LBNL and the Richmond Parkway Research Campus' ownership to accommodate LBNL's needs.

Please do not hesitate to contact me at (510) 620-6512 or at bill_lindsay@ci.richmond.ca.us if you have further questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "William A. Lindsay".

William A. Lindsay
City Manager

EX. F

**BIOLOGICAL RESOURCES
BAYSIDE VILLAGE**

Submitted to:

**JHS Properties
2165A Francisco Boulevard East
San Rafael, California 94901**

Prepared by:

**LSA Associates, Inc.
157 Park Place
Point Richmond, California 94801
(510) 236-6810**

LSA Project No. JHT530

LSA

November 29, 2007

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INTRODUCTION

This report presents the results of reconnaissance level biological surveys conducted on the Bayside Village project site in the City of Richmond. The project site was visited on October 25, November 10, and December 13, 2005 and May 8, 2007.

Site Description

The project site is a roughly rectangular property of approximately 28 acres (Assessors Parcels 408-220-003, 408-220-006, 408-220-007, 408-220-023 through 026, 408-220-032 through 039, and 408-220-041 through 043) located on the north side of the Richmond Parkway, west of Goodrick Avenue in the City of Richmond. The site is in unsectioned lands within T2N, R5W, on the Richmond, California 7.5 minute USGS quad map (Figures 1 and 2). The site is bordered by San Pablo Bay marshlands to the west, the Richmond Rod and Gun Club to the north, Goodrick Avenue and vacant land to the east, and the Richmond Parkway and light industry to the south. The site contains a paved street, multiple concrete-lined drainage ditches, and a concrete foundation slab from a demolished building. A tidal drainage channel runs along the northern edge and part of the east edge of the site. The remainder of the site is disturbed fill. A paved segment of the bay trail runs along the site's southwestern boundary. The trail was built with an 80-foot setback from the edge of salt marsh and a 3-foot high chain link fence at the edge of the setback to discourage people and dogs from getting closer to or entering the marsh.

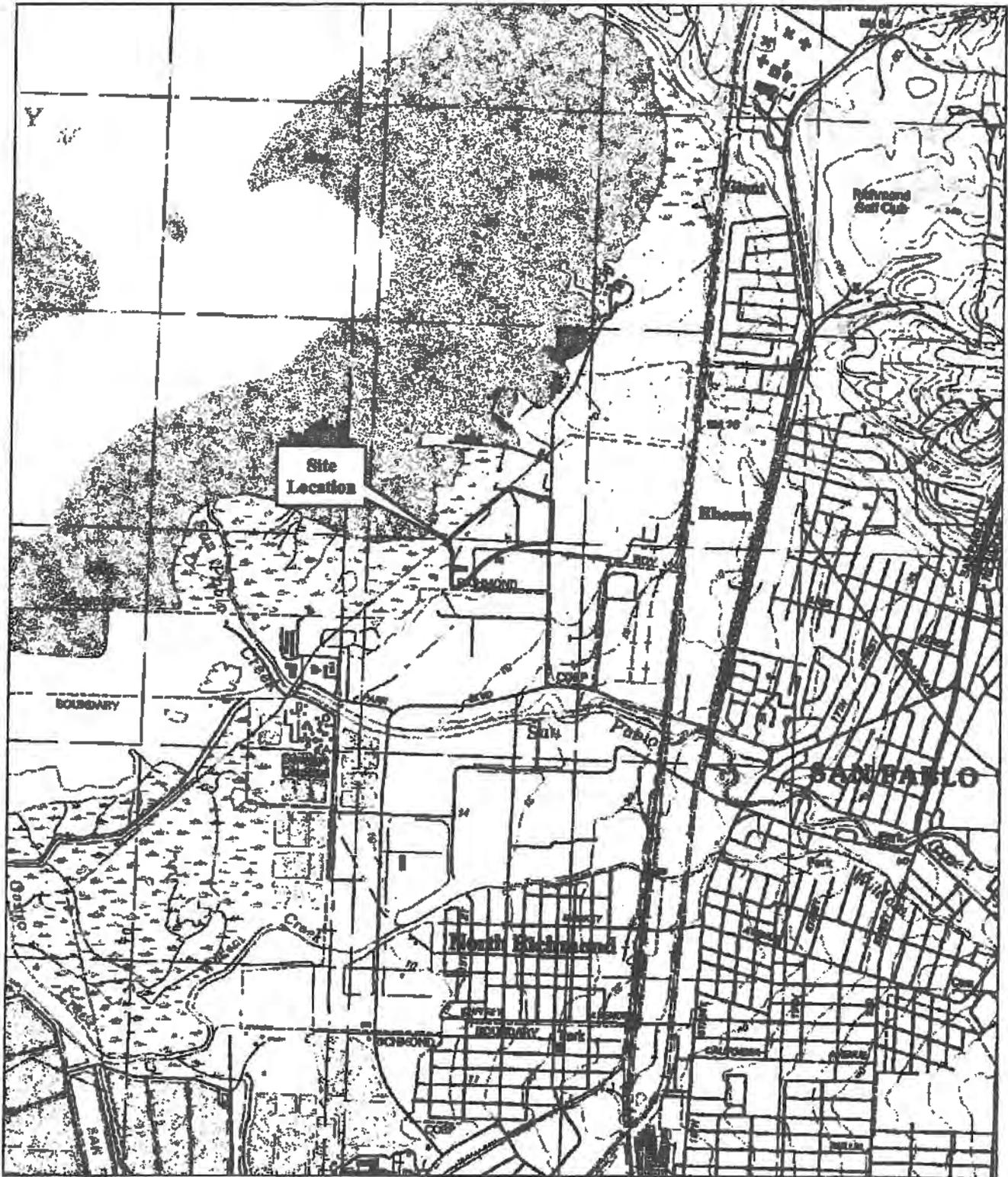


FIGURE 2

Bayside Village

Site Location

LSA



0 500 1,000 2,000
FEET

SOURCE: USGS 7.5' Quad: RICHMOND and SAN QUENTIN
E:\NTS\GIS\Map\Figures2-ProjectLocation.mxd (11/04/06)

The site is generally level, but slopes gently northwestward. The site drains to the northern boundary tidal ditch, to a roadside ditch along the Richmond Parkway that drains westward to a tidal ditch, and through concrete ditches that flow westward and northward into the San Pablo Bay marshland. San Pablo Bay is a navigable water of the United States. The tidal ditch along the northern and eastern edges of the site is a linear trapezoidal channel that parallels property lines.

The entire site was disced for weed and vector control during the summer of 2005, which buried most of the existing vegetation, making plant species identification difficult. Discing had not occurred prior to the May 2007 site visit and herbaceous plants were identifiable at that time. Plant species present are mostly non-native ruderal forbs and grasses. The tidal ditch had been cleaned out, with the spoils and ditch-bottom vegetation remains spread beyond the top of the bank. The north and northwest edges of the property contain the remains of eucalyptus trees that were removed within the last few years.

The majority of the site is graded and disturbed fill that contains plentiful debris. These areas have been graded relatively flat with linear furrows remaining from cultivation. The soil in these areas is highly disturbed and shows no evidence of horizons. The amount of vegetation cover after discing ranges from zero to ten percent and consists of plant debris from the last growing season remaining after the discing plus some seedlings from the current growing season. Prior to discing, such as in May 2007, the amount of vegetative cover approaches 90 percent. The vegetation on the majority of the site consists of non-hydrophytic species such as wild oats (*Avena* spp.), ripgut (*Bromus diandrus*), hare barley (*Hordeum murinum*), soft chess (*Bromus hordeaceus*), mustards (*Brassica kaber* and *Brassica nigra*), wild radish (*Raphanus sativus*), Italian thistle (*Carduus pycnocephalus*), burr clover (*Medicago polymorpha*), fennel (*Foeniculum vulgare*), vetch (*Vicia* spp.), sweet clover (*Melilotus officinalis*), and yellow starthistle (*Centaurea solstitialis*), along with some facultative species such as Italian rye (*Lolium multiflorum*), harding grass (*Phalaris aquatica*), and bristly ox-tongue (*Picris echioides*).

The western edge of the project site is primarily adjacent to undisturbed tidal salt marsh on the border of San Pablo Bay. A portion of this salt marsh adjacent to the southwestern corner of the site is a mitigation area created as part of the Richmond Parkway project. This area is dominantly vegetated with pickleweed (*Salicornia virginica*) and salt grass (*Distichlis spicata*). The landward edge of this salt marsh wetland coincides with the edge of fill that has been placed on the project site in the past. The vegetation upslope from the base of the fill abruptly changes to upland ruderal species that include coyote brush (*Baccharis pilularis*). The edge of the fill is the approximate property boundary. A small area of this salt marsh may be present on the project site depending on the exact location of the western property line.

The southwestern portion of the project site contains four small seasonally ponded areas. These areas appear to be depressions in the fill that shallowly pond water for a short period of time after storms. They range in size from 95 square feet to 2,050 square feet. Plant species found here and the sparse cover they form reflect these seasonally ponded conditions. They include Mediterranean barley (*Hordeum marinum*), hyssop loose-strife (*Lythrum hyssopifolium*), rabbit's-foot grass (*Polypogon monspeliensis*) and prostrate knotweed (*Polygonum aviculare*).

A trapezoidal ditch extends from the salt marsh eastward along the northern site boundary, and then southward along the west shoulder of Goodrick Avenue. The ditch receives drainage from the east

side of Goodrick Avenue through a culvert, from a roadside ditch along the north shoulder of the Richmond Parkway, and from a short concrete-lined ditch on the site. The lower reaches of this channel appear to have regular tidal action. The banks support pickleweed and salt-grass, along with patches of cord grass (*Spartina* spp.). Upstream of the salt marsh plants brackish, freshwater conditions appear. Remains of cattails (*Typha* spp.) that had been cleaned out of the ditch were observed along the banks of the channel. A culvert beneath Goodrick that drains the area east of Goodrick Avenue connects to the ditch. The continuation of the ditch south of the Goodrick culvert does not display wetland characteristics and does not show evidence of scour or a bed and bank.

Five concrete-lined ditches on the site drain to the salt marsh. These ditches typically do not contain any vegetation.

The U.S. Army Corps of Engineers has verified a jurisdictional delineation (August 8, 2007) for the site. The Corps exerted jurisdiction over the drainage ditch along the northern and eastern property boundaries up to and including the culvert beneath Goodrick and a small patch of salt marsh (340 square feet) along the western property boundary. The Corps did not take jurisdiction over the four small seasonally ponded features in the southwestern corner of the property. These four areas will be subject to the jurisdiction of the Regional Water Quality Control Board.

Wildlife

The project site has been extensively disturbed by past fill, previous development activity and the current practice of discing the fill to control weed growth. This has resulted in disturbed habitat conditions on the entire project site. A small number of wildlife species are able to occupy the site as a result. This includes small rodents (mice, rats, gophers), songbirds which move in to feed from the edges of the site where remnant vegetation which provides cover is present, and hawks (white-tailed kite, red-tailed hawk, American kestrel) which hunt over this open area. It is also likely that urban adapted small carnivores including opossum, raccoon, and striped skunk forage on the site.

The project site is adjacent to tidal salt marsh which is part of the marshlands at the mouth of San Pablo creek. Tidal salt marsh provides habitat for three federal and/or state listed species. These are California clapper rail, black rail and salt marsh harvest mouse.

California Clapper Rail and California Black Rail. The California clapper rail is federally and state-listed as endangered, and the California black rail is state-listed as threatened. Both of these species typically occur in tidal marshes, and both have been observed in Giant Marsh, which is located to the north of the project site (CDFG 2003) and in the salt marsh adjacent to the project site to the west (LSA 2003). They both likely move onto upland portions of the site during high tide events.

Clapper rails occur primarily in the salt marshes of San Francisco Bay which are subject to direct tidal action and have a network of tidal channels. Areas within the marsh with sparse vegetative cover and tidal channels and adjacent mudflats exposed at low tide are used for foraging. Areas of dense vegetation are used for nesting and protection from predators. They also rely on adjacent upland areas for cover during extreme high tides.

Black rails in San Francisco Bay prefer pickleweed dominated salt marsh which receives full tidal action. Nesting occurs in dense pickleweed stands with an open structure below the vegetation canopy. Like clapper rails, an area of dense vegetation above the high tide line is important for black rails as protective cover when the salt marsh is completely underwater during extreme high tides.

Salt Marsh Harvest Mouse. The salt marsh harvest mouse (SMHM) is federally and state-listed as endangered. The species has been recorded as recently as 1986 in East Bay Regional Park District's Giant Marsh, which is adjacent to the northern boundary of the Bruener property (CDFG 2003) and in 2001 from the Bruener property (Live Oak Associates 2001). The salt marsh adjacent to the western property line is suitable SMHM habitat and based on their presence in contiguous habitat to the north are likely to be present in the salt marshes adjacent to the site. They also will move onto the site during high tide events.

According to Shellhammer (2000), "SMHM are dependent on the thick, perennial cover of salt marshes and seasonally move into adjacent grasslands in the spring and summer when the grasslands provide maximum cover." Shellhammer (2000) also noted that their preferred habitats are the pickleweed and peripheral halophyte zones (which are occupied by salt-tolerant plant species) and "similar vegetation in diked wetlands adjacent to the Bay." Discing of the site in the spring has likely greatly minimized this kind of seasonal movement.

The project site, as noted previously, contains a very small amount of salt marsh habitat which is part of a larger salt marsh associated with the mouth of San Pablo Creek. The on-site salt marsh includes a patch along the western boundary approximately 340 square feet in size and the sides of the northern tidal drainage ditch. These areas could be used by the rails and the harvest mouse during high tides. Upland portions of the site adjacent to the salt marsh that contain sufficient cover are likely used as escape cover during periods of extremely high tides. The remainder of the site contains no suitable habitat for them.

The salt marshes found at the mouth of San Pablo Creek and Wildcat Creek and extending along the adjacent shoreline including adjacent to the project site have been identified as essential habitat in the SMHM/Clapper Rail Recovery Plan.

Buffer Proposal

The Bayside Village project proposes to buffer the adjacent salt marsh habitat by establishing a minimum 80-foot setback from the marsh edge. This setback is consistent with the 80-foot setback which was used when the Bay Trail segment adjacent to the project sites southwestern boundary was built. The project proposes to create several berms within the southern portion of the setback and to install a level swale for the discharge of stormwater runoff in its northern portion. Clumps of woody vegetation, primarily shrubs, are proposed for planting within the buffer. The Bay Trail would be extended along the landward edge of the buffer and the existing 3-foot high fence present along the portion of the Bay Trail adjacent to the southwestern property line will be extended along the entire length of the trail on the site.

The project proposes no buffer or setback from the drainage channel along its northern and eastern boundaries.

IMPACTS AND MITIGATION MEASURES

The primary natural resource issue at this site is the presence of the adjacent tidal salt marsh and the federal and state listed species (clapper rail, black rail, salt marsh harvest mouse) which are present in it. The project will not directly impact this habitat (no salt marsh fill) but will affect areas adjacent to the marsh. This is an issue because all three of these species use adjacent uplands for escape cover during periods of high tides which completely inundate the salt marsh. During these periods they move into the adjacent uplands and are vulnerable to predation from a variety predator. Sufficient vegetative cover (height and density) is necessary to provide places for them to hide and escape this predation. This requires preserving a band (or buffer) of habitat adjacent to the marsh. Maintaining a setback from the marsh is also necessary to buffer these species activity and use of the marsh from potential impacts from the development. These impacts include night lighting, human activity, and harassment or predation by domestic pets (cats and dogs).

Impacts

1. The proposed project restricts the amount of upland refugia habitat that will be adjacent to tidal salt marsh to an 80-foot buffer. The existing habitat adjacent to the marsh is filled upland that is disced for fire control. The discing limits its current value as upland refugia for the rails and harvest mouse. The existing transition between salt marsh and upland is rock riprap which serves as a refuge for predators such as Norway rats of these species.

The construction of a residential community and associated improvements at this location would result in the introduction or increase in several human created disturbances. These include night lighting, human activity adjacent to the marsh, harassment or predation by pets and predation by rats or other predators whose numbers have increased due to the new residences. These new impacts could result in a decrease in numbers or homerange abandonment by clapper rail, black rail, and salt marsh harvest mouse and would be a significant project impact. The proposed 3-foot high chain link fence along the edge of the buffer will not be sufficient to mitigate these impacts.

Mitigation Measures

1. Erect a minimum 6-foot high fence along the entire edge of the Bay Trail/buffer (including the existing segment). The fence will need to end at the northern drainage ditch. The fence design shall prevent people and pets (cats/dogs) from entering the buffer area. This will include extending the fence material a minimum of 18 inches below ground to prevent burrowing. It will also need to include an overhang to prevent people or animals from climbing over it.

The preliminary landscape plan indicates that shrubs and/or trees will be planted in the buffer. To prevent the introduction of perch sites which can be used by raptors to prey on rails and the harvest mouse, woody plant material will be limited to native shrubs which do not exceed four to five feet in height when mature.

3. Street lights along Bayside Dr. will be screened/shielded to prevent the spill of light into the buffer or adjacent salt marsh. This restriction will apply to all light fixtures along Bayside Dr. that are mounted at a height of six feet or greater.
4. The pore spaces in the existing riprap along the edge of the salt marsh will be filled with a material which prevents their use by Norway rats.
5. The project will create an endowment that will fund an amount equivalent to 10% of an animal control specialist's salary. This individual will spend 10% of their time controlling introduced predators (red fox, feral cats, rats) in and adjacent to the San Pablo Creek salt marsh. This area extends from the West Contra Costa Sanitary District landfill at its southern end northward to Giant Marsh. The control area could be extended southward to the Wildcat Creek marshes and northward to Point Pinole if sufficient time is available.

Ex. 6



DEPARTMENT OF THE ARMY
 SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
 1455 MARKET STREET
 SAN FRANCISCO, CALIFORNIA 94103-1300

AUG 8 2007

Regulatory Branch

SUBJECT: File Number 30360S

Mr. Chip Bouril
 LSA Associates, Inc.
 157 Park Place
 Pt. Richmond, California 94801

Dear Mr. Bouril:

This letter is written in response to your submittal of May 21, 2007 requesting confirmation of the extent of Corps of Engineers jurisdiction at the Bayside Village project site located on the north side of the Richmond Parkway, west of Goodrick Avenue in the City of Richmond, Contra Costa County, California (APNs 408-220-003, 408-220-0006, 408-220-007, 408-220-023, 408-220-024, 408-220-025, 408-220-026, 408-220-032, 408-220-033, 408-220-034, 408-220-035, 408-220-036, 408-220-037, 408-220-038, 408-220-039, 408-220-041, 408-220-042, and 408-220-043).

Enclosed is a map dated August 8, 2007, showing the extent and location of Corps of Engineers jurisdiction. We have based this jurisdictional delineation on the current conditions on the site as verified during site visits performed by our staff on November 13, 2006, and June 20, 2007. A change in those conditions may also change the extent of our jurisdiction. This jurisdictional delineation will expire in five years from the date of this letter. However, if there has been a change in circumstances that affects the extent of Corps jurisdiction, a revision may be completed before that date. Since your delineation information was received before June 5, 2007, the effective date of the official interagency guidance interpreting the Supreme Court decision, *Rapanos v. United States*, 126 S. Ct. 2208 (2006), the Corps did not apply this guidance to the delineation in rendering this jurisdictional determination.

All proposed work and/or structures extending bayward or seaward of the line on shore reached by: (1) mean high water (MHW) in tidal waters, or (2) ordinary high water in non-tidal waters designated as navigable waters of the United States, must be authorized by the Corps of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 403). Additionally, all work and structures proposed in unfilled portions of the interior of diked areas below former MHW must also be authorized under Section 10 of the same statute.

All proposed discharges of dredged or fill material into waters of the United States must be authorized by the Corps of Engineers pursuant to Section 404 of the Clean Water Act (CWA) (33 U.S.C. Section 1344). Waters of the United States generally include tidal waters, lakes, ponds, rivers, streams (including intermittent streams), and wetlands.

-2-

You are advised that the Corps has established an Administrative Appeal Process, as described in 33 C.F.R. Part 331 (65 Fed. Reg. 16,486; March 28, 2000), and outlined in the enclosed flowchart and "Notification of Administrative Appeal Options, Process, and Request for Appeal" form (NAO-RFA). If you do not intend to accept the approved jurisdictional determination, you may elect to provide new information to the District Engineer for reconsideration or submit a completed NAO-RFA form to the Division Engineer to initiate the appeal process. You will relinquish all rights to appeal, unless the Corps receives new information or a completed NAO-RFA form within sixty (60) days of the date of the NAO-RFA.

Should you have any questions regarding this matter, please call Katerina Galacatos of our Regulatory Branch at 415-503-6778. Please address all correspondence to the Regulatory Branch and refer to the File Number at the head of this letter. If you would like to provide comments on our permit review process, please complete the Customer Survey Form available online at <http://pcr2.nwp.usace.army.mil/survey.html>.

Sincerely,



Jane M. Hicks
Chief, Regulatory Branch

Enclosures

Copy Furnished w/map only:

CA RWQCB, Oakland, CA

Copy Furnished w/out map only:

CA SWRCB, Sacramento, CA



LSA
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Ex. H

STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

30 VAN NESS AVENUE
SAN FRANCISCO, CALIFORNIA 94102
PHONE: 357-3806



August 15, 1977

Mr. Elmer J. Freethy
1432 Kearney
El Cerrito, California 94530

Dear Mr. Freethy:

Enclosed is a copy of the Commission's determination of your claim of exemption. We would appreciate your acknowledgment of receipt of the determination so that our file can be brought up to date on this matter. Of course, acknowledgment of receipt does not mean that you agree or disagree with the determination itself.

Thank you for your cooperation.

Very truly yours,

ALAN R. PENDLETON
Staff Counsel

Enclosure

ARP/lb

cc: Mr. Arthur M. Shelton

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STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

30 VAN NESS AVENUE
SAN FRANCISCO, CALIFORNIA 94102
PHONE: 337-3686



CLAIM OF EXEMPTION NO. CE 74-5

August 15, 1977

Mr. Elmer J. Freethy
1432 Kearney
El Cerrito, California 94530

Dear Mr. Freethy:

On May 5, 1977, the San Francisco Bay Conservation and Development Commission, by a vote of 19 affirmative, 0 negative, and 2 abstentions, approved the following resolution:

I. Determination

The claim of exemption is granted for the industrial development and uses on approximately 84.34 acres within Assessor's Parcels 408-100-019, 408-100-018, and 408-120-016, as shown on a drawing entitled "Land Development Plan for Freethy Land and Investment, Richmond, California" dated December, 1964, including future work involving (1) completion of a road system that was under construction since 1963, including placing fill on tidal areas running from the easterly line of the property to the westerly line; (2) placing fill behind the completed roadway system to bring all of the approximately 84.34 acres of land to grade according to the plan finalized in 1964; and (3) using the 84.34-acre area for light industrial facilities and purposes.

The claim of exemption is denied for any work or uses on approximately 5 acres (known as Parcel 4) within Assessor's Parcel 408-090-018 included in the claim.

II. Findings and Declarations

This determination is made on the basis of the Commission's findings and declarations that the work and uses claimed to be exempt from the Commission's normal permit requirements satisfy the requirements of Section 66632.1, 66655, or 66656 of the McAteer-Petris Act for the following reasons:

A. Exempt Portions of the Claim

1. There is a "Project" at Claimant's Development Site Within the Meaning of Sections 66632.1 and 66656 of the McAteer-Petris Act. Under Sections 66632.1 and 66656

Mr. Elmer J. Freathy
 CLAIM OF EXEMPTION NO. CE 74-3
 Page 2

of the BCDC law, a claimant must meet three tests in order to have an exempt "project": (a) there must have been a "project" as of September 17, 1955; (b) prior to September 17, 1965, the claimant must have obtained all necessary permits to allow commencement of the diking or filling for that "project"; and (c) the claimant must have actually commenced the diking and filling process prior to September 17, 1965.

- a. A "Detailed and Specific Plan" Exists. In BCDC v. Emeryville, 69 Cal. 2d 533 (1968), the California Supreme Court defined "project" for the purpose of the "grandfather" clause contained in Government Code Section 66632.1 (substantially re-enacted in 1962 as Section 66556), as follows:

"In view of the manifest intent of the Legislature 'to protect the present shoreline and body of the San Francisco Bay to the maximum extent possible'...we are convinced the Legislature used the term 'project' as a term of limitation.

"The dominant theme underlying all generally accepted definitions of the word 'project' is that of a detailed and specific plan prepared in furtherance of a determination to accomplish a certain objective." (Emphasis added.)

The Commission finds that, as of September 17, 1965, the claimant had prepared and adopted a detailed and specific plan for the development of a light industrial park. This specific and detailed plan is shown and described on Exhibits 3 through 10 (CT, pp. 7 through 10) and consists of drawings showing an industrial park layout with sufficient utilities, road and rail services to accommodate full development of the property then controlled by the claimant. The first, preliminary plan was prepared in April of 1962 and revised on March 15, 1963. Further modifications were made in December of 1964. The 1964 development plan (Exhibit 5, CT p. 8) covers approximately 84.34 acres of land consisting of three parcels then owned by Freathy which are Contra Costa County Assessor's Parcels 408-100-019, 408-100-018,

Mr. Elmer J. Freesty
 CLAIM OF EXEMPTION NO. CE 74-3
 Page 3

and 408-120-016. Since the claimant acquired Parcel 4 after September 17, 1965, the 1964 development plan does not establish a specific and detailed plan for that parcel. Evidence also indicates that utility services had been designed and located to serve the three parcels (CT, p. 24). The drawings, letters and description of the industrial project indicate that the claimant had prepared a plan for an industrial park development on approximately 84.34 acres (Parcels 1, 2 and 3) and that this plan was sufficiently detailed to satisfy that aspect of a "project" as defined by the Supreme Court in the Emeryville case.

- b. A "Determination to Accomplish a Certain Objective" Exists. Besides requiring a "specific" and "concrete plan," Emeryville sets forth an additional requirement for determining whether or not a "project" exists:

"...A determination without a concrete plan is not a 'project' because the means of achieving the ultimate objective are not delineated sufficiently to permit prudent commencement of the enterprise. A plan without a determination is not a 'project' because the objective has not been made. (Emphasis added.) Only when that decision has been made and a plan has been conceived in the detail necessary for the prudent commencement of physical efforts to achieve the objective does a 'project' come into being." Id. pp. 545-6.

The Commission finds that, as of September 17, 1965, the claimant had the necessary determination to commence construction of the project pursuant to its specific plan. The claimant's intent in this regard (see Staff Summary dated February 4, 1977, Exhibits 3 through 10, and CT pp. 7 through 10 and pp. 12, 24, 27, 30, 31, 34, and 35) is evidenced by:

- (1) An agreement in February, 1963, between claimant and Southern Pacific Company regarding the construction of the drill track on the property, and a letter dated February 14, 1963 from the

Mr. Elmer J. Freethy
 CLAIM OF EXEMPTION NO. CE 74-3
 Page 4

Southern Pacific Company showing the commencement of the first stage of construction in April, 1963;

- (2) An agreement between claimant and Pacific Gas and Electric Company in November, 1964, to secure the right to fill and use the surface land under Pacific Gas and Electric's transmission line which traverses the property from southwest to northeast;
- (3) City of Richmond Permit No. 60352 issued to claimant on March 11, 1963 for the construction of the Bustin Steel Products industrial building on the property;
- (4) Hugh M. O'Neil Company plans dated September 10, 1964 for the construction of the Freethy buildings shown on the development plan;
- (5) Utility improvements consisting of the drill track extension with Southern Pacific Railway in 1963, and the installation of sewer, electrical, and gas systems in 1963;
- (6) Road work construction commencing in 1963;
- (7) Completed construction of Bustin Steel Products building in 1963, and Freethy Company warehouse building in 1964;
- (8) As of September 17, 1964, the placement of several hundred thousand cubic yards of fill on the property at a cost of \$45,000; and
- (9) As of September 17, 1965, expenditures in excess of 50,000 incurred for the development.

The Commission thus finds that the claimant had the requisite "concrete plan" and the "determination" for the industrial development and thus had a "project" under Sections 66632.1 and 66656 of the McAteer-Petris Act, as amplified by the Emeryville case.

Mr. Elmer J. Freathy
 CLAIM OF EXEMPTION NO. CE 74-3
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2. As of September 17, 1965, the Claimant did not Need Local or Corps Approvals to Allow Commencement of the Filling Process

- a. Local Approval by the City of Richmond not Required for Filling. The Commission finds that on September 17, 1965 the claimant did not need a City permit to commence filling operations on the site pursuant to Section 12.44.060 of the City of Richmond Zoning Ordinance (CT, pp. 32 and 33). At that time, the subject property was zoned "M-3 Heavy Industrial District." Section 12.44.080 of the Richmond Zoning Code exempts industrial areas and marshland areas where industrial use is permitted from a City permit requirement for fill operations. Accordingly, the claimant was advised by the City of Richmond that no permit was required by the City to commence the fill work. With respect to building construction, the claimant applied for and was issued building permits by the City of Richmond on March 3, 1963, February 9, 1966, and on July 11, 1966 for three industrial buildings on the property (CT, p. 33).
- b. As of September 17, 1965, an Army Corps of Engineers Permit was not Required. The Commission finds that, as of September 17, 1965, no Corps of Engineers permit was required to commence filling and diking on claimant's property. At that time, the Corps did not require persons doing work in marshland areas to obtain Corps permits (letter dated August 1, 1972 from Col. Lammie of the Corps of Engineers to Alan Pendleton at BCDC). While a Corps permit is now required to place fill below the plane of Mean Higher High Water (MHHW), the claimant was not required to obtain a permit from the Corps as of September 17, 1965, by which time filling and diking had been well begun.

On June 11, 1971, the San Francisco office of the Army Corps of Engineers issued Public Notice No. 71-22 which extended the Corps' permit jurisdiction to the line of the shore reached by the plane of Mean Higher High Water. In September, 1972, the Army Corps of Engineers promulgated a regulation which specified for the first time that the plane of MHHW would be the shoreward limit of jurisdiction (33 C.F.R. Section 209.260).

Mr. Elmer J. Freethy
 CLAIM OF EXEMPTION NO. CE 74-3
 Page 6

The westerly portion of claimant's property, approximately 23 acres, consists of marshlands and mudflats, and the claimant had filled portions of those areas pursuant to his development plan. On August 10, 1971, the Corps issued a "cease and desist" order prohibiting the claimant from placing future fill without a permit over the marshland and mudflat areas that fell within the Corps' jurisdiction following its issuance of Public Notice No. 71-22. After apparent non-compliance by claimant, a lawsuit was filed in U. S. District Court in August, 1973 at the request of the Army Corps of Engineers, asking for a Court order requiring the claimant to remove all existing fill in those areas over which the Corps had jurisdiction, and to enjoin him from placing further fill without the required Corps permit. A court decision was rendered on February 24, 1975. It held, basically, that the claimant was not required to remove existing fill since he had justifiably relied on the Corps' pre-1971 policy and expended substantial funds on the development and that the Corps was equitably estopped now from demanding fill removal based on a distinct change of policy. The court also held that any future filling would require the necessary Corps permit, and the claimant was enjoined from future filling on portions of his property bayward of the plane of MHNW, as shown on the Corps topographical survey made after placement of the fill, without prior Corps of Engineers approval.

3. No Substantial Changes. The evidence shows that there were minor changes made to the development plan after September 17, 1965. One was the construction of an additional industrial building. Another was the acquisition of a fourth parcel of land in 1968 consisting of 5 acres to the south of the development. The exemption determination does not apply to Parcel 4 and the change in locations and design of the industrial building does not significantly change the nature or extent of the project as originally envisioned.

B. Non-Exempt Portions of the Claim

1. Filling on Assessor's Parcel 408-090-018. The Commission concludes that any fill on Assessor's Parcel 408-090-018 which is not included within the Industrial Development Plan of 1964 is not exempt from BCDC permit requirements.

... park in 1964, the ...
 ... before the ...
 ... right to require ...
 ... permits for shoreline fill.
 Along with about 30 others,
 Freedy filed for an exemption to the
 requirement under a "grandfather"
 clause which allows fill without
 permits if the developer already has
 begun the project and has detailed
 plans.
 Most of the claims have been de-
 cided, a handful are waiting on title
 disputes, and only Freedy's and two
 others have been accepted.
 BCDC's exemption was influenced
 by a U.S. District Court decision
 handed down in a suit between the
 Freedy Land and Forestry Co.

action) in a 22-acre marsh area as
 the site. Freedy has not filled on that
 area since the Corps began its action
 in 1971.
 This means that even though the
 developer does not need any BCDC
 permits, he does need a Corps permit
 for that 22 acres, part of the 90 acres
 in dispute.
 When BCDC granted the exemp-
 tion it noted: "The commission ad-
 vices the claimant that it intends to
 comment on any public notice re-
 ceived from the Corps for such filling
 and to indicate whether the proposed
 project is consistent or inconsistent

plans, the commission said.
 It claims that BCDC is not
 involved with the five acre site al-
 though the commission said he
 would need a BCDC permit for any
 work there within the feet of the
 highest tidal action line.
 Besides Freedy's own corpo-
 ration yard, there are two other cor-
 porations at the site, Rustin Steel Pro-
 ducts, and Collier of California.
 Freedy said he has plans for more
 development when he has worked
 out his permit application with the
 Corps, but he did not want to reveal
 what these are.
 He added that his fight with gov-
 ernment agencies over the develop-
 ment has cost him "hundreds of
 lawyers."

The evidence shows that this parcel was acquired in 1968 to enlarge the development site. It is now shown on the Development Plan of 1964 which claimant has submitted to establish a specific and detailed plan for the development. As title to this 5-acre parcel was not acquired until 1968, it cannot be considered to be part of the "project" as it existed on September 17, 1965, and thus is not exempt under Sections 66632.1 and 66656 of the McAttee-Petris Act.

2. Parcel 4 is not an integral part of the "project". Claimant has stated that this parcel is an integral part of the development project. Yet he also states that Parcel 3, Assessor's Parcel 408-120-016, which was purchased on December 14, 1964, was acquired to complete the land acquisition required for completion of the central part of the project. It appears, therefore, that, as of September 17, 1965, claimant had contemplated completion of the development on only three parcels of land consisting of approximately 84.34 acres. Also, claimant has submitted no evidence of any specific plan to be carried out with respect to Parcel 4, other than placing fill on it. The Commission finds that Parcel 4 is not an integral part of the overall "project" as conceived prior to September 17, 1965 and is therefore not exempt from BCDC permit requirements.
3. Section 66655 is inapplicable. As an alternative basis for the claim, the claimant relies on Government Code Section 66655. The Commission finds that Section 66655 is inapplicable here because the subject area is within the Commission's "bay" jurisdiction as defined in Section 66610(a). Section 66655 is available only for vested rights perfected within the areas defined in subdivisions (b), (c) and (d) of Section 66610 (shoreline band, salt ponds, and managed wetlands).

III. Conclusions

The determination made herein represents a determination only that, because of Sections 66632.1 and 66656 of the McAttee-Petris Act, a permit from the Commission is not required at this time for the placement of fill or the development of light industrial uses on Parcels 1, 2, and 3, consisting of approximately 84.34 acres and including approximately 23 acres of marsh and tidelands. It does not represent, and should not be construed to represent, a determination by the Commission that the proposed project is consistent or inconsistent with any other provision of the McAttee-Petris Act or the San Francisco Bay Plan.

Elmer J. Freethy
CLAIM OF EXEMPTION NO. CE 74-3
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The Commission has also noted herein that the federal court has decided that a Corps permit is required for filling below the plane of Mean Higher High Water within the approximately 23-acre area of marsh and tideland at the site. The Commission advises the claimant that it intends to comment on any public notice received from the Corps for such filling and to indicate whether the proposed project is consistent or inconsistent with the fill and use policies of the San Francisco Bay Plan, the McAteer-Petris Act, the California Environmental Quality Act of 1970 and the Commission's Management Program for San Francisco Bay.

The Commission has also hereby determined that work and uses on Parcel 4, approximately 5 acres, acquired after September 17, 1965, are not exempt from BCDC permit requirements. Thus any work or uses either below the line of highest tidal action or within 100 feet inland of the line of highest tidal action on Parcel 4 requires a BCDC permit. The Commission also notes that it appears that most of Parcel 4 is not within the Commission's jurisdiction because it is above the line of highest tidal action; however, no survey information has been submitted sufficient to determine the Commission's jurisdiction at Parcel 4 precisely.

The Attorney-General's Office concurs in this conclusion.

CHARLES R. ROBERTS
Executive Director

CRR/lc

cc: U. S. Army Corps of Engineers, Attn: Regulatory Functions Branch
S. F. Bay Regional Water Quality Control Board, Attn: Certification Section
Environmental Protection Agency, Attn: Chris Vais, E-4-2
San Francisco Department of City Planning
City of Richmond, Attn: City Manager

* * * * *

Receipt acknowledged, contents understood and agreed to:

Executed at _____

Applicant

On _____

By: _____

Title

Ex. I

**REDEVELOPMENT RESOLUTION NO. 05-31
CITY COUNCIL RESOLUTION NO. 124-05**

JOINT RESOLUTION OF THE COUNCIL OF THE CITY OF RICHMOND, CALIFORNIA AND THE RICHMOND REDEVELOPMENT AGENCY OPPOSING THE EAST BAY REGIONAL PARK DISTRICT'S PLANNED ACQUISITION OF CERTAIN REAL PROPERTY LOCATED IN THE CITY OF RICHMOND, COUNTY OF CONTRA COSTA, INCLUDING APNs 408-100-023 and 408-100-024, AS WELL AS APNs 405-010-001, -017, -019, -020 AND APNs 408-110-001 AND -004, ALL OF WHICH ARE GENERALLY KNOWN AS "THE FORMER BREUNER PROPERTY"

WHEREAS the City of Richmond, California, a Charter City and municipal corporation ("City"), has the authority to determine land uses within its city limits; and

WHEREAS the City, through a public process, including community meetings, an Environmental Impact Report ("EIR") and public hearings of the Planning Commission and the City Council, has through its General Plan, zoned a portion of the former Breuner Property ("Property") M-1 for commercial purposes (Industrial and Office Use); and

WHEREAS the Richmond Community Redevelopment Agency ("Agency"), a public body, corporate and politic under the authority of the state of California, has included the Property in the Hensley Amended Redevelopment Project Area for the purpose of redeveloping the Property and that this was accomplished through a public process that included community meetings, an EIR and public hearings of the Richmond Planning Commission, the City Council of the City of Richmond and Agency Board; and

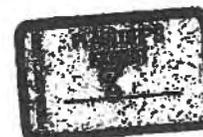
WHEREAS the City's General Plan and the Agency's Project Plan and Implementation Plan, all of which were approved through public processes, designate portions of the Property for commercial development in order to increase economic development, provide jobs and increase tax revenue to provide public services, to fund capital improvements to City infrastructure and to help redevelop blighted neighborhoods; and

WHEREAS, based on new proposals for development of the Property, the property tax revenue could soon reach as much as \$4 million per year, which would have a present value approaching \$100 million; and

WHEREAS there are approximately 7,770 acres of parkland within or abutting and contiguous to the City, approximately 7,500 of which are owned or leased by the East Bay Regional Park District and approximately 3,020 of which are on the Richmond shoreline; and

WHEREAS Point Pinole Regional Park, which consists of 2,315 acres, is adjacent to the Property; and

WHEREAS these parklands and other open space areas are abundant for a city the size of Richmond and many parks, including Point Pinole Regional Park, are very underutilized; and



WHEREAS the loss of additional land from the tax roll would be a hardship on the people of the City because it would further reduce the City's ability to provide the services that the people of Richmond deserve; and

WHEREAS the goals of restoring wetlands fronting the bay and constructing a section of Bay Trail along the edge of the wetlands can be accomplished by the City through the entitlement process when the Property is developed; and

WHEREAS the East Bay Regional Park District has notified the owner of the Property that it intends to consider adopting a Resolution of Necessity to acquire by eminent domain certain portions of the Property on September 20, 2005; and

WHEREAS the East Bay Regional Park District has not taken into account any of the above actions or needs of the City, the Agency or the community; and

WHEREAS the East Bay Regional Park District has not contacted the City or the Agency at a staff, City Council or Agency Board level to discuss plans for park expansion within the City; and

WHEREAS the East Bay Regional Park District has not demonstrated any public interest or necessity that would require its proposed project; and

WHEREAS the East Bay Regional Park District has not to the knowledge of the City or the Agency performed any analysis of the economic impacts of its proposed project; and

WHEREAS the East Bay Regional Park District has not demonstrated that its proposed project would be compatible with the greatest public good and the least private injury, and in fact, has not conducted any public outreach or California Environmental Quality Act (CEQA) process of which the City or Agency are aware; and

WHEREAS the City has no intention of ceding its right to determine land uses within its city limits or have land taken off the tax roll without the City's concurrence; and

WHEREAS the Agency has no intention of allowing land designated under a Project Plan for redevelopment to be used for purposes contrary to the Project Plan and Implementation Plan without an appropriate public process and approval of the Agency Board; and

WHEREAS outside counsel has advised that the East Bay Regional Parks District lacks the legal authority to unilaterally proceed with its stated course of action.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Richmond and the Richmond Community Redevelopment Agency that the City and the Agency are opposed to the East Bay Regional Park District's plan to acquire any portion of the former Brewer Property, including APNs 408-100-023 and 408-100-024, as well as APNs 405-010-001, -017, -019, -020 and APNs 408-110-001, and -004; and

BE IT FURTHER RESOLVED that the City Manager, City Attorney and Executive Director of the Agency are hereby directed to take all appropriate

I certify that the foregoing resolution was passed and adopted by the City Council of the City of Richmond and the Richmond Community Redevelopment Agency at a joint meeting thereof held September 13, 2005, by the following vote:

AYES: Councilmembers/Board Members Butt, Thurmond, Bates, Marquez, Griffin, and Chairperson/Mayor Anderson

NOES: Councilmembers/Board Members Rogers and McLaughlin

ABSTENTIONS: None

ABSENT: Councilmember/Board Member Viramontes

DIANE HOLMES

Clerk of the City of Richmond
Clerk of the Richmond Redevelopment Agency

(SEAL)

Approved:

IRMA L. ANDERSON
Mayor/Chairperson

Approved as to form:

EVERETT JENKINS, INTERIM
City Attorney

Certified as a True Copy

Diane Holmes
CLERK OF THE CITY OF RICHMOND, VA

Exhibit B



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
1488 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94103-1388

NOV 24 2009

Regulatory Division

SUBJECT: File Number 28051S

**Murray Parkway Properties
c/o Mr. Jeff Olberding
Olberding Environmental, Inc
193 Blue Ravine Road, Suite 165
Folsom, California 95630**

Dear Mr. Olberding:

This letter is written in response to your submittal of behalf of Murray Parkway Properties requesting confirmation of the extent of Corps of Engineers jurisdiction at their Goodrick Avenue Properties, located northeast of the intersection of Goodrick Avenue and Richmond Parkway in the City of Richmond, Contra Costa County, California.

Enclosed is a map labeled "Goodrick Avenue Property, City of Richmond, Contra Costa County, California", dated 03/20/09, showing the extent and location of Corps of Engineers jurisdiction. We have based this jurisdictional delineation on the current conditions on the site as verified during a site visit performed by our staff on March 12, 2009. A change in those conditions may also change the extent of our jurisdiction. This jurisdictional delineation will expire in five years from the date of this letter. However, if there has been a change in circumstances that affects the extent of Corps jurisdiction, a revision may be completed before that date.

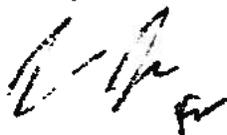
All proposed discharges of dredged or fill material into waters of the United States must be authorized by the Corps of Engineers pursuant to Section 404 of the Clean Water Act (CWA) (33 U.S.C. Section 1344). Waters of the United States generally include tidal waters, lakes, ponds, rivers, streams (including intermittent streams), and wetlands.

Your proposed activity may be within our jurisdiction and a permit may be required for your project. Application for Corps authorization should be made to this office. To avoid delays it is essential that you enter the file number at the top of this letter into Item No. 1 of the application. The application must include plans showing the location, extent and character of the proposed activity, prepared in accordance with the requirements contained in this pamphlet. You should note, in planning your project, that upon receipt of a properly completed application and plans, it may be necessary to advertise the proposed work by issuing a Public Notice for a period of 30 days.

You are advised that the Corps has established an Administrative Appeal Process, as described in 33 C.F.R. Part 331 (65 Fed. Reg. 16,486; March 28, 2000), and outlined in the enclosed flowchart and "Notification of Administrative Appeal Options, Process, and Request for Appeal" form (NAO-RFA). If you do not intend to accept the approved jurisdictional determination, you may elect to provide new information to the District Engineer for reconsideration or submit a completed NAO-RFA form to the Division Engineer to initiate the appeal process. You will relinquish all rights to appeal, unless the Corps receives new information or a completed NAO-RFA form within sixty (60) days of the date of the NAO-RFA.

Should you have any questions regarding this matter, please call Bob Smith of our Regulatory Division at (415) 503-6792. Please address all correspondence to the Regulatory Division and refer to the File Number at the head of this letter. If you would like to provide comments on our permit review process, please complete the Customer Survey Form available online at <http://per2.nwp.usace.army.mil/survey.html>.

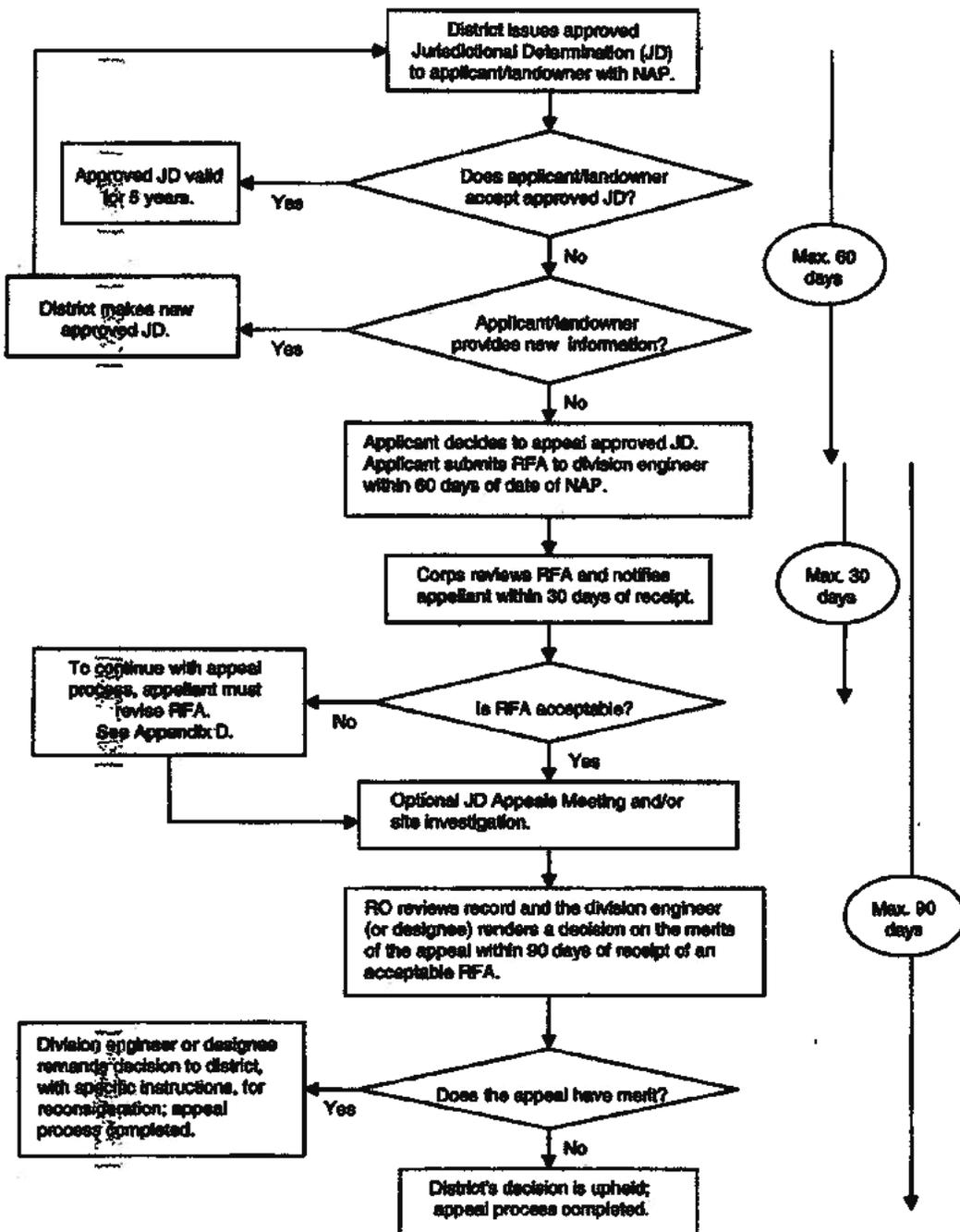
Sincerely,



Jane M. Hicks
Chief, Regulatory Division

Enclosures

Administrative Appeal Process for Approved Jurisdictional Determinations



Appendix C

Exhibit C

OLBERDING ENVIRONMENTAL, INC.

Wetland Regulation and Permitting

December 2, 2010

Mr. Dan Murray
228 Beach Road
Belvedere, CA 94920

SUBJECT: Pre-Construction Survey for California Red-Legged Frog, Salt-Marsh Harvest Mouse, and Other Special-Status Plants and Wildlife at the Goodrick Avenue Property, Richmond, Contra Costa County, California.

Dear Mr. Murray:

Olberding Environmental, Inc. (Olberding Environmental) has conducted a pre-construction survey to detect the presence or absence of the federally threatened California red-legged frog (CRLF) (*Rana draytonii*), the state and federally endangered salt-marsh harvest mouse (SMHM) (*Reithrodontomys raviventris*), and the state and federally threatened Alameda whipsnake (*Masticophis lateralis euryxanthus*) at the Goodrick Avenue Property (Property), located in Richmond, Contra Costa County, California.

In addition, surveys were also conducted to assess the on-site habitat for the potential of occurrence of special-status ground-nesting raptor species that may be in the area such as the burrowing owl (*Athene cunicularia*), northern harrier (*Circus cyaneus*), and short-eared owl (*Asio flammeus*). The survey also included the assessment of potential habitat for the state threatened California black rail (*Laterallus jamaicensis coturniculus*) and the state and federally endangered California clapper rail (*Rallus longirostris obsoletus*). Finally, habitats were assessed for their potential suitability to contain special-status plant species, namely the federally threatened and state endangered pallid manzanita (*Arctostaphylos pallida*), federally endangered soft bird's-beak (*Cordylanthus mollis* ssp. *mollis*), CNPS List 1B species Loma Prieta hoita (*Hoita strobilina*), and the federally threatened and state endangered Santa Cruz tarplant (*Holocarpha macradenia*).

On December 1, 2010, Olberding Environmental conducted a presence/absence survey and habitat assessment for the special-status species mentioned above within the boundaries of the Property (Figure 1). In addition, a California Natural Diversity Database (CNDDB) search and review was conducted for the Property within the Richmond 7.5 minute quadrangle and eight surrounding quadrangles. During the survey, the biologist from Olberding Environmental conducted transect surveys spaced 50 feet apart throughout the entire length of the Property. A visual survey was performed on the properties surrounding the Property. Visual signs of these special-status species were noted, as well as secondary signs of the presence of burrowing owls and other raptors around small mammal burrows and any possible perch locations in the area. In addition, the amount of burrows and any other cracks in the soil was noted in order to determine the amount of potential refuge areas for CRLF. Finally, the on-site and adjacent habitats were assessed in order to determine the potential for any of these special-status species to occur on the Property. These survey methods, along with the CNDDB search and review, were employed in order to obtain a final conclusion as to the potential presence or absence of each of these special-status species to occur on the site.

PROPERTY DESCRIPTION

The Property is located approximately 800 feet southeast of the eastern shoreline of San Pablo Bay, northwest of Richmond Parkway, west of the Union Pacific Railroad tracks, north of Rheem Creek and south of Point Pinole Regional Park, in the City of Richmond, Contra Costa County, California. Access to the Property is attained by taking the Richmond Parkway exit west from Interstate-80. From Richmond Parkway, turn north onto Goodrick Avenue. The Property is situated at the north end of Goodrick Avenue.

The Property consists primarily of upland grassland habitats. The Property is contained between Goodrick Avenue to the west and Richmond Parkway to the east. Rheem Creek, a constructed flood control channel is located approximately 100 feet north of the northern Property boundary, while San Pablo is located several hundred feet to the east and is separated from the Property by Goodrick Avenue and the Breuner Property. The Richmond Rod and Gun Club is adjacent to the west of the site and is located along San Pablo Bay. The entire site is on a low-lying alluvial plain. Most of the area is level, although localized shallow depressions occur throughout the site.

Along the western edge of the Property, there is an extension of Goodrick Avenue, which separates the tidal wetlands from the site. Although signs of recent disturbance on the Property are mainly limited to disking for fire protection, it is assumed that all or most of the Property has been subject to intensive disturbance in the past. The majority of the site has been historically used a pasture for cattle and horses. Overall, the vegetative cover on the site has been highly disturbed from past grazing. Dominant vegetation on the site includes wild oat (*Avena fatua*), black mustard (*brassica nigra*), curly dock (*rumex crispus*), and coyote brush (*Baccharis pilularis*).

SPECIAL-STATUS SPECIES HABITATS

The CRLF is found in lowlands, foothill woodland and grasslands, near marshes, lakes, ponds or other water sources. These amphibians require dense shrubby or emergent vegetation closely associated with deep still or slow moving water. Generally these frogs favor intermittent streams with water at least two and a half feet deep and where the shoreline has relatively intact emergent or shoreline vegetation. CRLF are known to take refuge upland in small mammal burrows during periods of high water flow.

The SMHM resides only in the saline emergent wetlands of the greater San Francisco Bay and its tributaries. The primary habitat for this mouse is pickleweed. These small mice build loosely organized nests in vegetation above ground and do not burrow. SMHM also require higher areas within their range where they may escape from high water. Some movement of individuals from pickleweed marsh to higher grassland occurs in the spring and summer, or otherwise as plant cover affords escape from predators.

The Alameda whipsnake is typically found in chaparral, northern coastal sage scrub, and coastal sage habitats, usually with rock outcrops; however annual grasslands, oak woodlands, and oak savannah serve as habitat during the breeding season. Egg-laying occurs near scrub habitat on ungrazed grasslands with scattered shrub cover.

California black rails inhabit saltwater, brackish, and freshwater marshes at very low elevations. They prefer coastal areas for tidal salt marshes bordering larger bays dominated by dense pickleweed with an open structure below. A dense canopy that provides optimal cover is essential for survival. The California clapper rail occurs in the San Francisco Bay Area where saltwater and brackish marshes are present that are traversed by tidal sloughs and dominated by pickleweed and cordgrass.

Burrowing owls generally require open annual grassland habitats in which to nest, but can be found on abandoned lots, roads, airports, and other urban areas. In addition to being open, habitats must meet three other requirements to be suitable for the burrowing owl. First, existing burrows must be present (or suitable substitutes). Next, elevated perches or low vegetation, generally free of visual obstruction, must be relatively close. Finally, there must be a high percentage of bare ground or ground covered with very low vegetation. Northern harriers require open annual grassland habitats and prefer dense ground vegetation or grasses in which to build nests. The short-eared owl forages in grasslands, tundra, and marshes with an abundant small mammal population. Nests are constructed on the ground, usually in a dry depression with concealing vegetation.

The pallid manzanita can be found in broadleafed upland forest, closed-cone coniferous forest, chaparral, cismontane woodland, uplifted marine terraces, and coastal scrub from 656 to 1,460 feet in elevation in siliceous shale, thin chert, sandy, or gravelly soils. It blooms from December to March. Soft bird's-beak is a saprophyte upon host plants such as salt grass and pickleweed. The blooming period for this plant is between April and July. This plant unusually is found where the high to highest flood water occurs. The Loma Prieta hoita can be found in openings in chaparral or oak woodland, cismontane or riparian woodland, serpentine, or related Franciscan-formation substrata, and descending in gravelly creekbeds draining from the mountains into the Santa Clara Valley. This legume blooms from May to October. The Santa Cruz tarplant is found in coastal prairie and valley and foothill grassland habitats in sandy clay soils, often amongst non-native plants. Yellow flowers bloom between June and October.

RESULTS

CNDDDB maps of the special-status species listed in this report are included as Figures 2 and 3. The species displayed on these maps have occurred within a five mile radius of the site within the last ten years. Figure 4 has been included to display the USFWS designated critical habitat for the Alameda whipsnake occurring within five miles of the site. Below is a list of the most recent occurrences of these species within the vicinity of the site:

- CRLF was last observed in 2000 (Occurrence #407), roughly 5.8 miles northeast of the Property.
- SMHM was last observed in 2001 (Occurrence #73), roughly 0.7 miles northeast of the Property.
- Several occurrences of the Alameda whipsnake have been made within the last ten years within the vicinity of the site. Due to the sensitive nature of this species, its location information has been suppressed. Critical habitat for this species occurs less than five miles to the southeast of the Property (Figure 4).
- The California black rail was last observed in 2008 (Occurrence #33), roughly 0.7 miles northeast of the Property.
- The California clapper rail was last observed in 2000 (Occurrence #83), roughly 2.2 miles northeast of the Property.
- The burrowing owl was last observed in 2004 (Occurrence #1160), roughly 5.0 miles southeast of the Property.
- No recent occurrences of the northern harrier or short-eared owl have been made within the vicinity of the Property.
- The pallid manzanita was last observed in 2004 (Occurrence #1), roughly 5.3 miles east of the Property.
- The soft bird's-beak was last observed in 2006 (Occurrence #1), roughly 1.9 miles northeast of the Property.
- The Loma Prieta hoita was last observed in 2004 (Occurrence #15), roughly 3.5 miles southeast of the Property.

- The Santa Cruz tarplant was last observed in 2009 (Occurrence #28), roughly 4.3 miles southeast of the Property.

Observations made during the initial survey conducted on December 1, 2010, indicate that none of the special-status species occur on the Property. Based on the habitat assessment of the Property, the following conclusions were made: CRLF is presumed absent from the site based on the lack of suitable habitat and lack of recent occurrences. No deep pools occur on the site and the Property lacks suitable refuge habitat in the form of small mammal burrows. No pickleweed occurs on the Property for the SMHM, but does occur within 350 feet of the Property to the west. Habitat does not occur on the Property for the Alameda whipsnake. In addition, development and highways to the east of the Property act as obstacles to migration for this species. Habitat for the California black rail and California clapper rail occur within the shoreline vegetation to the west of the Property. However, both of these species are unlikely to occur within the Property boundaries due to lack of suitable habitats. The lack of small mammal burrows and lack of recent occurrences precludes the use of the Property to the burrowing owl. Regular maintenance and grazing of the site precludes the use of the Property for the northern harrier and short-eared owl. None of the special-status plant species are expected to occur on the site based on the lack of suitable habitat, soil conditions, and regular grazing disturbance.

No special status species currently occur on the Property. In summary, while several special-status species have the potential to occur adjacent to the Property along the shoreline to the west, the majority of these species are unlikely to occur on the Property based on lack of suitable habitats (tidal marsh and pickleweed), lack of recent occurrences, grazing disturbance, and migratory obstacles (Goodrick Avenue and Rheem Creek). Primary habitat for SMHM is absent on the Property. Grasslands act as refuge habitat for SMHM during high tide events, usually during the spring and summer seasons. However, the Property is located over 350 feet from pickleweed known to support this species and is separated from this habitat type by Goodrick Avenue. It is highly unlikely that SMHM would venture this distance from the cover of the shoreline band of pickleweed. Therefore, SMHM are assumed to be absent from the Property.

If you have any questions, please feel free to contact me at (925) 866-2111.

Sincerely,



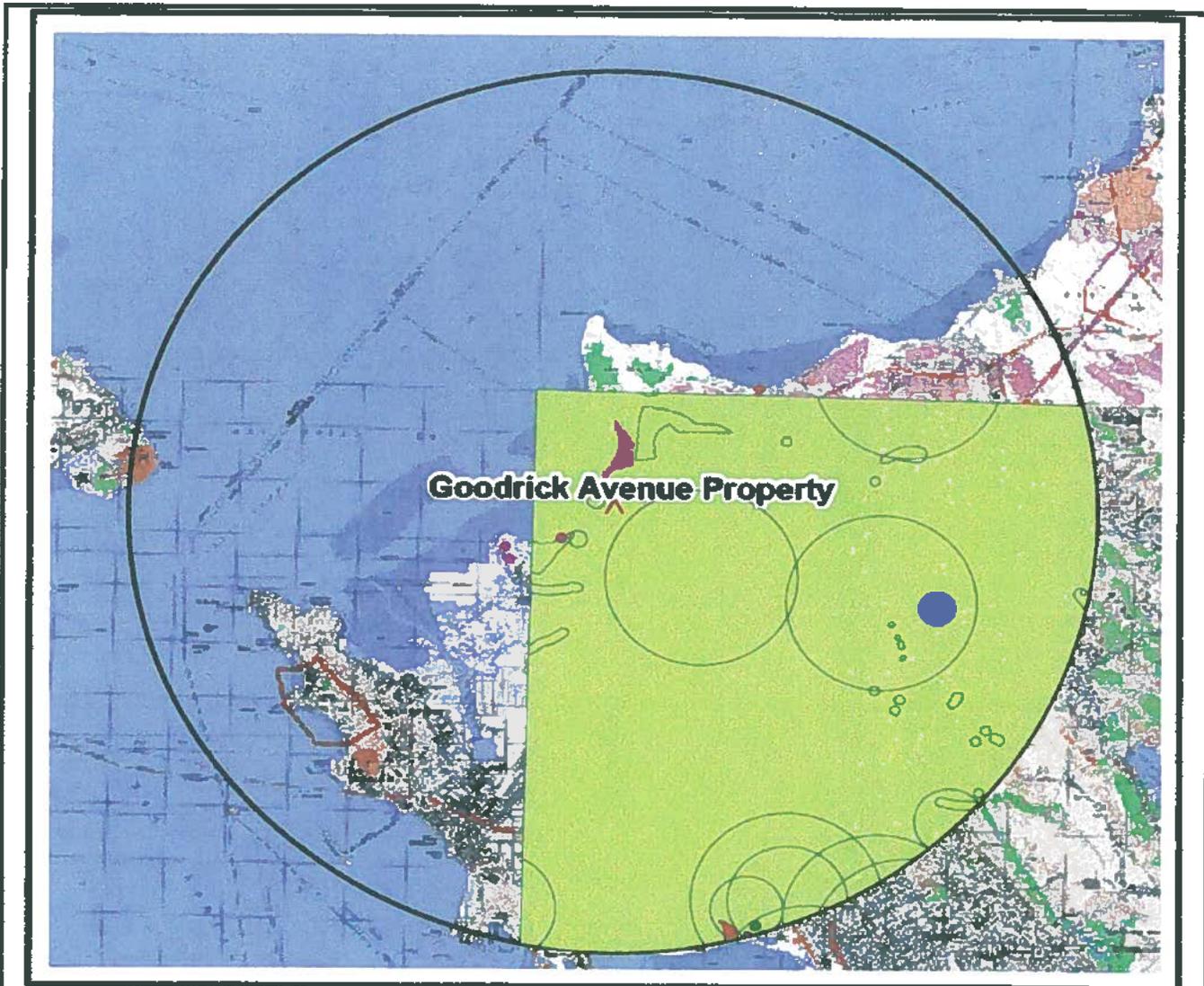
Jeff Olberding
Wetland Regulatory Scientist



Figure 1
Aerial Photograph of the Goodrick Avenue Survey Area
Contra Costa County, California

Olberding Environmental, Inc.
3170 Crow Canyon Place, Suite 260
San Ramon, California 94583
Phone: (925) 866-2111

This document is not intended for detail design work.

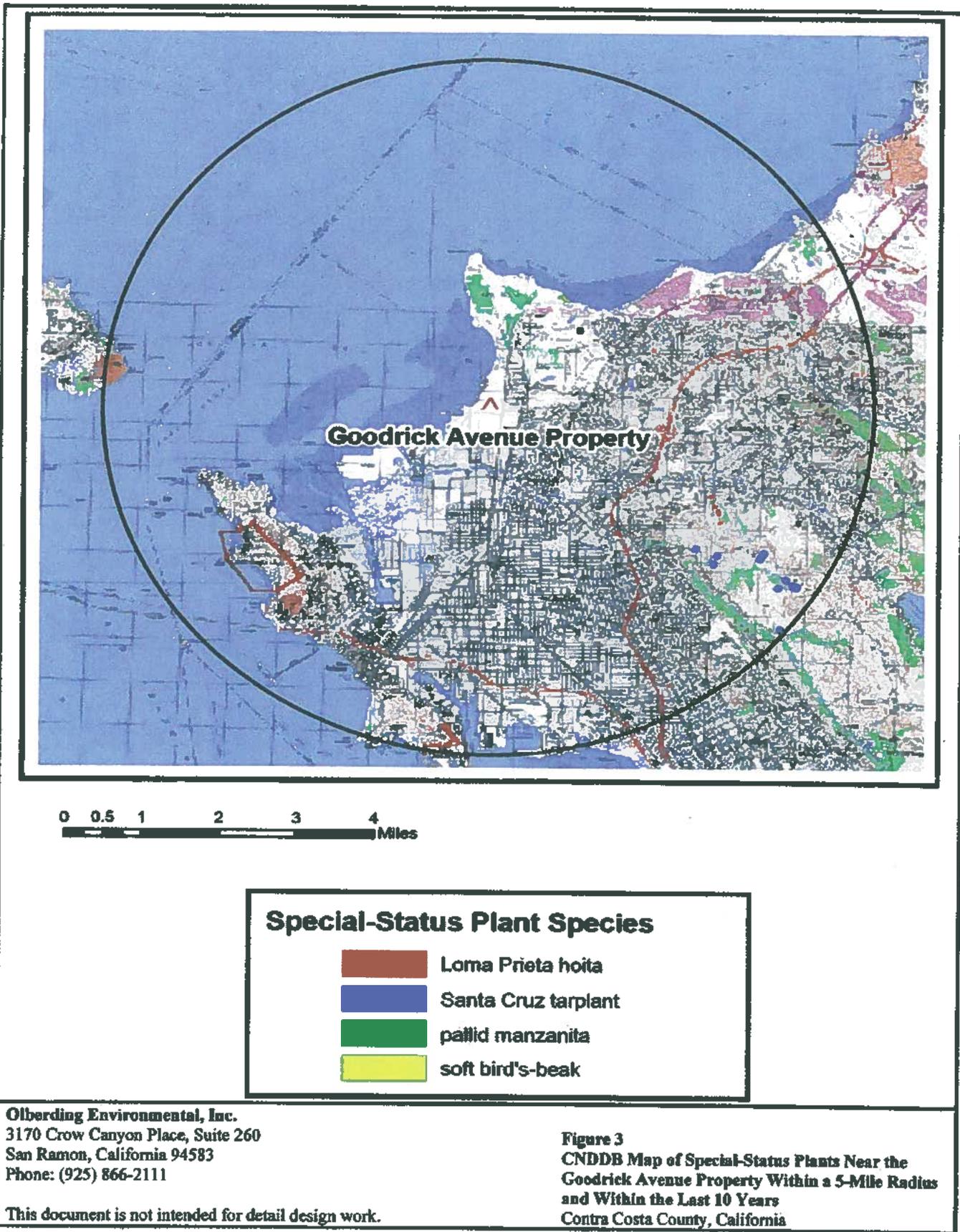


Special-Status Animals			
	Alameda whipsnake		California clapper rail
	Bridges' coast range shoulderband		burrowing owl
	California black rail		salt-marsh harvest mouse

Olberding Environmental, Inc.
 3170 Crow Canyon Place, Suite 260
 San Ramon, California 94583
 Phone: (925) 866-2111

Figure 2
 CNDDDB Map of Special-Status Animals Near the
 Goodrick Avenue Property Within a 5-Mile Radius
 and Within the Last 10 Years
 Contra Costa County, California

This document is not intended for detail design work.



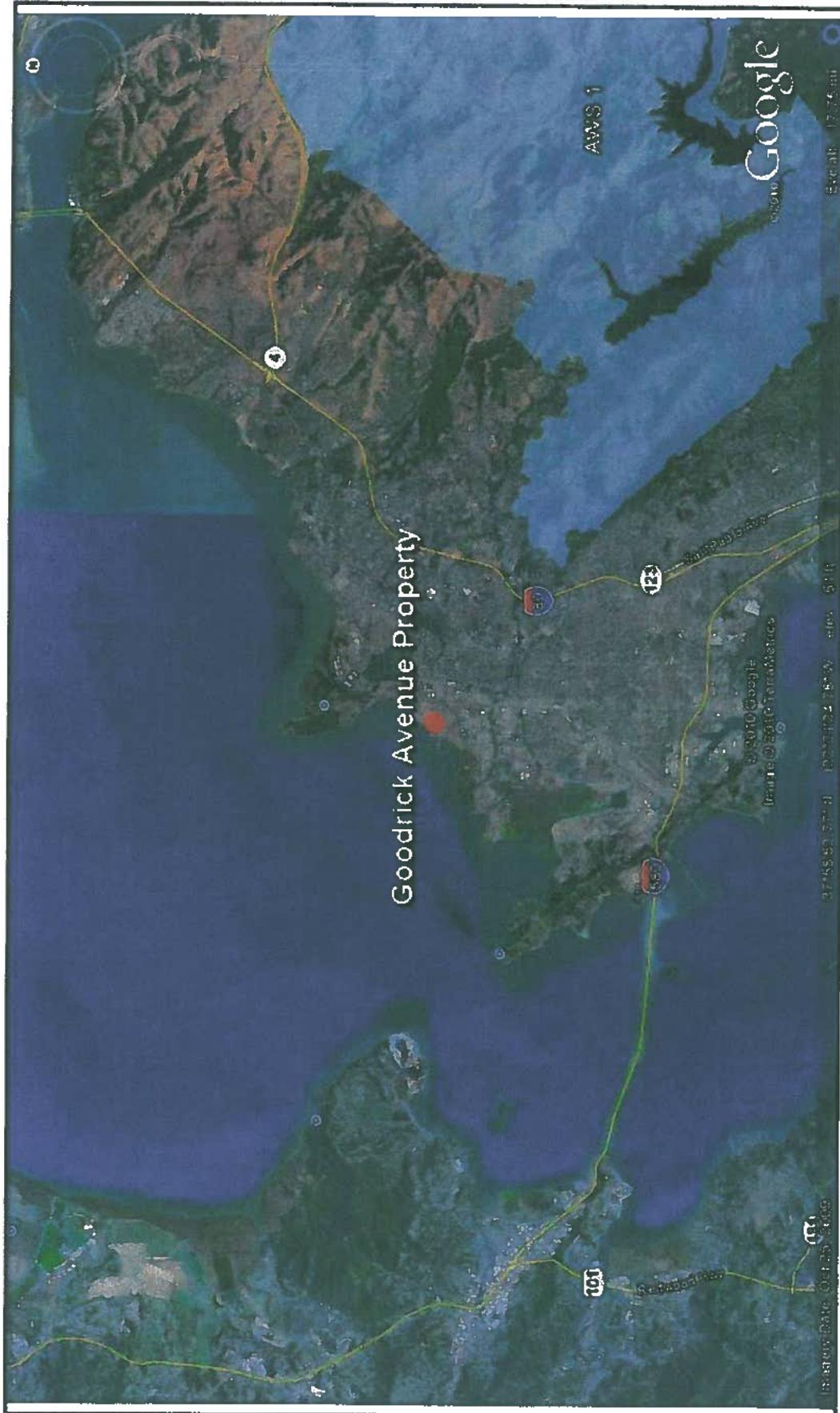


Figure 4
USFWS Designated Critical Habitat Map for the Alameda
Whipsnake Near the Goodrick Avenue Property
Contra Costa County, California

Oiberding Environmental, Inc.
3170 Crow Canyon Place, Suite 260
San Ramon, California 94583
Phone: (925) 866-2111

This document is not intended for detail design work.



Photo 1. View of the upland grassland habitat on the site looking east from the northwest corner of the Property.



Photo 2. View of the pickleweed dominated habitat along the eastern shoreline of San Pablo Bay. There is a distinct difference from the habitat found on the Goodrick Avenue Property.

**Olberding Environmental, Inc.
Goodrick Avenue Property – December 2010**

LETTER 18: Cox Castle Nicholson LLP, Anne Mudge

Response to Comment 18-1

The comment provides background information about the owners of parcels located in Change Area 12: Northshore. As it is not a direct comment on environmental issues or the content or adequacy of the Draft EIR, the comment is noted without response.

Response to Comment 18-2

The comment asserts that the proposed change in General Plan land use designation constitutes a “downzone” of the referenced property, and would destroy all economically viable use of the property. The comment goes on to state that, for these reasons, the Draft EIR does not provide adequate environmental analysis and violates CEQA. The Draft EIR evaluates the land use for the property as proposed in the General Plan. The area is currently undeveloped, there are no approved development plans for the area, and no development applications under review. The proposed land use designation permits the same intensity of use as is currently permitted. The Draft EIR evaluates the impacts that would occur if the property were developed at the permitted intensity.

Response to Comment 18-3

The comment provides history about the parcels located in Change Area 12: Northshore and the Freethy Industrial Park. As it is not a direct comment on environmental issues or the content or adequacy of the Draft EIR, the comment is noted without response.

Response to Comment 18-4

The comment states that the General Plan mischaracterizes the property as wetlands and suitable habitat and cites reports that suggest the referenced property has the potential for fewer sensitive resources than is referenced in the Draft EIR. This information does not materially affect the analysis in the Draft EIR, because if sensitive resources are not present on the site, the potential effect of the project would be less than disclosed in the Draft EIR.

Response to Comment 18-5

The comment states the General Plan is inaccurate in that the General Plan states the Change Area 12: Northshore lacks infrastructure. The reference in the General Plan and the Draft EIR refer to Change Area 12: Northshore generally, and not specifically to the property referenced in the comment. Much of Change Area 12: Northshore is currently undeveloped, with no obvious, above-ground infrastructure. As with the potential for impacts on sensitive species on the site, the existence or lack of infrastructure does not materially affect the conclusions in the Draft EIR.

Response to Comment 18-6

The comment generally refers to deficiencies in the Draft EIR, but does not provide information on specific deficiencies in this comment. Please see responses to comments that follow.

Response to Comment 18-7

The comment states that the Draft EIR understates the impacts of the project by assuming a growth rate that is less than “full buildout” of the General Plan and the Draft EIR never discloses the capacity of the General Plan at full buildout. By “full buildout,” this commenter means all possible development that could occur under the land use designations and policies set forth in the General Plan. As discussed on page 3.0-4 of the Draft EIR, the EIR analyzes an adjusted buildout scenario based on the concept that “buildout” of the proposed General Plan would not occur for many years beyond the 2030 horizon year, if at all. Because the full buildout scenario is highly unlikely, the Draft EIR does not present an analysis of development that is speculative and not reasonably foreseeable, which would present impacts that are overstated and incorrect. The General Plan, and therefore the Draft EIR, assumes a rate of growth that substantially exceeds historic population growth in the City since 1945. The Draft EIR assumes that with implementation of the proposed project, the City would absorb up to 13 percent of the anticipated population growth that would occur in Contra Costa County, or 30,147 new residents, bringing the City’s 2030 population to 132,847 residents. This exceeds the 2007 ABAG 2030 population projections for the City by 4,847 residents and the 2009 ABAG 2030 projections by 247 residents. Based on the estimated 2030 population of 132,847 residents in the City, the Draft EIR provides an analysis of impacts greater than those that could be expected based on the most recent ABAG projections.

The comment also states that full buildout is not quantified in the Draft EIR. The Draft EIR includes, under each impact discussion in the technical sections, an assessment of the potential for buildout of the General Plan. However, the full buildout assessments are qualitative in nature because of the improbability that all areas of the City, including those already developed with viable land uses, would redevelop to the full extent as allowed by the General Plan. In order for the City to reach a “full buildout” level as suggested in the comment, it would have to be assumed that all vacant parcels would be developed in addition to the redevelopment of all underutilized parcels in the City. The “full buildout” scenario suggested in the comment would require that areas of the City that are currently developed, but not to the full intensity allowed under the proposed General Plan, would all be redeveloped to new maximum intensity allowed in the General Plan. In order for that to happen, much existing development would be demolished and rebuilt to attain the overall maximum allowed density and every unbuilt parcel in the City would be developed to the maximum extent permitted under the General Plan. Such a scenario is highly unlikely and an analysis of the potential impacts for that level of redevelopment would be purely speculative.

As discussed on page 2-8 of the Draft EIR, the City estimates there are approximately 1,200 acres of vacant and underutilized land in Richmond that may be available for infill development. Table 2-4 on page 2-42 of the Draft EIR shows that there are approximately 16,500 total acres in the City. This means that approximately 7.3 percent of Richmond’s total land is vacant or underutilized, and therefore available for development. ABAG’s 2007 projections for 2030 show a 24.6 percent population increase over the 2005 level. Full buildout in the Draft EIR assumes the 24.6 percent population increase would occur in the 7.3 percent of available land. The City believes that this is a conservative assumption and that the Draft EIR does not underestimate the amount of development

that would occur, and, therefore, that the Draft EIR does not underestimate the potential physical effects that would occur with development of the General Plan.

While the City believes that the analysis of the development contained in the Draft EIR conservatively estimates the amount of development that would be absorbed over the General Plan timeframe, to ensure that development in the City does not exceed the projections in the Draft EIR, the City will implement the following measures to track development in the City and reevaluate City-wide development if population or employment-generating uses exceed the assumptions of the EIR.

The following measures are added on page 3.2-8 of the Draft EIR:

3.2-1 The City shall continue to track the number of new housing units as building permits are issued to determine if new development exceeds the amount of development assumed in the EIR (15,548 housing units). As part of its annual Housing Element progress report, City staff shall provide a report on the number of new housing units to the City Council annually. If the number of units approaches or exceeds 80 percent of the number assumed in the General Plan EIR (12,438 housing units), the City shall prepare an update to the General Plan and General Plan EIR to assess the environmental effects of additional projected growth.

3.2-2 Based on available U.S. Census or ABAG data, the City shall track the number of new jobs to determine if new development exceeds the amount of development assumed in the EIR (22,488 jobs). City staff shall provide a report on the number of new jobs to the City Council annually and if the number of jobs approaches or exceeds 80 percent of the number assumed in the General Plan EIR (9,950 jobs), the City shall prepare an update to the General Plan and General Plan EIR to assess the environmental effects of additional projected growth.

The above measures would ensure that development of the General Plan does not exceed the level of development analyzed in the EIR and that the General Plan would be updated and analyzed if development were to exceed the current assumptions.

Response to Comment 18-8

The comment states that the Draft EIR does not provide meaningful analysis of the project's air quality impacts and does not comply with the BAAQMD's methodology to determine if the project is consistent with the BAAQMD Clean Air Plan. The analysis of consistency follows the BAAQMD's methodology, which requires that a plan be consistent with all the BAAQMD criteria in order to be consistent, and may be determined to be inconsistent with the Clean Air Plan if it is inconsistent with any of the criteria. Because the land uses contained in the proposed General Plan would result in more development than is assumed in Richmond for the Clean Air Plan and VMT generated by the General Plan would exceed the increase in population in the Clean Air Plan, the Draft EIR found that the proposed General Plan would not be consistent with the Clean Air Plan..

Response to Comment 18-9

The comment states that the air quality analysis is not based on substantial evidence because the analysis does not consider the “full buildout” scenario described by the commenter. Please see Response to Comment 18-7 regarding the full buildout scenario.

Response to Comment 18-10

The comment states that the Draft EIR fails to quantify the project’s emissions. As discussed in previous comments, this is program-level EIR. Because the specific uses and intensities of development that may occur under the General Plan cannot be determined at this time (e.g. the ratio of residential to non-residential in a mixed use project and the locations of those uses relative to one another), any modeling effort would require a substantial amount of speculation. Consistent with CEQA Guidelines section 15145, the City noted its conclusion and terminated the discussion of the impact. Consequently, the Draft EIR concluded that due to the substantial increase in intensity of uses within the City, even with reductions in emissions that could be achieved through implementation of BAAQMD best management practices and General Plan policies, the impact would be significant.

Response to Comment 18-11

The comment states the analysis of toxic air contaminants (TAC) is not based on substantial evidence, because it does not establish a baseline and quantify future TAC levels. As discussed in Response to Comment 18-10, this level of analysis cannot be performed at this time, due to lack of specific development to analyze. As discussed in the Draft EIR (see pages 3.3-8 and 3.3-11), the term “toxic air contaminants” encompasses a range of pollutants, each with its own threshold for exposure. As these pollutants differ by industry or land use, it would be speculative to predict which land use would be developed and the type and amount of TAC that would be generated. The comment also notes that in order to comply with BAAQMD thresholds regarding TACs, overlay zones need to be included and contends that overlay zones are not included in the General Plan policies. Mitigation Measure 3.3-3 on Draft EIR page 3.3-26 does require the implementation of overlay zones for planned sources of TACs. Consequently, the General Plan would comply with BAAQMD thresholds regarding TACs.

Response to Comment 18-12

The comment states the Draft EIR analysis relies on the City Ordinance to include odor overlay zones, but odor overlay zones are not specifically referenced in the Ordinance. According to the May 2011 BAAQMD Guidelines,² for plans to have a less-than-significant odor impact, a plan must identify the location of existing and planned odor sources in the plan area and include policies to reduce potential odor impacts in the plan area. Though Municipal Code Section 15.04.510 does not

2 Bay Area Air Quality Management District, California Environmental Quality Act, Air Quality Guidelines, May 2011, <http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD%20CEQA%20Guidelines%20May%202011.ashx>, accessed June 8, 2011, pg. 2-7.

12 Richmond Municipal Code Section 15.04.510 Overlay Districts.

specifically address odor overlay zones, the General Plan identifies areas of potential nuisance odor sources as the industrial areas of the City, particularly those in the vicinity of Harbor Way South, Marina Way South, Interstate 580, and Hall Avenue. Policies LU5.3 and ED8.2 were developed to minimize conflicts between land uses to protect human and environmental health and safety, preserve community character, and retain job generating activities. Actions LU5.C and ED7.B include requirements to establish buffer areas or transition areas to minimize conflicts, including those related to odors.

Therefore, the discussion of odor thresholds beginning on page 3.3-16 of the Draft EIR is revised as shown below. These revisions do not alter the conclusions of the analysis.

Odor Thresholds

~~Special overlay zones need to be established around existing and proposed land uses that emit odors. According to the Bay Area Air Quality Management District, the location of existing and planned odor sources in the plan area must be identified in order for plan-level documents to be considered less than significant with respect to odors. Also, the plan must identify goals, policies, and objectives to minimize potential impacts for sources of odors and sensitive receptors. These overlay maps should be included as part of the proposed General Plan. Individual projects shall be evaluated based on the established BAAQMD screening levels to determine adequate special overlay zone distances between odor sources and receptors. A plan level assessment is determined to be less than significant with respect to odors if it complies with the following:~~

- The land use diagram must identify special overlay zones around existing and planned sources of odors; and
- The plan must identify goals, policies, and objectives to minimize potential impacts and create overlay zones for sources of odors and receptors.

The discussion of odor impacts on page 3.3-28 is revised as follows:

The individual projects that are included in the development of the City have not been planned to the level of detail where odor sources can be identified and emissions quantified. In the absence of specific project data, the BAAQMD Guidelines provide thresholds of significance for plan-level analysis. In order for General Plans to be considered less than significant with respect to potential odor emissions, a plan must identify the location of existing and planned odor sources in the plan area and include policies to reduce potential odor impacts in the plan area. ~~special overlay zones need to be established around existing and proposed land uses that emit odors. Special overlay zones should be included in the proposed plan policies, land use maps, and implementing ordinances. Section 15.04.510 of the Richmond Municipal Code details the Resource Management Overlay Districts¹² and the existing use of special overlay zone maps. The BAAQMD has established screening levels to aid in the determination of adequate overlay zone distances for minimizing impacts from odor sources. With the evaluation and inclusion of all future odor source development into the existing zone areas and ensuring they are properly mapped,~~ The General Plan identifies

areas of potential nuisance odor sources that could potentially affect nearby uses as the industrial area of the City in the vicinity of Harbor Way South, Marina Way South, Interstate 580, and Hall Avenue. The General Plan includes policies LU5.3 and ED8.2 that are intended to minimize conflicts between land uses to protect human and environmental health and safety, preserve community character, and retain job generating activities.

The accompanying actions, LU5.C and ED7.B, require new industrial uses adjacent to existing residential or commercial uses to incorporate measures, such as enclosure of industrial activities in buildings, to minimize impacts on residential uses. New residential and commercial uses established adjacent to existing industrial uses must also incorporate measures to minimize impacts on the residents from odors. The City would review proposed uses for the potential to result in nuisance odors to ensure compliance with these actions. With these policies and actions in place to reduce exposure of sensitive receptors to nuisance odors, the proposed General Plan complies with the BAAQMD guidelines for odors and would, therefore, result in a *less-than-significant* impact related to odor.

Response to Comment 18-13

The comment states a Lead Agency should not approve a project if there are additional feasible mitigation measures that would reduce a project's significant environmental effects and states the air quality mitigation measures are general and not enforceable. The comment, however, refers to proposed General Plan policies, not mitigation measures, when it discusses the general language included in the EIR. Mitigation measures included to reduce air quality effects include reduced transit fares, expansion of bicycle and pedestrian routes, and incentives to use transit (MM 3.3-1, page 3.3-21); requirements for the use of best management practices (MM 3.3-2, page 3.3-22); and requirements to implement stationary source control measures (MM 3.3-2, page 3.3-25). While these measures would help to reduce air emissions, because no specific projects are being proposed at this time, the amount of reductions achieved cannot be accurately determined. Consequently, impacts related to regional emissions and potential air quality violations were found to be significant and unavoidable. Also see Response to Comment 18-10.

Response to Comment 18-14

The comment states that the Draft EIR does not adequately quantify the project's greenhouse gas emissions because it fails to adequately disclose its assumed base-year GHG emissions inventory total and provides no information regarding the methodology used to calculate the total. The 2005 baseline emissions for the City of Richmond are included as part of the environmental setting in the "Potential Effects of Human Activities on Climate Change" section on pages 3.6-5 through 3.6-7. The Draft EIR not only provides emissions for the City of Richmond, but also provides, county, state, U.S., and global emissions estimates. The discussion does not include a step-by-step explanation of the calculations ICLEI used to determine the baseline and 2020 emissions; however, it does include a summary of the emission sources, and identifies the emissions generated within the City's geographical boundaries. The Draft EIR also estimates emissions associated with development of the General Plan, as shown in Table 3.6-1 on Draft EIR page 6.3-17.

Response to Comment 18-15

The comment states that the Draft EIR underreports the 2005 base-year emissions inventory. As discussed on page 3.6-7, “The total emissions from Richmond in 2005 equal approximately 5.8 million metric tons CO₂e. Approximately 88 percent of the City’s emissions are from commercial/industrial operations (5.1 MMT CO₂e). The majority of these emissions, approximately 3.5 MMT CO₂e, are from commercial/industrial operations located within the City limits; however, Richmond has no jurisdictional control over them with respect to the production of GHG emissions. Therefore, the total citywide emissions for which Richmond has jurisdictional control, approximately 2.4 MMT CO₂e, is the focus of this analysis.” The majority of the industrial sources are associated with processes that are monitored and permitted under the BAAQMD. The City does not have general authority to limit or reduce the emissions from these sources. Stationary source emissions and operations are regulated at a regional level by the Air District. Therefore, the Draft EIR focuses analysis on the existing emission sources and those growth-related emission sources over which the City has direct control.

Additionally, the comment states that municipal emissions (emissions from City owned and operated facilities) were excluded from the analysis. As stated on page 4 of the 2005 *City of Richmond Greenhouse Gas Emissions Inventory* under the Community Emissions Protocol heading, the International Local Government GHG Emissions Analysis Protocol (IEAP) was developed “to assist local governments in greenhouse gas emissions from both their internal operations and from the whole community within their geographical boundaries.” The municipal emissions are imbedded in the city-wide inventory and have been appropriately accounted for in the analysis, although they were not called out separately from the rest of the city-wide emissions.

Response to Comment 18-16

The comment states that the Draft EIR fails to fully quantify and consider all project-related GHG emissions because it inaccurately reports data from the *2005 Richmond Greenhouse Gas Emissions Inventory*. See Response to Comment 18-15.

Response to Comment 18-17

The comment states that the Draft EIR fails to qualitatively or quantitatively analyze the efficacy of the General Plan policies or to impose all feasible mitigation for GHG-related impacts. The General Plan is a policy document intended to guide future development in the City. The implementation of the General Plan policies would provide a reduction in GHG emissions due to a reduction in VMT, increases in energy efficiencies, and reduction in waste generation. However, the potential for the reductions depends on variables that are dependent on the individual development that would occur as a result of the implementation of the General Plan. Therefore, the degree to which greenhouse gas emissions may be reduced by implementation of the General Plan remains uncertain.

The Draft EIR includes enforceable mitigation (Mitigation Measures 3.6-1b through 3.6-1o) that would reduce the emissions of greenhouse gases in the City through the reduction of vehicle trips, increase in energy efficiencies, reduction of utility consumption, reduction of waste generation or

increased recycling, and the increase in renewable energy generation. As cities are required to reduce emissions to meet California State Assembly Bill (AB) 32 GHG targets by 2020 through the implementation of a Climate Action Plan, the Draft EIR assumes implementation of the City's Climate Action Plan to reduce emissions. To ensure the Climate Action Plan is in place for implementation of the General Plan and that it meets the reductions requirements of AB 32, the following mitigation measure has been added in order to define how the implementation of the Climate Action Plan would influence reductions with respect to City-wide emissions.

3.6-1 p The City of Richmond shall adopt a Climate Action Plan within 18 months of the adoption of the General Plan Energy and Climate Change Element. The Climate Action Plan shall include the following pursuant to CEQA section 15183.5(b):

- a. The quantification of greenhouse gas emissions, both existing (2005) and projected for 2020 and General Plan horizon year (2030). These inventories and projections shall be used in the forthcoming Climate Action Plan.
- b. The Climate Action Plan shall define reduction targets that are California State Assembly Bill 32 (AB 32) compliant and continue reducing emissions past 2020 in order to address cumulatively considerable impacts of greenhouse gas emissions. At a minimum, the Climate Action Plan shall set a target to reduce emissions to 1990 levels by 2020, which is anticipated to be a reduction of 15% from 2005 levels.
- c. The 2020 and 2030 Business As Usual (BAU) Inventories provide emissions by land use types and emission sectors based upon the anticipated changes and growth in land use within the General Plan Land Use and Urban Design Element, which fulfills the criteria of CEQA Guidelines 15183.5(b)(C). As such, the inventories shall provide quantities and context of the emissions that need to be reduced in order to achieve the reduction target. Reduction measures in the Climate Action Plan shall focus on reducing the emissions from the sectors and land use types identified in the 2020 and 2030 BAU inventories.
- d. The Climate Action Plan shall specify reduction measures or groups of reduction measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the AB 32 compliant reduction target. To implement the goals and policies in the General Plan Energy and Climate Change Element, the Climate Action Plan shall include adaptation strategies that focus on potential local impacts of climate change, such as sea level rise, increased risk of flooding, diminished water supplies, and public health. Broader sustainability measures may include the preservation of local water quality, air quality, open space, and biodiversity. In addition, the following reduction strategies shall be incorporated into the Climate Action Plan:

- i. Require all new or renovated municipal buildings to seek California Green 2010 Tier 1 building standards or higher and require new development building design to be, at a minimum, compliant with California Green 2010 building standards.
 - ii. Require all municipal fleet purchases to be fuel efficient vehicles for their intended use, based on the fuel type, design, size, and cost efficiency.
 - iii. Require new development projects to implement a construction plan that demonstrates how activities will reduce waste through recycling and/or salvaging of non-hazardous construction and demolition debris at a minimum of 50%.
- e. In order to establish a mechanism to monitor the Climate Action Plan's progress towards achieving the reduction targets and to require amendment if the Climate Action Plan is not achieving the reduction targets, the Climate Action Plan shall include an implementation chapter describing how the reduction measures are to be implemented, emissions monitored, and the Climate Action Plan updated. Emissions inventories shall be conducted at minimum intervals of five years in order to evaluate the progress of the Climate Action Plan. The Climate Action Plan shall be updated together with future General Plan Updates or as necessary to implement new statewide reduction thresholds.
 - f. The Climate Action Plan, including all updates, is a project subject to public review and comment under the California Environmental Quality Act.

As stated in the Draft EIR (page 3.6-28) the adoption and implementation of the Climate Action Plan is anticipated to reduce emissions to a less-than-significant level in conformance with AB 32 reduction goals. However, because the Climate Action Plan is not currently adopted, the Draft EIR uses the BAAQMD's plan-level threshold of 6.6 MT/SP as the significance threshold. Based on quantified reductions and including the reduction of emissions at a minimum to the AB 32 goal through the implementation of the Climate Action Plan, the per-service-population emissions from city-wide operations are anticipated to remain above the BAAQMD threshold. Therefore, the finding in the Draft EIR is that the City's contribution to greenhouse gas emissions is significant and unavoidable.

Response to Comment 18-18

The comment states that the Draft EIR must fully analyze the project's operational greenhouse gas emissions before reaching the conclusion that the effects are significant and unavoidable. As discussed in detail in Responses to Comments 18-14 and 18-15, the Draft EIR fully discloses existing emissions in the City based on the ICLEI inventory and quantifies the emissions that would occur as development progresses under the proposed General Plan. As discussed in Response to Comment 18-17, the Draft EIR qualitatively and quantitatively analyzes the proposed mitigation measures, and implements enforceable mitigation measures. As discussed in Response to

Comment 18-17, with implementation of project mitigation measures, the City would achieve greenhouse gas emissions consistent with AB 32 goals, but would still exceed the BAAQMD thresholds. Consequently, the impact was found to be significant and unavoidable.

Response to Comment 18-19

The comment states that the Draft EIR underestimates the traffic impacts of the General Plan because it does not analyze a full buildout scenario. Please see Response to Comment 18-7 regarding the full buildout scenario.

The comment also states that the traffic analysis is incorrect because it compares the proposed project with a “no project” baseline that is flawed. The comment is not accurate in its assumptions. The Draft EIR provides existing conditions related to transportation and circulation, to which impacts of the proposed General Plan are compared (Draft EIR pages 3.14-1 through 3.14-26). The “no project” scenario included in the transportation section was included to describe conditions that would occur with continuation of the existing General Plan, which was adopted in 1994. However, the findings for impacts in the section are based upon a comparison with the existing conditions, not the “no project” scenario.

Response to Comment 18-20

The comment states that the traffic section identifies 57 road segments, but only focuses on impacts at three intersections. As shown in Table 3.14-10 on Draft EIR page 3.14-38, there are three intersections where the proposed General Plan would result in a drop in LOS that would exceed the standard. In order to encourage multi-modal transportation alternatives, the updated General Plan does not rely on the LOS standard as the only measure of a successful circulation system. However, because the LOS standard is one of the most familiar ways to measure traffic impacts, LOS-standard analysis is included in the Draft EIR. Using the LOS standard, the traffic consultant found that only three intersections are likely to experience a significant decline in LOS standard.

Response to Comment 18-21

The comment states the Draft EIR does not analyze the means by which the General Plan would improve mobility and safety for all modes of travel. The comment refers to the statement summarizing Impact 3.14-2 on Draft EIR page 3.14-45. Impact 3.14-2 includes a discussion of proposed General Plan policies and actions intended to improve mobility and safety for all modes of travel, including Action CR1.G (Capital Improvement Program) which calls for development of the Capital Improvement Plan to ensure high-priority projects are completed; Action CR1.H (Street Capacity and Infrastructure) to reduce congestion for all modes of transportation by enhancing the public transportation system, promoting mixed-use development patterns to reduce VMT and by implementing transportation demand management strategies to increase mobility options; Policy CR3.3 (Concurrent Infrastructure Development) and Action CR3.C (Circulation Development Impact Fee), which require that new development in Richmond contribute to infrastructure improvements through a circulation fee. The effects of the increased mobility are reflected in the traffic volumes shown in Table 3.14-10 on Draft EIR page 3.14-38.

Response to Comment 18-22

The comment states the Draft EIR does not analyze the increased demand for transit. Transit demands are addressed in Impact 3.14-3 on Draft EIR pages 3.14-46 through 3.14-48. The Draft EIR acknowledges increases in the demand for transit services and includes proposed General Plan policies and actions intended to increase the availability of transit service. However, because the locations of specific demand are not known at this time, the City cannot guarantee that adequate service can be provided at all locations. Thus, this impact was determined to be significant and unavoidable.

Response to Comment 18-23

The comment refers to the discussion of full buildout on Draft EIR page 3.14-48 and states this is deferral of analysis. See Response to Comment 18-7 for a discussion of the full buildout analysis.

Response to Comment 18-24

The comment states congestion on City streets has historically been a problem with respect to emergency vehicle response time and the Draft EIR should have analyzed this with specificity, including identifying neighborhoods currently affected. The comment provides no source for the information regarding current deficiencies in response times. Areas of potential delay for emergency vehicles can be inferred from the information contained in table 3.14-10 on page 3.14-38 of the Draft EIR: segments that exceed LOS D could experience some delays for vehicles, including emergency vehicles. Because the General Plan is developed to encourage multiple modes of travel, there is a potential for impacts on response times, as disclosed in the Draft EIR. Segments with LOS at E or F would have the greatest potential for these delays. It should be noted, however, that with each development proposal requiring preparation of an Initial Study and/or Environmental Impact Report, the City considers response times of emergency vehicles and requires each project to include measures to ensure adequate emergency vehicle access.

Response to Comment 18-25

The comment again states that the Draft EIR's analysis of full buildout is inadequate. See Response to Comment 18-7.

Response to Comment 18-26

The comment states the mitigation measures in the EIR are unenforceable and inadequate and makes no attempt to address enforceability of the mitigation measures proposed. The comment then refers to proposed General Plan policies, not mitigation measures.

As discussed in Response to Comment 18-10, the EIR is a program EIR, with no specific development proposed or entitlements sought. Consequently, the Draft EIR cannot provide an analysis of specific projects or location-specific mitigation measures. The comment also states that the Draft EIR relies upon an "unfunded mandate" in Mitigation Measure 3.14-1 to reduce the impact identified in Impact 3.14-2. The comment is not an accurate reflection of the analysis in the Draft

EIR. Impact 3.14-1 was found to be significant and unavoidable even with implementation of Mitigation Measure 3.14-1. Impact 3.14-2 is a policy-related impact regarding the safety of a multi-modal circulation system in the City. Impact 3.14-2 does not rely upon Mitigation Measure 3.14-1; it was found to be less than significant with the implementation of General Plan policies.

Response to Comment 18-27

The comment states the Draft EIR omits a discussion of cumulative traffic impacts. As stated in the Draft EIR, the traffic forecasts for all of the General Plan alternatives necessarily include regional growth, as the transportation analysis horizon for development under the General Plan is 2030. Thus, cumulative growth is contained in the forecasts. However, it is noted that the impacts of the “Project” (the General Plan Update) are appropriately compared to existing conditions for the purposes of impact significance determination.

Response to Comment 18-28

The comment states that the Draft EIR does not explain the means by which the General Plan policies would mitigate visual impacts, but only provides a laundry list of policies. On pages 3.15-15 and 3.15-16, the Draft EIR details mitigating effects of the policies. The list of policies included in the Draft EIR includes a brief statement of the means by which implementation of each policy would mitigate visual impacts. For example, the Draft EIR states: “Policy LU1.1 aims to protect, preserve, and enhance visual character within the City by encouraging the development of high-density mixed-use products on vacant and blighted property; Policy LU1.2 promotes adaptive reuse of historic buildings and the use of public art as a means of improving the visual character of blighted areas.” There are many policies throughout the General Plan that directly or indirectly address visual impacts. By listing many of them and including a brief statement of each policy’s effect on visual impacts, the Draft EIR demonstrates that implementation of General Plan policies will ensure that visual impacts of future development remain less than significant.

Regarding the comment that Mitigation Measure is 3.15-2 (Draft EIR page 3.15-19) is vague because the EIR is programmatic in nature, the mitigation measures are necessarily general to allow application to any project that may be proposed in the future. For example, the requirements for exterior lighting would vary by use - the number, height, shielding, and spacing of fixtures would be different for commercial, industrial, and residential uses and site-specific – and will be determined at the time specific development is proposed.

Response to Comment 18-29

The comment states the noise section does not analyze full buildout of the General Plan, that the mitigation measures should include specific measures that future projects will be required to implement and the EIR should analyze the efficacy of those measures. Refer to Response to Comment 18-7 for a discussion of full buildout analysis. Regarding the specificity of mitigation measures in the EIR, the comment refers to Mitigation Measures 3.10-1 and 3.10-2 (pages 3.10-24 and 3.10-25, respectively), which address construction noise and vibration. Because the noise effects of construction would vary by the type and size of a proposed project, the construction

methods employed, and the proximity of the project site to receptors, specific mitigation appropriate to future projects cannot be developed at this time. Mitigation Measures 3.10-1 and 3.10-2 require the implementation of site-specific methods to reduce the effects of construction noise and vibration, but because site-specific details are not yet known, specific methods that would be employed or their effectiveness cannot be determined at this time. For this reason, the impacts of construction noise and vibration were determined to be significant and unavoidable.

Response to Comment 18-30

The comment states that there is no supporting analysis for the following statement: “[i]mplementation of the proposed General Plan could expose sensitive receptors to noise levels in excess of the existing noise standards established by the City. There are no known feasible measures to reduce train noise below a level of significance; this impact would be *significant and unavoidable*.” The comment provides a misleading quotation of a summary statement preceding detailed discussion of an impact (see Draft EIR pages 3.01-26 through 3.10-28). The comment also asks the reason the impact statement references only train noise when the discussion that follows also addresses rooftop equipment. As discussed on pages 3.01-26 through 3.10-28, noise associated with rooftop equipment can be reduced through project design, so it would be less than significant. The summary impact statement, therefore, reports only the residual significance of the train noise. The Draft EIR identifies the potential effect of train noise on future development, but without details regarding proposed development, it is premature to attempt in-depth analysis of that effect. In the absence of known mitigation measures to reduce the impact of train noise to a less-than-significant level, the Draft EIR concludes that impacts of noise on sensitive receptors will be significant and unavoidable.

Response to Comment 18-31

The comment states that the impacts related to hazardous materials, geology, and cultural resources do not analyze full buildout, do not include enforceable mitigation, and are not supported by substantial evidence. Refer to Response to Comment 18-7 for a discussion of full buildout. As discussed in previous responses, the Draft EIR is a program-level document. The effects of development related to hazardous materials, geology, and cultural resources may be greater in some locations than in others. However, in the absence of specific development proposals, the City cannot prepare project-level analyses for these topics. The mitigation measures included in the EIR require project-specific studies to determine the potential for effects related to geologic hazards or exposure to hazardous materials, and specific field surveys to determine if cultural resources are present. The comment provides no examples of impacts that have not been addressed by the measures in the Draft EIR.

Response to Comment 18-32

The comment states that the Draft EIR should describe and evaluate potential for accidental release of ammonia from the Chevron Richmond Refinery. The Draft EIR acknowledges the potential for accidental release from existing facilities, but a program-level EIR does not analyze the risks associated with each industrial, medical, or commercial facility currently operating in the City. As

discussed in Section 3.8, Hazards and Hazardous Materials, the extensive regulatory structure currently in place provides substantial protection to reduce exposure from accidental releases. Any future development at the Chevron Richmond Refinery will be subject to environmental review and the risks of hazardous releases will be addressed in project-specific review.

Response to Comment 18-33

The comment states that not enough alternatives are addressed in the EIR and that the alternatives analyzed propose the same density and intensity of development. The comment does not provide any support for the conclusion that the EIR fails to describe a range of reasonable alternatives to the project. The alternatives analysis considers different land uses within change areas, as well as different rates of population growth. As discussed on Draft EIR page 5-17, Alternative 1 would reduce the residential designations compared to the proposed General Plan by removing the mixed-use designations in Change Areas 12 through 16; only Change Area 11: Northern Parkway Area, would include residential development under Alternative 1. As discussed on Draft EIR page 5-28, under Alternative 2, there would be no residential growth in Change Area 12: Northshore, Change Area 14: Port Priority Use, and Change Area 16: Southern Gateway; residential growth could occur in Change Area 11: Northern Parkway, Change Area 13: San Pablo Peninsula, and Change Area 15 Regatta/Marina Bay under Alternative 2.

Response to Comment 18-34

The comment states that Alternative 1 and Alternative 2 are identical to the proposed project, so they cannot lessen the physical impacts compared to the proposed project. As discussed in Response to Comment 18-33, Alternative 1 and Alternative 2 do not include the same land use plan as the proposed project. The reduction in residential capacity in each of those alternatives could result in a reduction in population-related effects, as discussed in Chapter 5, Alternatives.

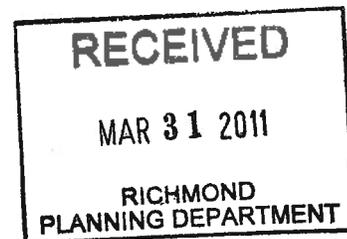
Response to Comment 18-35

The comment states that retaining the existing land use designation in Change Area 12: Northshore would reduce the physical impacts of the General Plan by accommodating new employment and reducing the VMT in the City. Based on the land use intensity allowed in the proposed General Plan for the Open Space designation, the traffic analysis for the Draft EIR conservatively assumes growth in Change Area 12: Northshore could generate 5,783 new trips. This corresponds to up to 7,000 jobs, assuming development with heavy industrial (about 0.82 trips per employee), based on ITE *Trip Generation, 8th Edition*. Trips generated by this growth are included in the Transportation and Circulation section of the Draft EIR (Section 3.14). While the Draft EIR need not include alternative land uses for each change area, if Change Area 12: Northshore were developed with industrial uses, it could accommodate a substantial amount of industrial development that may otherwise occur in other areas of the City.

Response to Comment 18-36

The comment states the EIR should be recirculated based on the comments contained in the letter. As discussed in the previous responses, the analysis contained in the Draft EIR is adequate for a program-level document. See Responses to Comments 18-1 through 18-35.

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Hector Rojas, Associate Planner
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Comments to the DEIR:

In Sec. 3.1 Intro "An EIR may provide information regarding social and economic issues, but CEQA does not recognize these issues as direct physical impacts on the environment." You then include policies LU2.1, LU2.2, LU2.3, LU2.4 which are social and economic issues. While you may or may not like these policies, how do you justify them in an EIR.

19-1

In Sec. 3.1 Last Paragraph "...under the proposed General plan, potential incompatibilities could occur." ..."incompatibilities associated with noise, odor, light, or traffic," Most of the evidence given is incomplete, or based on politics and social issues.

In Sec. 3.2 Housing stock models go to 2005, your NOP was 03/02/08 Your information is outdated for both city and county housing policies.

Policy LU2.1 should be altered to use the now more than 1000 vacant single family homes in fore-closure instead of building more affordable housing. It makes more economic sense.

19-2

In Sec. 3.3 Air Quality

Carbon Monoxide (CO) – "highest during the winter morning, with little to no wind," Appendix B – Air Quality Measurements of carbon monoxide only was done in June 1989? And there was no wind measurement, traffic patterns have changed since then, and car emission standards have improved a lot. I think your data is very out of date.

19-3

Appendix E – Transportation , some of it dated 2005. There are no definitions for the abbreviations used in the charts, I do not know if the information is valid or not.

19-4

Table 3.3-1 : 2007 data taken in city of San Pablo and 2008/2009 data taken in city of Concord. Again how valid is this data to Richmond.

19-5

Table 3.3-3 What vehicle emission standards did they use? Present or Projected?

19-6

This section lists several elements : Ozone, Sulfur Dioxide (SO2), Lead, Toxic Air Contaminants (TACS) , but gives no Richmond measurements. No Base Line.

There are no BASE LINE measurements for industry, commercial, residential, or the port. (either individual or collective).

19-7

There are no BASE LINE measurements for Richmond only, additions from Marin County or San Francisco (wind), or freeways.



There are no BASE LINE measurements of ships in the bay or at port, ferry boats, heavy trucks, buses, paratransit vans, construction equipment, recreational equipment, farming equipment.

19-7
(cont.)

After establishing your base line, what are your upper limits that you can live with or regulated by state and federal government. I would think that more of this type of information should be in your EIR.

In Sec. 3.9 Hydrology and Water Quality

You list several streams in the text but why is there no map showing all of the creeks and streams and what portions are covered and which are not covered.

19-8

On Page 8 "These problem areas are identified as being located." You should add Portions of Richmond Annex, Portions of Southwest Annex, and areas around The Richmond Field Station (UC).

19-9

In Sec. 3.9 Noise

I did not see any information regarding noise or vibration effecting fish or marine wildlife By ships or ferryboats in port or Richmond regulated waterways.

19-10

Why is Public Safety omitted from the EIR? It effects many of the elements of the General Plan. Such as if business locates here and where in the city business will locate. It effects trip generation, vehicle miles traveled, need for public service, use of streets, sidewalks, trails, and parks. Also economic factors.

19-11

In Sec. 3.14 Transportation and Circulation

Since you want to replace buses for cars, and cars have ever increasing emission standards and buses have very little or known. You need to do a comparison of brake even points: how many people must a bus carry to equal a car with one rider, two, etc., and considering different sizes of cars and buses and considering present emission standards and projected emission standards for both types of vehicle. Also what is the percentage of ridership on different bus lines both in town and going out of town. This is needed because your Air Quality data is so bad.

19-12

In Sec. 3.14-6 "The proposed General Plan would increase congestion and reduce travel speeds on various roadways throughout the city, including some that are on primary emergency response routes (i.e. freeways and arterials). This is a significant and unavoidable impact."

19-13

For a city to indanger it citizens on purpose is not smart growth or professional planning, its wreckless tyranny.

Mitigation is needed, the problems created are avoidable, and social, political policies are not needed but good solid solutions.

LETTER 19: Garland Ellis

Response to Comment 19-1

The comment refers to the discussion on page 3.1-1 which states, “An EIR may provide information regarding social and economic issues, but CEQA does not recognize these issues as direct physical impacts on the environment.” Based on this statement, the comment questions the inclusion of certain policies the commenter refers to as social and economic policies. The listed policies are included in the Draft EIR because they are policies in the General Plan that affect the way development could occur in the City, and thereby have the potential for a physical environmental effect. The Draft EIR does not provide an analysis of each policy, but looks at the potential physical consequences of implementation of the General Plan and those policies that could influence development. The comment also questions the discussion of incompatibilities, saying that the discussion is incomplete or based on politics or social issues. The comment is correct in that the land use discussion is intended only to provide information regarding incompatibilities between adjacent uses and not to provide a discussion of the physical impacts that would result from incompatibilities. On page 3.1-9 of the Draft EIR, it is acknowledged that uses could be developed under the proposed General Plan that result in potential incompatibilities. The reader is then referred to the appropriate technical sections of the Draft EIR for a technical discussion of topics related to those physical effects, such as noise, odor, light, or traffic.

Response to Comment 19-2

The comment questions the demographic data used in the Draft EIR. Please see Response to Comment 28-14 for a discussion of recent demographic data.

Response to Comment 19-3

The comment refers to the air quality section of the Draft EIR which states that carbon monoxide is “highest during the winter mornings, with little to no wind” and compares it to the Caline4 modeling output in Appendix B stating that data from June 1989 is out of date. The June 1989 date indicated in the heading of the Caline4 modeling output refers to the date the model was released and not the evaluation year or the emissions factors used in the evaluation. The emission factors used were for 2030 as taken from the 2007 version of the EMISSION FACTORS (EMFAC) model, so the data is not out of date as stated in the comment.

Response to Comment 19-4

The comment requests definitions of the abbreviations included in the Appendix E of the Draft EIR. The definitions of the abbreviations in the tables are provided in the table titled CCTA MODEL LAND USE KEY at the beginning of Appendix E.

Response to Comment 19-5

The comment questions the validity of the ambient air quality data that was used, stating that data taken from the cities of San Pablo and Concord in 2007, 2008, and 2009 is not relevant to

Richmond, and is not the most current available data. The ambient air quality data for the criteria pollutants was taken from the Bay Area Air Quality Management District (BAAQMD) air pollution summary sheets, which were the only data available for 2007, 2008, and 2009 at the time of the analysis.

Air quality is analyzed at a regional level with the San Francisco Bay Area Air Basin (SFBAAB) being the extent of the region. The BAAQMD is the agency in charge of monitoring and reporting air quality for this air basin. According to the BAAQMD website (http://hank.baaqmd.gov/tec/maps/dam_sites.htm#) monitoring sites for regional gaseous pollutants such as ozone (O₃), oxides of nitrogen (NO and NO₂), and carbon monoxide (CO) are selected based on population exposure and at locations with the highest expected concentrations. Some pollutants, such as sulfur dioxide (SO₂), hydrogen sulfide (H₂S), and hydrocarbons, are closely associated with a particular type of industry, so monitoring locations are typically placed near those industrial sources. Other pollutants can be a hybrid of these two pollutant types, having a regional aspect with particular sources identified with them. Particulate matter (PM₁₀ and PM_{2.5}) and toxic pollutants fall into this category and are sited to provide regional coverage and/or located near potential sources. The two stations located within the City of Richmond (7th Street and Point Richmond) have been identified to monitor SO₂, H₂S, and other hazardous pollutant compounds, which are industry-related pollutants. The San Pablo and Concord monitoring stations were the closest regional stations that monitor for the criteria pollutants of concern when evaluating air quality on a plan level (CO, NO₂, PM₁₀, PM_{2.5}, and O₃). Under BAAQMD methodology and representing a worst case scenario, these data were used to provide a baseline for the existing ambient emissions.

Response to Comment 19-6

The comment questions the emission standards used for calculating CO hotspots. As discussed in Response to Comment 19-6, the emission factors used were for 2030. The emissions standards shown in the table are the current standards, as there are no standards established for 2030.

Response to Comment 19-7

The comment states that there is a lack of an established baseline or an analysis of that baseline with respect to air quality. The comment also states that an “upper limit” should be identified with respect to the Baseline for the analysis. Air quality impacts with respect to criteria pollutants are analyzed on two levels, a regional level for CO, NO_x, ROG, PM₁₀, and PM_{2.5}, and on a local level for CO and toxic air contaminants. A regional baseline, as discussed in Response to Comment 19-5, is established in the form of ambient concentrations, identified in Table 3.3-1 of the Draft EIR (page 3.3-3). Local level pollutants are identified as those in the immediate vicinity of intersections for CO analysis, and the immediate vicinity of TAC emitters or sensitive receptors for TACs. The impacts from CO at intersections that have the potential to increase ambient pollutant levels above State and federal thresholds are identified and discussed in detail under Impact 3.3-3 on pages 3.3-25 through 3.3-28 of the Draft EIR.

The Draft EIR is a program-level review for a policy document that will guide future actions. The exact nature and location of development that will include emission sources are unknown. The

BAAQMD acknowledges that program-level review cannot always include quantitative analysis, and has established thresholds for qualitative analysis of program-level CEQA documents.

Individual projects that could be developed in the industrial-designated areas of the City are not proposed as part of the General Plan; information about new pollution sources is not available and emissions that may be generated over the life of the General Plan cannot be quantified. In the absence of data from specific development, the BAAQMD Guidelines provide thresholds of significance for program-level analysis. The analysis under Impact 3.3-3 of the Draft EIR provides a qualitative analysis appropriate under the BAAQMD at the time of the analysis.

Response to Comment 19-8

The comment notes there are several streams discussed in the Draft EIR text, but a figure is not included. Major waterways are depicted in Figure 3.9-1 on page 3.9-6 of the Draft EIR. The comment also states that the Draft EIR does not mention which portions are covered. Information regarding daylighted and undergrounded or culverted portions of urban creeks is not readily available and is not essential to a program-level EIR.

Response to Comment 19-9

The comment recommends additional areas to the discussion in the Draft EIR of known flood hazard areas shown on page 3.9-7 of the Draft EIR. The information contained in the Draft EIR is based upon the Storm Drainage Master Plan prepared for the City. Based on the criteria contained in the Storm Drainage Master Plan, the locations noted in the comment would not apply as flood hazard areas.

Response to Comment 19-10

The comment notes that there is no information in the Draft EIR regarding the effects of noise and vibration on fish or marine wildlife. The San Francisco Bay is currently heavily traveled by commercial watercraft, from fishing boats to container ships, as well as recreational watercraft. The land use designations included in the General Plan do not include uses that substantially differ from those that currently operate in the Bay. Marine life in the Bay would be acclimated to the existing uses, so land uses that would be developed as part of the General Plan would not substantially change those uses such that the character of the noise and vibration would be changed. It is not known what type of uses would be proposed in the future that could alter noise and vibration in the Bay. However, to the extent that any future use would substantially increase the intensity or frequency of noise or vibration in the Bay, the potential effects of the noise or vibration would be disclosed as part of the project-specific analysis prepared at the time the project is proposed.

Response to Comment 19-11

The comment questions why public safety is not discussed in the Draft EIR. Public safety spans several topical areas in the Draft EIR. Aspects of public safety are discussed under in the Draft EIR

in Sections 3.3, Air Quality; 3.7, Geology, Soils, and Minerals; 3.8, Hazards and Hazardous Materials; and 3.9, Hydrology and Water Quality.

Response to Comment 19-12

The comment states that a “break-even point” for the comparison for bus use versus cars needs to be established as part of the analysis, considering the varying sizes of vehicles as well as the current and projected emission standards of the vehicles in question. The comment also states that a detailed analysis of the percentage of ridership on the various bus lines needs to be evaluated. That level of economic analysis is beyond the scope of a programmatic EIR.

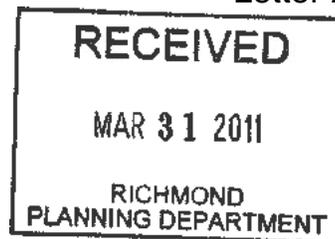
Goals and Policies of the Richmond General Plan, as well as the mitigation measures identified in Section 3.14 associated with transportation emission reductions, deal with increased transit ridership and alternate modes of travel, including Bay Area Rapid Transit (BART), bus ridership, walking, bicycle, and alternative fueled vehicle use. There are currently transit opportunities available in the city; therefore, reducing single occupancy vehicle use would initially reduce emissions because these transit opportunities are included in the baseline emissions and the initial increase in passengers would not necessitate an increase in buses. As demand increases beyond current capacity, additional capacity would be added as is economically feasible. Economic feasibility for increased bus or BART service will require numerous additional riders.

A simplified analysis of emissions for buses and cars, based on EMFAC 2007 emission factors for 2030 is provided in the table below. These emissions are based on an average winter temperature of 40 °F and an average summer temperature of 85 °F (assumed from the URBEMIS model defaults for the Bay Area). The estimates only compare running emissions. Starting vehicle emissions are greater for cars and there would be more car “starts” than bus “starts,” so this represents a conservative comparison. The table shows the minimum and maximum emissions in grams per mile based on temperature and vehicle speed. Assuming that bus and car trips are identical in length (i.e. both the bus and the car take a person directly from their home to the intended destination) and comparable speeds would be used, the emissions from one bus are equivalent to between 2.23 and 7.42 cars. Therefore, eight people need to ride a bus rather than take their personal vehicles in order to show a reduction in emissions. It should be noted, however, that the buses are currently operating, so any change from a car trip to a bus trip would result in a net reduction until such time that additional buses are needed.

AUTOMOBILE VERSUS BUS EMISSIONS			
	Emissions (gr/mi)		Cars per bus
	Car	Bus	
Summer (at 5mph)	1,123.51	2,502.93	2.23
Summer (at 30 mph)	391.69	2,091.17	5.34
Summer (at 45 mph)	336.67	2,066.24	6.14
Summer (at 65 mph)	445.86	2,121.87	4.76
Winter (at 5 mph)	924.02	2,502.93	2.71
Winter (at 30 mph)	330.28	2,091.17	6.33
Winter (at 45 mph)	278.39	2,066.24	7.42
Winter (at 65 mph)	373.13	2,121.87	5.69
Source: Atkins, 2011.			

Response to Comment 19-13

The comment suggests that traffic congestion should be mitigated to ensure emergency response routes are not affected (see Impact 3.14-6 on Draft EIR pages 3.14-51 and 52). As discussed throughout Section 3.14, Transportation and Circulation, the intent of the General Plan is to increase the intensity of use to promote the use of alternate modes of transportation. A necessary element of this concept is to limit the capacity of roads to discourage reliance on the automobile. The consequence of limited capacity is a reduction in Level of Service. The comment is noted and forwarded to the decision-makers for their consideration.



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

March 31, 2011

Mr. Hector Rojas, Associate Planner
 Planning and Building Services
 City of Richmond
 450 Civic Center Plaza, 2nd Floor
 Richmond, CA 94804

RE: City of Richmond General Plan and Draft Environmental Impact Report.

Dear Mr. Rojas,

I am writing on behalf of my clients: Citizens for East Shore Parks ("CESP"), The Sierra Club, San Francisco Bay Chapter ("Sierra Club"), Golden Gate Audubon Society ("Audubon"), and the Sustainability, Parks, Recycling and Wildlife Legal Defense Fund ("SPRAWLDEF", and the foregoing, collectively, "Clients") to comment on the above-referenced documents. This letter follows up on my comment letters on earlier drafts of the Richmond General Plan. However, the focus of this letter is not only on the general plan but also on the Draft Environmental Impact Report ("DEIR").

My Clients would note again, as in my prior letter, that the General Plan Map shown as Figure 8.1, Potential Sea Level Rise, shows a large portion of the current shoreline area being inundated by 2100. In particular, much of the northern third of the Northshore area (Change Area 12) as far east as the AMTRAK right-of-way would be under water by 2100. In addition, it appears that virtually the entire Hoffmann Marsh area would be fully under water. While the updated general plan does not intend to carry planning that far forward, it seems clear that some degree of sea level rise, and consequent loss of shoreline area, is reasonably foreseeable within the general plan's planning period.

My Clients are pleased that the updated general plan now designates as open space the entire Northshore area west of the Richmond Parkway north to its intersection with the AMTRAK right-of-way, and the area west of that right-of-way north to the southern edge of Point Pinole Regional Park. However, unless the general plan's land use designations take future sea level rise into account and reserve sufficient area to accommodate shoreline-using animal and plant species, global warming-induced sea level rise will inevitably result in the loss of crucial wildlife habitat. Such habitat loss would adversely affect protected animal species such as the northern harrier, great Blue heron, great egret, snowy egret, Black-crowned night heron, whitetailed Kite, Caspian tern, California Black rail, saltmarsh common yellowthroat, San Pablo song sparrow, California clapper rail, California least tern, San Pablo vole, salt marsh harvest mouse and salt marsh wandering shrew as well as protected plant species such as *Fritilaria liliaceae*, *Bromus carinatus* var. *maritimus*, *Grindelia hirsitula* var. *maritime*, *Dudleya farinosa*, and *Romanzoffia californica*.

* - My Clients continue to believe that the Conservation, Natural Resources, and Open Space element should be supplemented by inclusion of one or more maps showing the distribution of special status wildlife species (both plant and animal) within the general plan area. The City should also consider a map showing the location of various habitat or ecosystem types and wildlife corridors within the City. These

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General Plan Policy CN2.2 states: "Conserve, protect and enhance natural and cultural resources along the Richmond shoreline." More specifically, the policy goes on to state, "Prepare plans that will to protect natural and built environments from adverse potential impacts of sea level rise due to climate change." (See also, Land Use and Urban Design Element ("LUUDE"), Policy LU4.1.) This statement is encouraging, but it is one thing to prepare a plan; it is another to adopt and implement it.

20-1
(cont.)

Policy CN1.1 states, "Natural habitat is essential to ensuring biodiversity and protecting sensitive biological resources. Protect these areas and work with the California Department of Fish and Game, the San Francisco Bay Regional Water Quality Control Board, the East Bay Regional Park District and other regional agencies to identify areas for special protection and establish appropriate protection measures for these areas." Again, more specifically Policy CN1.1 includes the mandatory policy that, "At a minimum the City shall require mitigation of impacts to sensitive species ensuring that a project does not contribute to the decline of the affected species populations in the region." Presumably, this policy applies to the general plan itself – i.e., the extent to which the general plan, by increasing the City's GHG production, is contributing to global climate change, which, in turn, is responsible for the foreseeable sea level rise and loss of shoreline habitat.

20-2

Consequently, the City has a mandatory duty to ensure that sufficient habitat is provided so that sea level rise, in conjunction with the general plan's land use designations, does not contribute to the decline of affected populations of sensitive species. My Clients would strongly suggest that, in order to meet this obligation, the LUUDE designate sufficient upland area as open space for habitat conservation to allow for replacement habitat in response to projected sea level rise.

This principle should also apply to all other shoreline habitat areas that would be subject to inundation, and specifically shoreline areas along the Hoffmann Marsh and Campus Bay. In each of these areas, sufficient adjoining upland area should be preserved and designated as open space to serve as replacement habitat and protect sensitive species.

Despite the general plan's current failure to require the protection of sufficient replacement open space to mitigate loss of shoreline habitat due to global warming, the DEIR fails to identify the loss of this habitat as a significant biological impact. Of course, if the general plan were modified to require not only the preparation, but also the adoption and implementation of a plan to protect the natural and built environments from the impacts of sea level rise, this would constitute appropriate mitigation. Since the general plan identifies this as a feasible mitigation measure, under CEQA it is required to adopt it. (Public Resources Code §21002; *Stockton Citizens for Sensible Planning v. City of Stockton* (2010) 48 Cal.4th 481, 498.)

20-3

Regarding the San Pablo Peninsula and Pt. Molate, my Clients want to express their appreciation for the changes the City has made to the land use designation for the Terminal 4 area at Point San Pablo. My Clients believe these changes open the way for conversion of this former industrial site to park use that will benefit Richmond citizens and the public.

20-4

My Clients also urge you, in making land use designations for the Point Molate area, to consider carefully the benefits for the community and the environment that were achieved in the settlement of the lawsuit between CESP/SPRAWLDEF and the City of

maps would facilitate the City's future compliance with Policy CN1.1 as well as allowing the EIR to evaluate impacts on sensitive plant and animal habitat areas and wildlife corridors.

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Richmond, Upstream and the Tribes. The Settlement Agreement provides major funding for design, development, and maintenance of newly acquired shoreline parklands and open space, and for habitat and recreational opportunities. This level of funding is rarely seen. What is most significant about the funding is that it goes far beyond what the City could directly obtain through the environmental review and project approval process. The Agreement's benefits also far exceed what could have been achieved directly through a lawsuit under the California Environmental Quality Act (CEQA).

When reviewing future options for Point Molate, please keep in mind that the City of Richmond is required to develop the Point Molate site pursuant to federal law regarding the closure and redevelopment of former military bases; and that the City has stated that it seeks to develop the property in a way that will produce economic benefits for the city and jobs for its residents. The Settlement Agreement provides that the Tribe will work with CESP, SPRAWLDEF, and the community to ensure compliance with CEQA and the National Environmental Policy Act and to ensure that appropriate mitigation measures for the project are implemented. This is in addition to the mitigations and protections that the City has identified through the EIR process.

It is also critical to note that the Guidiville Tribe has waived its sovereign immunity to allow full enforcement of this settlement agreement. Therefore, while there are great expectations about the environmental benefits of the Settlement Agreement, the parties to the settlement also retain the right to sue to enforce the terms of the settlement.

My Clients want to specifically bring to your attention the following extensive list of benefits from the Settlement Agreement:

A. Protection of Native Plants and Riparian Habitat and Open Space on the Site

Three-quarters of the total 413[†] acre site will be restored and protected, with more than 180 (145[†] hillside and 35[†] acre shoreline park) of the Point Molate site's 266[†] total upland acres will be protected in perpetuity under specific provisions in the Agreement. Buildings will be constructed solely in areas previously used by the Navy, avoid sensitive habitat areas, and will be set back from the Bay to allow a continuous open shoreline area and trail. The Settlement Agreement also provides protections for open space and parklands north of Pt. Molate at Terminal 4 and the Pt. San Pablo Yacht Harbor (beyond the Point Molate site).

B. Funding for Acquisition, Development, and Maintenance of Open Space and Park Land

A \$35 Million Fund for Open Space acquisition will be created. The tribe will pay \$7,000,000 in each of the first five years beginning after the project opens.

An additional \$5 Million will fund design and maintenance of the open space acquired with the \$35 Million, provided in increments of \$1 Million per year over five years.

A further \$3 Million will fund work preparatory to the acquisition of open space. This would go for appraisals, legal fees, etc.

C. Bay Trail Funding for Richmond Portion of Trail

There will be an additional \$5 Million to fund the Bay Trail in the area.

20-4
(cont.)

[†] - All figures as per City of Richmond February 2011 FEIR.

D. Additional Funding From Compact

Furthermore, if it is agreed to as part of the negotiations for the compact, \$20 Million more will go to the open space acquisition fund.

G. Mitigation and Improvements Measures that are Part of the Settlement Agreement and Thus Enforceable

Habitat and site restoration

- Removal of invasive species and restoration of native habitats in consultation with experts in the field of native habitat ecology, to be consistent with the Supplemental Habitat Analysis, dated August 2010 and prepared by Analytical Environmental Services
- Support for restoration of offshore eel grass beds (to be coordinated by Guidiville tribal members)
- Construction and maintenance of on-site shoreline, hillside open space and riparian corridors to protect habitat and wildlife and public access, in accord with a Special Status Species/Native Plant Restoration and Protection Plan and Special Status Species/Native Plant/Open Space Map
- Support for City tree-planting program (project proponents will purchase trees to enhance productivity of existing City staff and equipment)
- Restoration and preservation of creeks and streams within the property
- Project proponents will establish an advisory committee for the habitat and site restoration work and invite open space advocates to participate as members of the advisory committee
- Project proponents will fund a Richmond Conservation Corps or similar organization to assist in implementing the habitat and site restoration work for a ten-year period

Buildings and Facilities

There will be many cutting-edge energy conservation technologies used at the facilities:

- On-site photovoltaic arrays (with a generating capacity of at least 2 megawatts)
- Passive heating and cooling throughout building orientation and design (but not the sole heating or cooling mechanism utilized)
- Day-lighting of most public spaces, including the casino area
- Key-card electrical shut-off systems for hotel rooms
- Low flow fixtures throughout the project
- Graywater treatment and recycling system
- Use of best management practices for stormwater management, including bioswales, permeable pavements, stormwater retention and more
- On-site environmental sustainability displays and education
- Waste diversion program, including recycling, composting of food wastes and use of compostable containers
- Organic garden for on-site use and teaching



20-4
 (cont.)

Transportation and transit

- Approximately annual survey of patrons and employees to determine their travel routes and modes to develop specific measures to be reviewed with open space advocates and implemented by project proponents to reduce reliance on automobiles and increase use of mass transit including buses, BART, and ferry service
- On-site ferry service to points around the Bay subsidized by operations at the project (in accordance with the program and designs allowed by site permits)
- Linkages to BART, Amtrak and regional bus services by shuttles provided by the project operators
- Collaboration with the City of Richmond, Contra Costa County Sheriff, and BART to enhance security at the Richmond BART Station
- Employee and patron vehicle trip reduction incentives
- On-site electric shuttles (no private automobiles) within pedestrian and shoreline areas
- Construction of on-site portion of Bay Trail
- Collaboration with East Bay Regional Park District and the National Park Service to facilitate park visitation to regional and national parks throughout area.

20-4
(cont.)

My Clients urge the City to consider these benefits as tools that will help it accomplish the many positive environmental and open space goals stated in the new Richmond General Plan.

Finally, my Clients are gratified at the modifications to the LUUDE in the Southern Gateway and Point Isabel areas. While the Southern Gateway is designated as a change area intended to accommodate business/light industrial uses, with an emphasis on research and development activities (LUUDE, p.3.41), the discussion also includes the requirement that, "Appropriate setbacks should be observed in order to respect the natural habitats in adjacent marsh areas." My Clients emphatically agree, and suggest that the "should" in this sentence be replaced by "shall". My Clients would also emphasize that this requirement should extend to not only the Campus Bay area, but also the area surrounding Point Isabel and the Hoffman Marsh.

20-5

My Clients are also gratified that the LUUDE has been modified to show the area just to the east and south of Point Isabel Regional Park as business/light industrial; essentially continuing its current uses. My Clients believe these are generally appropriate uses that will minimize impacts on the adjoining park and open space/natural preserve areas. My Clients wish to emphasize the need, however, to carefully scrutinize activities placed in this area, which could potentially generate significant impacts. In particular, uses, such as large-scale retail, that would generate significant traffic and/or require large lit parking lots, as well as potentially generating large amounts of refuse, would likely have significant detrimental impacts on the adjoining park and natural areas. Full environmental review and conditional use permits, with associated findings addressing possible impacts, should be requires for all such uses.

CONCLUSION

The new Richmond General Plan includes many positive changes. There is an emphasis on environmental sensitivity and respect for open space and natural resources that well befits a city with as many important environmental areas as

Mr. Hector Rojas, Associate Planner – General Plan DEIR
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Richmond contains. My Clients also applaud the additional changes made from earlier drafts. These changes have helped avoid the generation of significant impacts on important shoreline wildlife habitat. My Clients urge the City to follow through on one additional "loose end" – committing itself to adopting a plan to prevent impacts from future sea level rise.

Most sincerely,

A handwritten signature in black ink that reads "Stuart M. Flashman". The signature is written in a cursive style with a large, stylized 'S' and 'F'.

Stuart M. Flashman

LETTER 20: Stuart Flashman, March 31, 2011**Response to Comment 20-1**

The comment states that sea level rise would result in the loss of crucial wildlife habitat. The Draft EIR acknowledges the potential for effects on ecosystems and biodiversity on pages 3.6-4 and 3.6-5. The comment also encourages the implementation of General Plan Conservation, Natural Resources and Open Space Policy CN2.2. The comment is noted.

Response to Comment 20-2

The comment notes that sea level rise would result in the loss of shoreline habitat and that the General Plan should designate upland habitat as open space to replace habitat lost to sea level rise. As discussed in Impact 3.4-1 on Draft EIR pages 3.4-29 through 3.4-31, future development under the General Plan would be subject to project-specific analysis to determine the potential for adverse effects on sensitive species and habitats. If these resources are present, the project would be required to avoid or mitigate for potential impacts, in compliance with existing regulations protecting these resources. However, if sea level rise were to occur as predicted, it would not be an effect of the proposed General Plan: sea level rise is predicted to occur regardless of approval of the Richmond General Plan. As potential effects of sea level rise are not effects of the General Plan, the EIR need not mitigate those effects. In addition, the efficacy of the mitigation suggested in the comment is uncertain because the shoreline habitat that could be lost due to sea level rise differs from the upland habitat proposed for preservation in the comment. There is no assurance that existing species that occupy the shoreline habitat could transition to and reestablish in the upland habitat the commenter proposes to preserve.

Response to Comment 20-3

The comment states that the General Plan fails to require the protection of replacement open space to mitigate loss of shoreline habitat due to global warming and that the Draft EIR fails to identify this loss of habitat as a significant biological impact. Section 15121 of the CEQA Guidelines states that an EIR is an informational document to inform public agency decision makers and the public generally of the significant environmental effects *of a project*. Sea level rise is not an effect of the project; it is an outside environmental condition not within the control of the City. Moreover, the timing and extent of sea level rise are unknown. The Draft EIR includes an analysis of the potential for development activities associated with the General Plan to result in the loss of habitat or impact sensitive species (See Draft EIR Section 3.4). The General Plan and the EIR also address the potential for the effects of sea level rise on the City, and provide for development of an Adaptive Management Plan to respond to new scientific information regarding sea level rise as it becomes available. However, as discussed in the Draft EIR, sea level rise is predicted to occur even without the proposed General Plan, so the potential effects on biological resources that could occur would be caused by natural factors and human activities worldwide and not by implementation of the General Plan. See also Responses to Comments 2-5 and 2-6.

Response to Comment 20-4

The comment provides information on the outcome of the lawsuit between Citizens for East Shore Parks/Sustainability, Parks, Recycling, and Wildlife Legal Defense Fund and the City of Richmond, Upstream and Tribes. The comment requests that the outcome be taken into consideration for future planning towards open space goals. The General Plan would not preclude the habitat restoration improvements discussed in the comment. Any subsequent projects would be reviewed by the City on a project-specific basis to determine consistency with the General Plan and the details of any applicable settlement agreement or court order.

Response to Comment 20-5

The comment expresses support for the land uses in the Southern Gateway and Point Isabel areas and notes that setbacks should be required in the Campus Bay, Point Isabel, and Hoffman Marsh areas. These are comments on the General Plan and not on the adequacy of the EIR. They are forwarded to the decision-makers for their consideration. The comment also recommends close scrutiny of land uses in these areas and requests an appropriate level of environmental review, especially for large retail uses in these areas. As discussed in previous responses, all subsequent development would be subject to future environmental review as required by CEQA and the project-specific impacts of any future proposed uses would be addressed as development is proposed.

Hector Rojas

From: fglueck125@aol.com
Sent: Thursday, March 31, 2011 10:10 AM
To: Hector Rojas
Subject: Comments to General Plan

Dear Mr. Rojas:

My name is Fred Glueck and I am the owner of Plant Reclamation located at 912 Harbour Way So. Richmond.

I am writing this letter to you to state that I am in support of the comments as stated and submitted by The Council of Industries and Katrinka Ruk.

We are extremely concerned about the housing component as stated in the GP with respect to the Buffer Zone region of Harbour Way, especially in light of the City of Richmond assurances that this would not occur in the Buffer Zone.

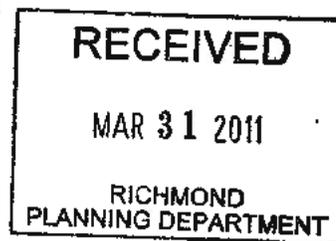
I would appreciate your review and consideration in this matter as per the COI comments.

Thank you very much.

Sincerely:

Fred glueck
Plant Reclamation
912 Harbour Way So.
Richmond, Ca. 94804

510-233-6552 off.
510-237-6739 fax.
fglueck125@aol.com email.



21-1

LETTER 21: Fred Glueck

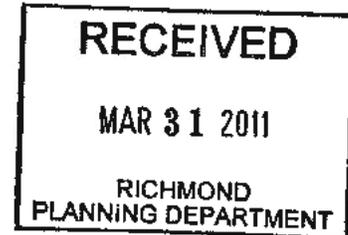
Response to Comment 21-1

The comment expresses support for comments submitted by the Council of Industries (see Letter 9) and expresses concern regarding potential for housing to occur in the Transitional/Buffer Zone. As discussed in Response to Comment 9-6, portions of Change Area 3: Ford Peninsula in Marina Bay are designated for mixed use because the General Plan does not contain land uses that are strictly commercial. However, Draft EIR Figure 2-6 (page 2-13) notes that residential uses are not allowed in the Transitional/Buffer Zone and the General Plan specifically states that the Transitional/Buffer Zone Ordinance (Ord. No. 1805) would continue to apply.

2165 Francisco Boulevard East • Suite A
San Rafael, CA 94901
(415) 453-0212
fax (415) 453-0421

March 31, 2011

City of Richmond
Planning Commission
450 Civic Center Plaza
Richmond, CA 94804



Re: Richmond General Plan Update
Draft Plan and EIR comments

Members of the Richmond Planning Commission:

My family (Shekou family) owns 8 legal lots in the 23.3 acre Freethy Industrial Park located at the northwest corner of the intersection of the Richmond Parkway and Goodrick Ave. Josh Genser and Jerry Overaa of Richmond Development Company own the other 8 legal lots within this improved Industrial Subdivision.

The lots are comprised of the following Assessors Parcels:

408-220-032, 408-220-033, 408-220-034, 408-220-035, 408-220-036, 408-220-037,
408-220-038, 408-220-039, 408-220-041, 408-220-042, 408-220-043, 408-220-003,
408-220-006, 408-220-007, 408-220-023, 408-220-024, 408-220-025, 408-220-026.

The lots are depicted on the Final Subdivision Map entitled "Subdivision 5754, Portion of Lot 201 Map of San Pablo Ranch (Filed March 1, 1894) & Portion of Sections 35 & 36 T2N, R5W M.D.M." The subject property has also been identified by the City of Richmond as the "Freethy Industrial Park" or the "San Pablo Bay Industrial Park".

The lots are zoned M-1 (Industrial /Office Flex) and have had that zoning for at least 30 years. The 1994 Richmond General Plan, the 1993 North Shoreline Specific Area Plan, and the Richmond Redevelopment Plan all have land use designations for these properties consistent with this industrial office flex zoning classification.

The California Government Code requires that municipalities adopt general plans which meet certain specified requirements. These requirements are outlined in the General Plan Guidelines published by the Governor's Office of Planning and Research. The California Environmental Quality Act provides direction regarding the EIR process. The purpose of this correspondence is to provide comments on the draft Richmond General Plan and the accompanying EIR relative to our properties.

22-1

Comments

1. The draft Land Use Element erroneously states that our property “lacks infrastructure and has long remained undeveloped”.

This is a blatant misrepresentation of the facts. The subject property is a fully improved industrial subdivision that was reviewed and approved by the Richmond Planning Commission and City Council, has infrastructure consistent with all City requirements, and has in part been developed with buildings.

The factual history of the property is clear and should be included as background within the draft Plan. The Richmond City Council unanimously approved the Final Map (attached Exhibit A) for “Subdivision 5754” as being compliant with the Planning Commission’s Tentative Map approval. On the face of the recorded Final Map are the signatures of the City Clerk/Clerk of the City Council, the Director of Planning, the City Engineer, and the General Manager of the West Contra Costa Sanitary District.

Pursuant to the Richmond Subdivision Ordinance (Section 15.08 of the Municipal Code), the City reviewed and approved a Subdivision Improvement Plan dated July 1, 1981 (Exhibit B) and entered into a Subdivision Improvement Agreement dated May 10, 1982. All streets and improvements were accepted for dedication and maintenance by the City on December 6, 1982 in accordance with City Council Resolution 185-82 (Exhibit C).

The Subdivision Improvement Plan includes the substantial construction work completed on the property. These items include concrete curb and gutter, asphaltic roadways, street lighting, street storm drainage, individual concrete V ditches for lot drainage, water mains, sewer mains, a sewer pump station, gas lines, electrical, cable, telephone, fire hydrants, and boundary monuments. An “Engineer’s Estimate”, dated January 28, 1980 and included herein as attached Exhibit D, was submitted and reviewed by the City as part of the standard City procedure. That estimated the cost of the improvements in excess of \$720,000 in 1980 dollars. The engineer has provided a revised estimate (Exhibit E) of \$3.34 million to complete this same work today.

Page 16.4 of the draft General Plan Glossary does include a definition of infrastructure, though the draft does not recognize that these exist on our property: “In this General Plan the term infrastructure encompasses a wide range of public services including water, sewer, garbage collection, flood control, gas and electricity, solid waste disposal, wastewater treatment, and streets”. Page 5.32 of the draft General Plan also explains what subdivision “improvements” are required by the City of Richmond.

In addition to the substantial improvements required by the City to implement the subdivision, there were also three large industrial structures built on lots within this

22-2

subdivision. One is presently located on the portion of the original subdivision that is now on the south side of the Richmond Parkway. The other two buildings were removed in order to make way for the construction of the Parkway. The foundation of one of those buildings remains today on Lot 15 of the subdivision.

22-2
(cont.)

2. The draft General Plan includes no factual basis or justification for the designation of the property as open space or recreational use and in fact includes conflicting and inaccurate information in this regard.

According to the California EIR Guidelines, general plan texts, charts, diagrams, and support information are integral pieces that must be reconciled. Internal consistency requires that the diagrams of land use, circulation systems, open space and natural resources areas reflect the written policies and programs in the text for each element (Curtin's California Land Use and Planning Law, 1998 edition, p 18). Without uniformity in all mandated and optional elements, the General Plan cannot serve as a clear guide. Decision makers will face conflicting directives, citizens will be confused as to policy standards and methods of implementation, findings of fact required for discretionary permits will be impossible to make, and owners and business people will not be able to rely on the document for business decisions. Inconsistencies expose jurisdictions to expensive and lengthy litigation.

22-3

The draft Land Use Map designates the subject property as "Open Space" while the Land Use text indicates an "Open Space/Parks and Recreation" classification. There is no definition in the General Plan Glossary for either Open Space or Open Space/Parks and Recreation.

On page 7.4 of the Conservation, Natural Resources and Open Space Element it states that "open space includes areas of land or water that are unimproved and are designated in a local, regional or state open space plan for open space use." The property is improved and, until now, has never been considered in any local, regional, or state plan as a candidate for open space acquisition.

Page 3.37 of the draft Land Use Element explains that Change Area 12 is recommended for designation as open space because the land is "historic baylands" that should be restored and protected. However, there is no General Plan Glossary or text description or definition of historic baylands. There are no map, survey or historic aerial photography provided as support documentation.

The Land Use Element indicates an FAR of .5 in Table 3.5 for Open Space/ Parks and Recreation. That equates to 500,000 square feet of buildings. Clearly that is ridiculous and unachievable within parks and open space. We have been told by City staff that this high FAR was devised as a scheme to avoid a takings claim on our part. Frankly they should be ashamed of themselves for being so blatantly dishonest and unethical.

The draft Land Use Element indicates that much of the subject area “is an important habitat for endangered plant and wildlife species”, yet this statement is not discussed or substantiated anywhere in the draft General Plan or the draft EIR. The single graphic included in the draft plan relative to biological resources is EIR Diagram 3.4-1, entitled “Wetlands”. As stated on the face of that diagram, 3.4-1 is based on the U.S. Fish and Wildlife June 2003 Inventory, though there is no copy of that survey included in the draft General Plan. The subject graphic does not depict any wetlands on the subject property. There is no discussion or supporting field analysis included anywhere within the draft General Plan or EIR that could be a basis for the statement that the subject property has any special habitat value.

22-3
(cont.)

With regard to the claim that the property has habitat value there is no discussion or correlation to the EIRs for the North Shoreline Specific Area Plan or the Richmond Parkway, and in fact both of these reports came to the conclusion that there is not habitat value on the property. The most current information, it should be noted, which confirms that the subject property is neither a wetland nor a biological resource, is the valid U.S. Army Corps of Engineers Jurisdiction Determination dated August 8, 2007 and the Biological Resources Study by LSA Associates dated December 18, 2007. These documents have been transmitted to the City at least twice; the most recent transmittal was made on September 23, 2009 in our comments to the first draft of the new General Plan.

Pursuant to Government Code Section 65564, every local open space element is required to contain a specific action program which discusses specific techniques to be employed to acquire open space. The chart on page 7.40 of the Plan does not address any detail as to acquisition of privately owned lands.

3. The draft General Plan and EIR have not properly addressed the impacts of the elimination of a significant amount of industrial land within the city, including the resulting impacts to the economy, public services, circulation, housing, etc.

All elements of a general plan must have equal status; whether mandatory or optional they must be consistent with one another. In *Concerned Citizens of Calaveras County v Board of Supervisors (1985) 126 Cal. App 3d 698* the Calaveras County General Plan land use element included proposals that would result in increased population. In that matter, the circulation element of the plan failed to provide feasible remedies for the predicted traffic that would follow and the county simply said that it would lobby for funds to solve the future traffic problems. The court held that this vague response was insufficient to reconcile the conflicts. All statements in a general plan must be precise and supported by facts or experts opinion.

22-4

While the draft Plan on page 3.46 states that General Plan Goal LU3 is to “expand economic opportunities in existing commercial and industrial areas and develop new opportunities to diversify the local economy”, it also recommends the elimination of this sizable section of Richmond’s usable land, and this would cause reductions in property tax revenues to the County, City and the Redevelopment Agency, reduction

in future construction work, a reduction of future employment opportunities, and a reduction in City development fees. Lost fees and reduced tax dollars and revenues will result in fewer city services and diminished affordable housing programs which are financed through Agency funds. The land use change would have an effect on the jobs/housing balance discussed in the draft Housing Element, and there would be secondary effects to traffic circulation because of longer commutes, wasted energy, and air quality. There are no discussions in the draft Economic Element, the Conservation, Natural Resources, and Open Space element, the accompanying EIR, or any other element of the draft Plan relative to these matters.

22-4
(cont.)

Table 5.5 of the draft Housing Element employment section notes that between 2000 and 2008 most Richmond residents continued to be employed in lower wage sectors. These include service, sales, office, production, and transportation sectors and the percentage of residents employed in these sectors is estimated to have increased from 31.4 to 33.3 percent. Richmond residents employed in higher wage management and professional jobs decreased from 32.9 to 30.2 percent in the same period. Richmond has a higher percentage that the County (8.6% higher) of residents with less than a high school education.

22-5

Table 5.7 of the draft Housing Element notes that between 2000 and 2010 unemployment rates for Richmond and the County remained high. Though much of this is due to the recession, the City Richmond's unemployment rate is still 2.5 to 6.6 higher than the County unemployment rate. Also, as noted on page 5.68 of the draft Plan, these official unemployment statistics do not reflect the dramatic impact of the loss of "informal" jobs.

On page 3.79 the draft Plan references the adopted North Richmond Shoreline Specific Plan approved by the City in 1993. That specific plan and the accompanying EIR were deemed consistent with the adopted Richmond General Plan and the Redevelopment Plan. Additionally, Contra Costa County processed an amendment of the County General Plan concurrent with the adoption of the North Richmond Shoreline Specific Plan in order to ensure consistency. The adopted North Richmond Shoreline Specific Plan designated the subject area as Office Industrial Flex in order to provide for the exclusive development of modern, non nuisance industrial space, office, and warehouse facilities to enhance the Richmond employment base. The concern was the same, that unemployment and underemployment in the City of Richmond was a chronic problem. Page 31 of the Specific plan noted that unemployment was "historically higher than the County as a whole". Unemployment was estimated at 6.6 percent in 1991 while County unemployment was 3.8 percent for the same year.

The 1993 Specific Plan was designed to create jobs to draw from a vicinity labor pool to help address unemployment and underemployment. The market had been identified and the Plan area was to meet that market demand by providing accessible, less expensive land (than nearby Marin) in close proximity to major transportation networks, labor pools, and affordable housing. By stabilizing the existing industrial

base, encouraging new light industrial uses, and providing the potential for quality office, research and development uses, the Specific Plan's objective was to increase jobs available to vicinity unemployed and underemployed. Because some of the new jobs might require retraining of blue collar workers, the Plan intended to provide opportunities for residents to train for more specialized jobs with better skills. The stated objective was to reduce the outmigration of Richmond's work force through provision of professional level employment opportunities and the creation of employment opportunities for blue collar workers.

22-5
(cont.)

The various elements of the draft Plan must address and reconcile how this significant change in land use direction will affect goals, policies, and objectives within the rest of the draft Plan. Otherwise, the draft Plan is internally inconsistent.

4. The proposed Change Area 12 designation is inconsistent with the Richmond Redevelopment Plan.

The California Community Redevelopment Law (CRL) provides the authority for a city to establish a redevelopment agency to carry out a local redevelopment program using tax increment financing. The law governing community redevelopment resides in the State Health and Safety Code. Redevelopment is about improving the health and safety condition in a designated project area and redevelopment can only be used in areas that suffer from adverse physical and economic conditions, defined in the law as "blight" usually in urbanized areas. Redevelopment is focused on the preservation and expansion of employment and housing opportunities in those areas.

22-6

Page 12 of the draft Plan states that "the City of Richmond has established a Redevelopment Project Area which makes it possible to issue improvement bonds for projects within the project area. Richmond's Redevelopment Plan is required to conform to the City's General Plan". The subject Change Area 12 is within "Hensley Amended" Redevelopment Project Area and subject to the adopted Richmond Redevelopment Plan. Tax increment financing and redevelopment bonds have been issued based on assumptions that the tax increment financing will continue for the term of the bonds. These monies have been used for public improvement projects and affordable housing elsewhere in the City. Without the redevelopment project area all existing and new property taxes would continue to be allocated to the general fund with a much smaller portion flowing to the City.

The draft Plan changes are not consistent with the Redevelopment Plan designation or Redevelopment Plan goals and policies which encourage industrial/office flex development on the property. The designation as open space cannot be consistent with the definition of a blighted urban area which is what the Agency claimed with the establishment of the Redevelopment Agency. Significant bonds have sold by the agency and purchased by parties and then resold in reliance on the designated Agency boundary and based on the adopted Redevelopment Plan. This raises serious questions of fraud committed against the State (who authorizes the Redevelopment Agencies) as well as bondholders who purchased the Redevelopment Agency bonds

in reliance on the tax increment flowing from our property (which will disappear if we are downzoned to open space).

↑ 22-6
(cont.)

Conclusion

The subject property is a fully improved industrial subdivision with dedicated and accepted streets and facilities. Significant expenditures were made by the property owner in reliance on several approvals granted by the City of Richmond which are wholly consistent with the adopted General Plan, the Redevelopment Plan, and the North Richmond Shoreline Specific Area Plan. The City has not maintained the streets, infrastructure, lighting, etc, but is never-the-less obligated to do so, and the City's lack of maintenance of its accepted improvements have resulted in deterioration and detriment to the property values. There is no basis for designation of this property as open or recreational space and this designation is inconsistent with several longstanding land use directives from the City.

22-7

We wish to inform the City Council that we are in contract to sell our property for use as a Salvation Army Regional Campus. The Salvation Army has been searching for a Bay Area home for over 3 years. Their proposed campus would be a model for environmental sustainability and it goes without saying that such a well-respected charitable organization would be good stewards not just of the land but also of the at risk residents of Richmond whom they would serve. The City's very public attempt to downzone our land to parks and open space is jeopardizing our sales contract for the Salvation Army project. Obviously if the City proceeds with this downzoning effort, it will kill the project.

We plan to schedule meetings with each City Councilmember in the next few weeks to present the Salvation Army project in detail. Meanwhile, we request that the City Council immediately take action to terminate the attempt to convert our land to parks and open space without our approval and without just compensation. We ask that you direct City staff to immediately restore our existing industrial/office flex designation and zoning within the proposed new General Plan. Since there has never been a vote of any City body approving this downzoning, restoring our existing designation should be a simple procedural matter by staff in response to public comments to the DEIR and General Plan. We encourage you to take this path in order to reset the discussion so that we can together engage in a merits based discussion of worthy projects such as the Salvation Army campus.

Sincerely,



Robert Herbst

Attachments: **Exhibit A Final Subdivision Map**
 Exhibit B Subdivision Improvement Plan
 Exhibit C City Council Resolution 185-82
 Exhibit D Engineer's Estimate
 Exhibit E Engineer's Revised Estimate

cc Mayor Gayle McLaughlin

Vice Mayor Tom Butt

Councilmember Corky Booze

Councilmember Jovanka Beckles

Councilmember Jim Rogers

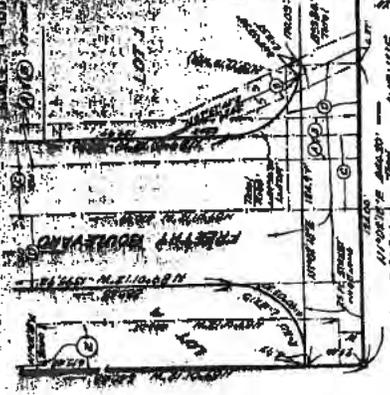
Councilmember Nat Bates

Councilmember Jeff Ritterman

SUBDIVISION

PORTION OF LOT 20, MAP 10, SAN JOAQUIN COUNTY, CALIFORNIA
A PORTION OF SECTIONS 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

RICHMOND, CONTRA COSTA COUNTY, CALIFORNIA
MAY 1912
RECORDED IN OFFICIAL RECORDS, PAGE 481

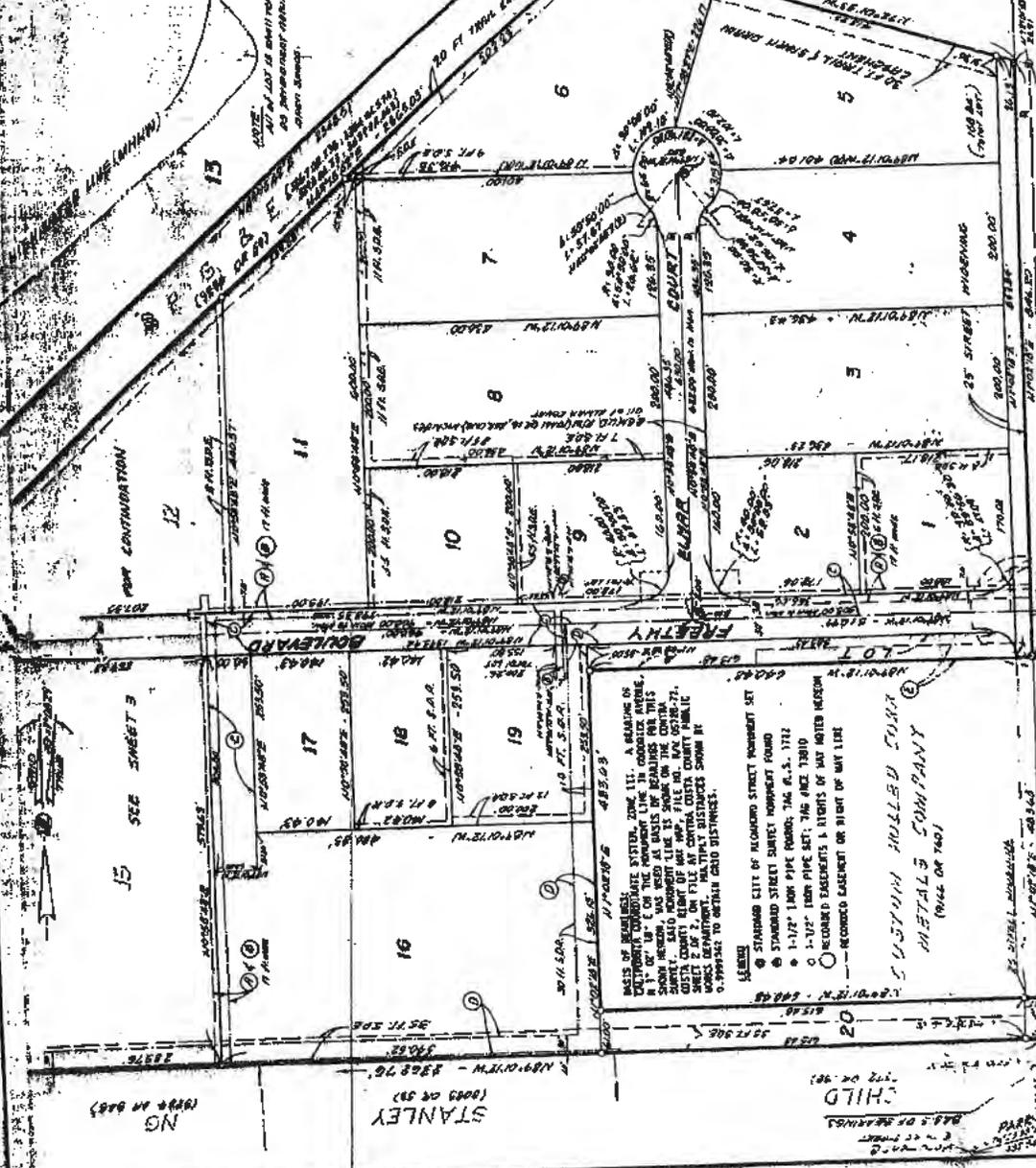


- 1. 17 FT. AND 10 FT. EASEMENTS FOR OVERHEAD ELECTRIC, TELEPHONE AND APPURTENANCES TO S. E. 1/4, MAP P. 1. 2. RECORDED DECEMBER 19, 1946, BOOK 5287, OFFICIAL RECORDS, PAGE 233.
- 2. 17 FT. AND 10 FT. EASEMENTS FOR OVERHEAD ELECTRIC, TELEPHONE AND APPURTENANCES TO S. E. 1/4, MAP P. 1. 2. RECORDED DECEMBER 19, 1946, BOOK 5287, OFFICIAL RECORDS, PAGE 233.
- 3. 17 FT. AND 10 FT. EASEMENTS FOR OVERHEAD ELECTRIC, TELEPHONE AND APPURTENANCES TO S. E. 1/4, MAP P. 1. 2. RECORDED DECEMBER 19, 1946, BOOK 5287, OFFICIAL RECORDS, PAGE 233.
- 4. 17 FT. AND 10 FT. EASEMENTS FOR OVERHEAD ELECTRIC, TELEPHONE AND APPURTENANCES TO S. E. 1/4, MAP P. 1. 2. RECORDED DECEMBER 19, 1946, BOOK 5287, OFFICIAL RECORDS, PAGE 233.
- 5. 17 FT. AND 10 FT. EASEMENTS FOR OVERHEAD ELECTRIC, TELEPHONE AND APPURTENANCES TO S. E. 1/4, MAP P. 1. 2. RECORDED DECEMBER 19, 1946, BOOK 5287, OFFICIAL RECORDS, PAGE 233.
- 6. 17 FT. AND 10 FT. EASEMENTS FOR OVERHEAD ELECTRIC, TELEPHONE AND APPURTENANCES TO S. E. 1/4, MAP P. 1. 2. RECORDED DECEMBER 19, 1946, BOOK 5287, OFFICIAL RECORDS, PAGE 233.
- 7. 17 FT. AND 10 FT. EASEMENTS FOR OVERHEAD ELECTRIC, TELEPHONE AND APPURTENANCES TO S. E. 1/4, MAP P. 1. 2. RECORDED DECEMBER 19, 1946, BOOK 5287, OFFICIAL RECORDS, PAGE 233.
- 8. 17 FT. AND 10 FT. EASEMENTS FOR OVERHEAD ELECTRIC, TELEPHONE AND APPURTENANCES TO S. E. 1/4, MAP P. 1. 2. RECORDED DECEMBER 19, 1946, BOOK 5287, OFFICIAL RECORDS, PAGE 233.
- 9. 17 FT. AND 10 FT. EASEMENTS FOR OVERHEAD ELECTRIC, TELEPHONE AND APPURTENANCES TO S. E. 1/4, MAP P. 1. 2. RECORDED DECEMBER 19, 1946, BOOK 5287, OFFICIAL RECORDS, PAGE 233.
- 10. 17 FT. AND 10 FT. EASEMENTS FOR OVERHEAD ELECTRIC, TELEPHONE AND APPURTENANCES TO S. E. 1/4, MAP P. 1. 2. RECORDED DECEMBER 19, 1946, BOOK 5287, OFFICIAL RECORDS, PAGE 233.
- 11. 17 FT. AND 10 FT. EASEMENTS FOR OVERHEAD ELECTRIC, TELEPHONE AND APPURTENANCES TO S. E. 1/4, MAP P. 1. 2. RECORDED DECEMBER 19, 1946, BOOK 5287, OFFICIAL RECORDS, PAGE 233.
- 12. 17 FT. AND 10 FT. EASEMENTS FOR OVERHEAD ELECTRIC, TELEPHONE AND APPURTENANCES TO S. E. 1/4, MAP P. 1. 2. RECORDED DECEMBER 19, 1946, BOOK 5287, OFFICIAL RECORDS, PAGE 233.
- 13. 17 FT. AND 10 FT. EASEMENTS FOR OVERHEAD ELECTRIC, TELEPHONE AND APPURTENANCES TO S. E. 1/4, MAP P. 1. 2. RECORDED DECEMBER 19, 1946, BOOK 5287, OFFICIAL RECORDS, PAGE 233.
- 14. 17 FT. AND 10 FT. EASEMENTS FOR OVERHEAD ELECTRIC, TELEPHONE AND APPURTENANCES TO S. E. 1/4, MAP P. 1. 2. RECORDED DECEMBER 19, 1946, BOOK 5287, OFFICIAL RECORDS, PAGE 233.
- 15. 17 FT. AND 10 FT. EASEMENTS FOR OVERHEAD ELECTRIC, TELEPHONE AND APPURTENANCES TO S. E. 1/4, MAP P. 1. 2. RECORDED DECEMBER 19, 1946, BOOK 5287, OFFICIAL RECORDS, PAGE 233.
- 16. 17 FT. AND 10 FT. EASEMENTS FOR OVERHEAD ELECTRIC, TELEPHONE AND APPURTENANCES TO S. E. 1/4, MAP P. 1. 2. RECORDED DECEMBER 19, 1946, BOOK 5287, OFFICIAL RECORDS, PAGE 233.
- 17. 17 FT. AND 10 FT. EASEMENTS FOR OVERHEAD ELECTRIC, TELEPHONE AND APPURTENANCES TO S. E. 1/4, MAP P. 1. 2. RECORDED DECEMBER 19, 1946, BOOK 5287, OFFICIAL RECORDS, PAGE 233.
- 18. 17 FT. AND 10 FT. EASEMENTS FOR OVERHEAD ELECTRIC, TELEPHONE AND APPURTENANCES TO S. E. 1/4, MAP P. 1. 2. RECORDED DECEMBER 19, 1946, BOOK 5287, OFFICIAL RECORDS, PAGE 233.
- 19. 17 FT. AND 10 FT. EASEMENTS FOR OVERHEAD ELECTRIC, TELEPHONE AND APPURTENANCES TO S. E. 1/4, MAP P. 1. 2. RECORDED DECEMBER 19, 1946, BOOK 5287, OFFICIAL RECORDS, PAGE 233.
- 20. 17 FT. AND 10 FT. EASEMENTS FOR OVERHEAD ELECTRIC, TELEPHONE AND APPURTENANCES TO S. E. 1/4, MAP P. 1. 2. RECORDED DECEMBER 19, 1946, BOOK 5287, OFFICIAL RECORDS, PAGE 233.

SHEET 2 OF 3

INDUSTRIAL LAND CO
1770 N. BAY ST.
SAN FRANCISCO, CALIF.
MARCH 1922

RICHMOND GUN CLUB
1770 N. BAY ST.
SAN FRANCISCO, CALIF.
MARCH 1922



LEGEND

- STANDARD CITY OF RICHMOND STREET MONUMENT SET
- STANDARD STREET SURVEY MONUMENT FOUND
- 1-1/2" IRON PIPE MONUMENT, 100 P.L.S. 1712
- 1-1/2" IRON PIPE SET, 7/8" ANCH. 73010
- RECORDED EASEMENTS & RIGHTS OF WAY NOTED HEREON
- RECORDED EASEMENT OR RIGHT OF WAY LINE

CUSTOM HOLLOW CURB
METALS COMPANY
(PAGE ON TWO)

ASS. R. JOB NO. 9642 DWS. NO. R. 1092

GOODRICK AVENUE

SEE SHEET 3

STANLEY (BOOKS ON 98)

STANLEY (BOOKS ON 98)

CHILD (BOOKS ON 98)

GOODRICK AVENUE

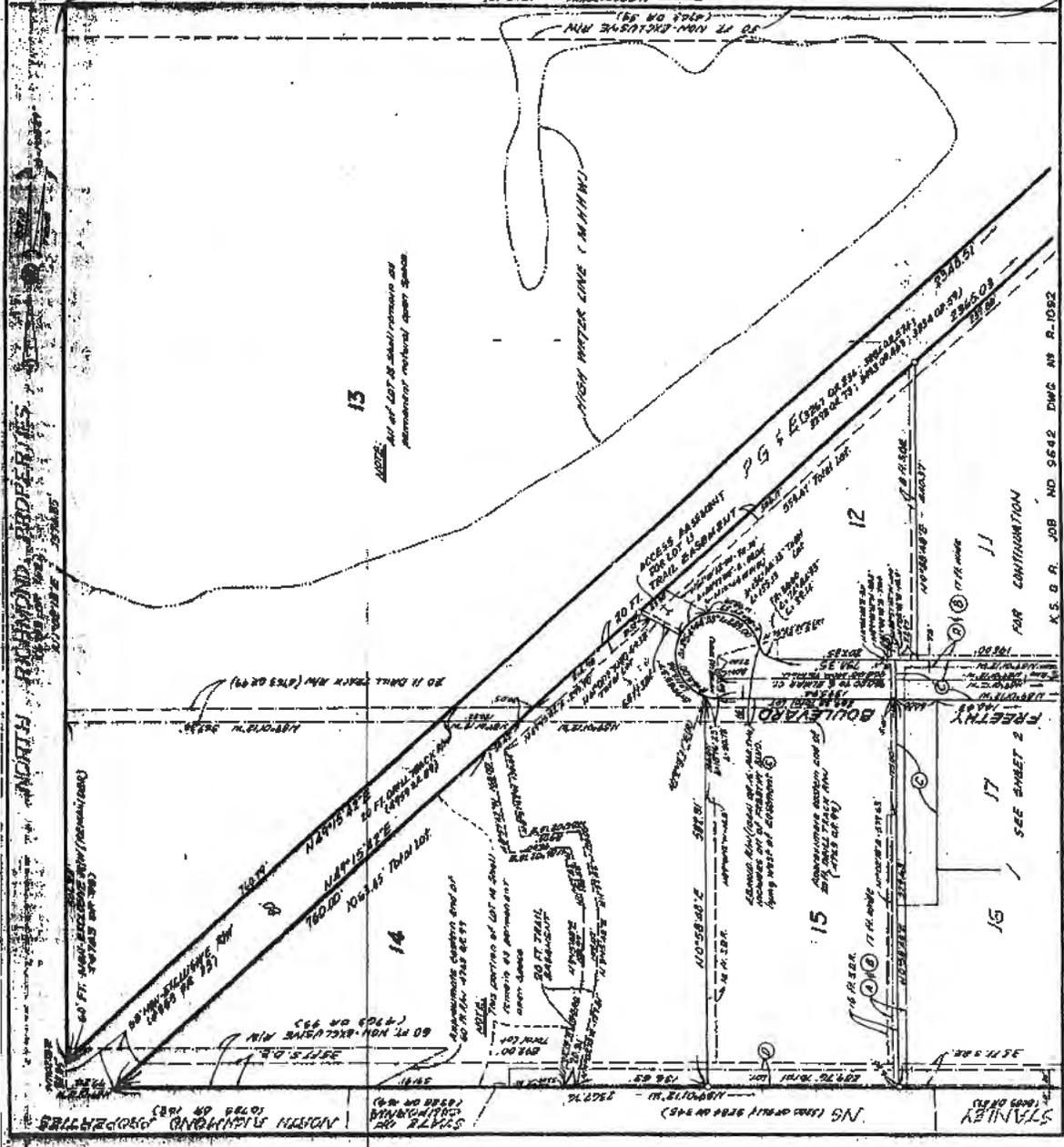
SUBVISED

PORTION OF LOT 201 MAP NO. 100 SAN PABLO COUNTY CALIFORNIA
 (MADE MARCH 1962)
 A PORTION OF SECTIONS 13 & 14 T2N, R5W N.M.S.
 RICHMOND, CONTRA COSTA COUNTY, CALIFORNIA
 TASTER, SAUNDERS & CO., INC. CIVIL ENGINEERS & SURVEYORS
 21 CERRITO, SAN FRANCISCO, CALIFORNIA
 MARCH 1962

- LEGEND**
- ⊙ STANDARD CITY OF RICHMOND STREET MOUNT SET
 - ⊙ STANDARD STREET MOUNT SET
 - ⊙ 1-1/2" IRON PIPE FOUND, THE M.S. 1912
 - ⊙ 1-1/2" IRON PIPE SET, THE M.S. 1914
 - RECORDED EASEMENTS & RIGHTS OF WAY SHOW ROBORN
 - RECORDED EASEMENT OR RIGHT OF WAY LINE

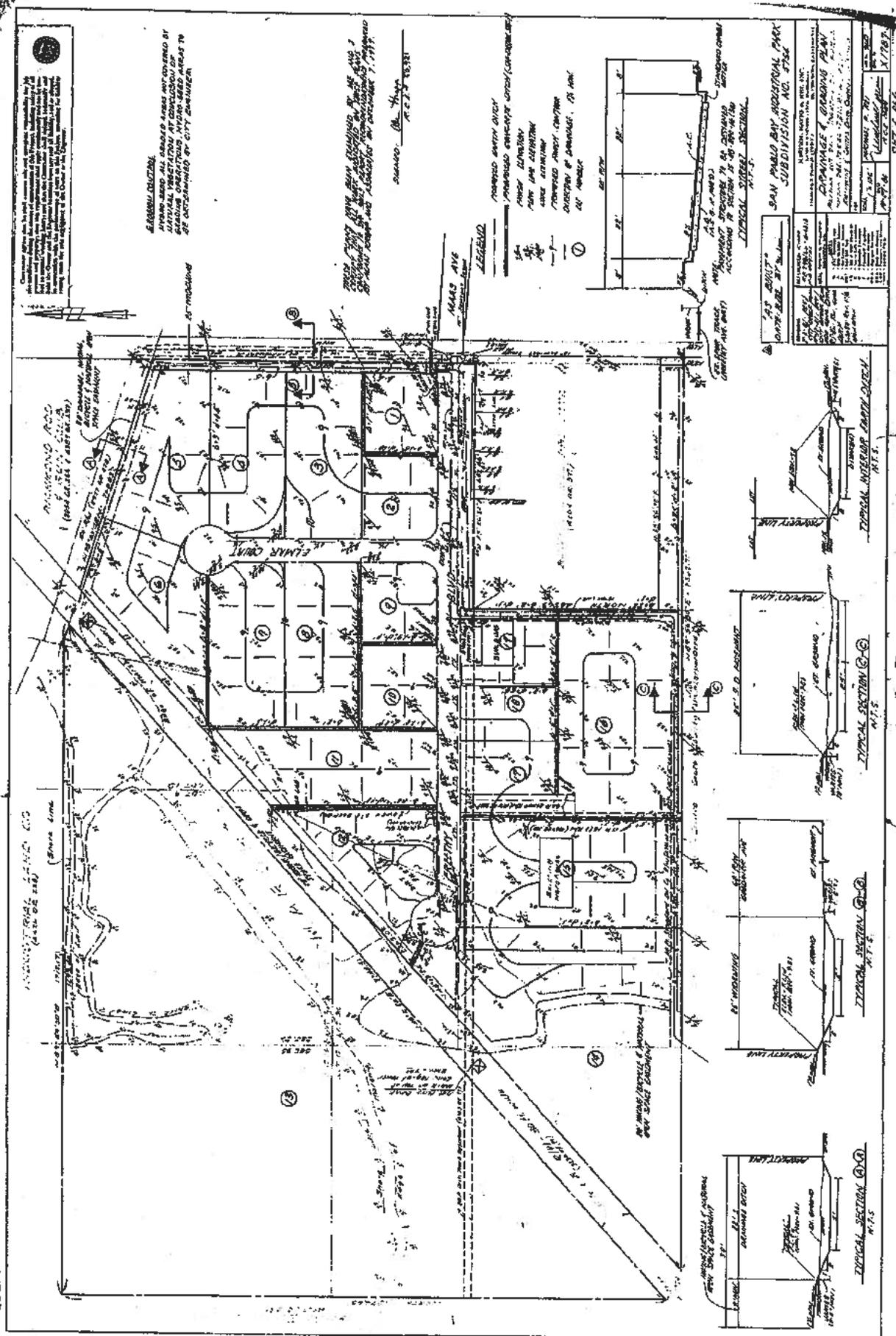
RECORDED EASEMENTS AND RIGHTS OF WAY SHOW:
 17 FT. EASEMENT FOR GAS LINES TO P.C. & E., RECORDED DECEMBER 19, 1964, BOOK 5264, OFFICIAL RECORDS, PAGE 437.
 17 FT. AND 10 FT. EASEMENTS FOR OVERHEAD ELECTRIC, TELEPHONE AND APPURTENANCES TO P.C. & E. AND P.T.I., RECORDED DECEMBER 19, 1964, BOOK 5267, OFFICIAL RECORDS, PAGE 438.
 20 FT. AND 60 FT. EASEMENT FOR RIGHT OF WAY FOR WATER LINES AND APPURTENANCES TO S.L.M.O.D., RECORDED DECEMBER 10, 1966, BOOK 5221, OFFICIAL RECORDS, PAGE 244.
 20 FT. RIGHT OF WAY FOR PIPELINES AND APPURTENANCES TO S.L.M.O.D. FOR WATER LINES AND APPURTENANCES TO S.L.M.O.D., RECORDED DECEMBER 10, 1966, BOOK 5221, OFFICIAL RECORDS, PAGE 245.

Sheet 3 of 3



K.S.B.R. JOB NO. 5642 DWG. NO. R-1082

X-1787



GENERAL NOTES

1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.

2. ALL UTILITIES ARE TO BE DEEPENED TO 48" UNLESS OTHERWISE NOTED.

3. ALL UTILITIES ARE TO BE DEEPENED TO 48" UNLESS OTHERWISE NOTED.

4. ALL UTILITIES ARE TO BE DEEPENED TO 48" UNLESS OTHERWISE NOTED.

5. ALL UTILITIES ARE TO BE DEEPENED TO 48" UNLESS OTHERWISE NOTED.

LEGEND

1. 1" = 10' (BUILDING FOOTPRINT)

2. 1" = 10' (PARKING SPACE)

3. 1" = 10' (STREET)

4. 1" = 10' (ALLEY)

5. 1" = 10' (UTILITY LINE)

TYPICAL SECTION (A)

1" = 10'

1. 1" = 10' (PARKING SPACE)

2. 1" = 10' (STREET)

3. 1" = 10' (ALLEY)

TYPICAL SECTION (B)

1" = 10'

1. 1" = 10' (BUILDING FOOTPRINT)

2. 1" = 10' (PARKING SPACE)

3. 1" = 10' (STREET)

TYPICAL SECTION (C)

1" = 10'

1. 1" = 10' (BUILDING FOOTPRINT)

2. 1" = 10' (PARKING SPACE)

3. 1" = 10' (STREET)

PROJECT INFORMATION

PROJECT: SAN PABLO BAY INDUSTRIAL PARK SUBDIVISION NO. 7564

DATE: APRIL 1964

ENGINEER: W. J. HAYES

SCALE: AS SHOWN

RESOLUTION NO. 185-82

RESOLUTION ACCEPTING CERTAIN STREETS AND PUBLIC IMPROVEMENTS
WITHIN SUBDIVISION 5754 (SAN PABLO INDUSTRIAL PARK), IN THE
CITY OF RICHMOND, CALIFORNIA

WHEREAS, the Subdivider, Elmer J. Freethy, has completed all improvements in accordance with the plans and specifications on file in the office of the City Engineer; and

WHEREAS, all of the work has been performed in accordance with the terms of the Subdivision Agreement dated May 10, 1982; and

WHEREAS, the Subdivider has posted a surety bond guaranteeing maintenance of the improvements constructed under the terms of said Subdivision Agreement for a period of one (1) year from the date of this Resolution; and

WHEREAS, the Subdivider has posted security in the amount of THIRTY-FOUR THOUSAND NINE HUNDRED Dollars (\$34,900.00) to guarantee the construction of an asphaltic concrete pavement overlay pursuant to the terms of said Subdivision Agreement.

NOW, THEREFORE, BE IT RESOLVED that the City of Richmond does hereby accept the dedication of ELMAR COURT and FREETHY BOULEVARD; and

BE IT FURTHER RESOLVED, that the City of Richmond does hereby accept for maintenance the public improvements within said dedicated streets except for the sanitary sewer system; and

BE IT FURTHER RESOLVED, that the City of Richmond does hereby accept the dedication of the 5.5 foot wide storm drainage easements within lots 9,10 and 12, the 6 foot wide storm drainage easement within lot 1; the 8 foot wide storm drainage easements within lots 1 and 12, the 7 foot wide storm drainage easement within lot 0, the 8.5 foot side storm drainage easement with lot 8, the 9 foot wide storm drainage easement within lot 6 and the 11 foot wide storm drainage easement within lots 6, 7 and 8; and

BE IT FURTHER RESOLVED, that the City of Richmond does hereby accept for maintenance those concrete lined ditches within the hereinabove mentioned storm drainage easements; and

BE IT FURTHER RESOLVED, that the release of the surety bond posted by the Subdivider, guaranteeing construction of said public improvements is hereby authorized; and

EXHIBIT C

BE IT FURTHER RESOLVED that the Clerk of the City of Richmond that the clerk of the City of Richmond is hereby instructed to record this Resolution with the office of the Recorder of Contra Costa County, California.

I certify that the foregoing resolution was adopted by the Council of the City of Richmond at a regular meeting held December 6, 1982, by the following vote:

Ayes: Councilmen Washington, Silva, Greco, Bates, Griffin, Wagerman, Livingston, Ziesenhenn, and Mayor Corcoran.

Noes: None.

Absent: None.

HARLAN J. HEYDON
Clerk of the City of Richmond

(SFAL)

Approved:

THOMAS J. CORCORAN
Mayor

Approved as to form:

MALCOLM HUNTER
City Attorney

State of California)
County of Contra Costa ; ss.
City of Richmond)

I certify that the foregoing is a true copy of Resolution No. 185-82, adopted by the Council of the City of Richmond at a regular meeting held December 6, 1982.

Harlan J. Heydon
Clerk of the City of Richmond

AAJ331

KISTER, SAVIO & REI INC.

LAND SURVEYORS & CIVIL ENGINEERS

DONALD E. KISTER (1905-1969)

CHARLES J. SAVIO
LICENSED LAND SURVEYOR

MICHAEL P. REI
REGISTERED CIVIL ENGINEER

11818 SAN PABLO AVENUE

EL CERRITO, CALIF. 94530

TELEPHONE 234-7640

January 28, 1980

Job No. 9642

PRELIMINARY ESTIMATE FREETHY INDUSTRIAL PARK

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>TOTAL</u>
1.	Grading: Import	28,500	C.Y.	5.00	142,500.00
2.	Regrading Lots	16,000	C.Y.	1.50	24,000.00
3.	Finish Grading Street	140,850	S.F.	0.15	21,127.50
4.	Drainage Ditches (Earth)	3,000	L.F.	10.00	30,000.00
5.	Concrete Valley Gutters	4	Ea.	600.00	2,400.00
6.	8" Sanitary Sewer	2,150	L.F.	20.00	43,000.00
7.	4" Sanitary Sewer	540	L.F.	10.00	5,400.00
8.	Manholes	8	Ea.	1,300.00	10,400.00
9.	Sanitary Sewer Pump Station	1	Ea.	6,000.00	6,000.00
10.	Tie Into Existing Manhole	1	Ea.	500.00	500.00
11.	Underground Trenching/Structures	3,640	L.F.	7.00	25,480.00
12.	Electroliers	10	Ea.	1,800.00	18,000.00
13.	Water Main Extension - 8"	990	L.F.	22.00	21,780.00
14.	Fire Hydrants	4	Ea.	1,800.00	7,200.00
15.	Water Services (3/4)	17	Ea.	575.00	9,775.00
16.	E.B.M.U.D. Standard Participation Charge	17	Ea.	100.00	1,700.00
17.	Concrete Curb & Gutter (Incl. Cushion)	4,280	L.F.	6.00	25,680.00
18.	Concrete Sidewalk	17,120	S.F.	1.75	29,960.00
19.	Paving - 2" A.C., 6" A.B., 12" A.S.B.	102,000	S.F.	1.50	153,000.00
20.	Street Name Signs	8	Ea.	100.00	800.00
21.	Street Monuments	4	Ea.	100.00	400.00
22.	Street Trees	30	Ea.	50.00	1,500.00
					<u>\$580,602.50</u>
				10% Contingencies	<u>58,060.25</u>
					<u>\$638,662.75</u>
	Sanitary District Annexation Fees				
	3.6 acres @ \$785.00 per acre				2,826.00
	Annexation Cost (Minimum)				200.00
	Sanitary District Inspection Fees 3% of \$65,300.00				1,959.00
	City Inspection Fees - 4% of \$211,340.00				8,454.00
	Civil Engineering & Land Surveying				20,000.00
	Soils Engineering				5,000.00
	P.G. & E. Refundable Advance (3640 L.F. @ \$12.00)				<u>43,680.00</u>
					<u>\$720,781.75</u>

NOTE: E.B.M.U.D. water meters are minimum size,
since actual customer requirements are not known.

EXHIBIT D

KISTER, SAVIO & REI INC.

LAND SURVEYORS & CIVIL ENGINEERS



MATTHEW L. REI, PRES.
R.C.E. 38883 - L.S. 7115
PATRICK H. REI, V.P.
L.S. 8170

DONALD E. KISTER (1905-1988)
CHARLES J. SAVIO (1921-2008)
MICHAEL P. REI (Retired)

825 SAN PABLO AVENUE
PINOLE, CA 94504
PHONE (510) 222 - 4020
FAX (510) 222 - 3710
E-MAIL info@ksrinc.net

January 28, 1980
March 24, 2011 Revised

Preliminary Estimate
Fresthy Industrial Park

Item	Description	1980		2011			
		Quantity	Unit	Unit Cost	Total	Unit Cost	Total
1	Grading: Import	28,500	C.Y.	5.00	142,500.00	10.00	285,000.00
2	Regrading Lots	16,000	C.Y.	1.50	24,000.00	7.50	120,000.00
3	Finish Grading Street	140,850	S.F.	0.15	21,127.50	0.30	42,255.00
4	Drainage Ditches	3,000	L.F.	10.00	30,000.00	70.00	210,000.00
5	Concrete Valley Gutters	4	Ea.	600.00	2,400.00	3,500.00	14,000.00
6	8" Sanitary Sewer	2,150	L.F.	20.00	43,000.00	80.00	172,000.00
7	4" Sanitary Sewer	540	L.F.	10.00	5,400.00	60.00	32,400.00
8	Manholes	8	Ea.	1,300.00	10,400.00	4,000.00	32,000.00
9	Sanitary Sewer Pump Station	1	Ea.	6,000.00	6,000.00	25,000.00	25,000.00
10	Tie Into Existing Manhole	1	Ea.	600.00	600.00	1,500.00	1,500.00
11	Underground Trenching/Structures	3,640	L.F.	7.00	25,480.00	25.00	91,000.00
12	Electroliers	10	Ea.	1,800.00	18,000.00	15,000.00	150,000.00
13	Water Main Extensions - 8"	980	L.F.	22.00	21,780.00	135.00	133,650.00
14	Fire Hydrants	4	Ea.	1,800.00	7,200.00	7,832.00	31,328.00
15	Water Services - 3/4"	17	Ea.	575.00	9,775.00	948.00	16,116.00
16a	Standard Participation Charge	17	Ea.	100.00	1,700.00		
16b	System Capacity Charge	17	Ea.			21,720.00	389,240.00
17	Concrete Curb & Gutter	4,280	L.F.	6.00	25,680.00	30.00	128,400.00
18	Concrete Sidewalk	17,120	S.F.	1.75	29,960.00	15.00	256,680.00
18a	Paving - 2"AC, 6"AB, 12"ASB	102,000	S.F.	1.50	153,000.00		
18b	Paving Base - 8"AB, 12" ASB	11,100	Tons			40.00	444,000.00
18c	Paving - 2"AC	1,275	Tons			75.00	95,625.00
20	Street Name Signs	8	Ea.	100.00	800.00	500.00	4,000.00
21	Street Monuments	4	Ea.	100.00	400.00	1,000.00	4,000.00
22	Street Trees	30	Ea.	50.00	1,500.00	500.00	15,000.00
				Total	\$580,602.50		\$2,673,194.00
				10% Contingency	58,060.25		267,319.40
					\$638,662.75		\$2,940,513.40
	Sanitary District Annexation Fee	3.6	Acre	785.00	2,826.00	2,271.00	8,175.80
	Annexation Cost (LAFCO & State Filing, Min.)				200.00		5,000.00
	Sanitary District Inspection Fee	3%	of	\$ 65,300.00	1,959.00		
	Sanitary District Inspection Fee	5%	of	\$211,340.00	8,454.00	\$262,900.00	13,145.00
	City Inspection Fees	4%	of				
	City Inspection Fees	3%	of			\$947,705.00	\$ 28,431.15
	Civil Engineering & Land Surveying				20,000.00	Est.	100,000.00
	Soils Engineering				5,000.00	Est.	30,000.00
	P.G.& E. Refundable Advance	3,640	L.F.	12.00	43,680.00	60.00	218,400.00
					\$720,781.75		\$3,343,665.15

Note: 2011-unit costs per Contra Costa County Public Works Department Guide; EBMUD rates & fees; West County Wastewater rates & fees; and PG&E rates & fees

EXHIBIT E

LETTER 22: JHS Properties, Robert Herbst

Response to Comment 22-1

The comment provides background information about the parcels located in Freethy Industrial Park. The comment is noted without response.

Response to Comment 22-2

The comment states that Freethy Industrial Park is incorrectly described in the draft General Plan as undeveloped and lacking infrastructure, and describes the property as “a fully improved subdivision.” The portion of the change area known as the Freethy Industrial Park includes vehicular access to the property via Goodrick Avenue, but there are no remaining surface or overhead improvements on the property that are readily visible from the public right-of-way. The status of any underground improvements would need to be verified to determine if adequate infrastructure exists on the site for any future development. The comment also mentions the existing structure south of Richmond Parkway. The comment is correct in that the area south of the Richmond Parkway is developed with industrial uses and contains infrastructure to support those uses. This area is proposed in the General Plan as “Business/Light Industrial”, which is consistent with the existing uses on this portion of the site. If more infrastructure exists in Change Area 12: Northshore, including the Freethy Industrial Park property, than was assumed in the Draft EIR, the impacts of development would be less than assumed in the Draft EIR. The comment further alleges that the proposed change in land use designation would diminish the value of the property. Property value is not within the scope of CEQA review and, therefore, is not addressed in the EIR.

Response to Comment 22-3

The comment states there is no factual basis for the designation of Change Area 12: Northshore as “Open Space” or “Parks and Recreation” because the land is not “historic baylands” that should be restored and protected. The commenter is referring to page 3.37 of the draft Land Use and Urban Design Element, which states that the area is “representative of historic San Francisco baylands,” but does not address the question of land use designation. It should be noted that the land use designations proposed in the General Plan are not based on the environmental analysis of the Draft EIR. Rather, the Draft EIR analyzes the existing environmental conditions and the changes to the physical environment that may take place through implementation of the General Plan, assuming that development will conform to the proposed land use designations.

Within Change Area 12: Northshore, there is suitable habitat for protected species, though the entire change area may not provide suitable habitat for breeding, feeding, and sheltering. The analysis contained in the Draft EIR conservatively assumes that protected species could be present anywhere within the City where suitable habitat types are present. Environmental review for specific development projects will analyze whether suitable habitat for protected species exists within the proposed development site. The General Plan EIR is a programmatic document that cannot undertake such finegrained analysis for every potentially developable parcel within the City.

The comment also states that the draft General Plan does not define either “Open Space” or “Open Space/Parks and Recreation”. The “Open Space” and “Parks and Recreation” classifications are described on page 3.21 of the draft General Plan.

The comment also states that Change Area 12: Northshore is incorrectly described in the draft General Plan as being unimproved. See Response to Comment 22-1.

Response to Comment 22-4

The comment states that changing the land use designation of Freethy Industrial Park will impact Richmond’s economy and circulation by creating longer commutes as people will have to go outside of Richmond for employment. The Draft EIR analyzes the General Plan as proposed, and, therefore, already includes assumptions for trip distribution based on the proposed land use designations in Change Area 12: Northshore. The comment’s reference to economic impacts is beyond the scope of CEQA review, which addresses only physical impacts on the environment. The comment’s assumption that the proposed land use designation will create longer commutes is speculative – there are no businesses currently operating within the Freethy Industrial Park and there are no development applications currently pending. The EIR cannot analyze speculative impacts.

Response to Comment 22-5

The comment states that changing the land use designation of the Freethy Industrial Park conflicts with the 1993 North Richmond Shoreline Specific Plan and the Hensley Amended Redevelopment Plan because the change in designation prevents development of the property for economically beneficial use. The Freethy Industrial Park has remained undeveloped since the North Richmond Shoreline Specific Plan was adopted in 1993. The proposed change in land use designation would allow the same intensity of development that is currently allowed. By allowing the same intensity of development, the updated General Plan promotes the goals of economic development. Therefore, it does not conflict with either the Hensley Amended Redevelopment Plan or the North Richmond Shoreline Specific Plan.

Response to Comment 22-6

The comment states that changing the land use designation of the Freethy Industrial Park is inconsistent with the Hensley Amended Redevelopment Plan, which includes the subject property within its boundaries. Though the goal of a Redevelopment Plan is to encourage economically beneficial development, a Redevelopment Plan does not govern land use and there is no requirement for a General Plan to be consistent with a Redevelopment Plan. The comment also refers to potential economic losses from the loss of tax increment to repay bonds that have been issued by the Redevelopment Agency. The Redevelopment Agency has not issued any bonds that would be affected by a decrease in tax increment financing from Change Area 12: Northshore. Moreover, it is important to note that potential economic effects of land use decisions are beyond the scope of CEQA review, which is concerned solely with physical impacts on the environment.

Response to Comment 22-7

The comment states that the City has not maintained streets and infrastructure on the Freethy Industrial Park, which has lowered property values. The comment also states that the property is under contract to be sold for use as a Salvation Army Regional Campus. The comment does not address the adequacy of the Draft EIR; therefore, it is noted without response.



LEVIN RICHMOND TERMINAL CORPORATION

402 Wright Avenue, Richmond, CA 94804
Tel (510) 307-4020 Fax (510) 236-0129 Cell (510) 703-6990
ljmc@levinterminal.com



March 31, 2011

Planning Commissioners
Bill Lindsay, City Manager
Hector Rojas, Planning Department
Mary Renfro, Assistant City Attorney
Sent by e-mail to: Hector_Rojas@ci.richmond.ca.us

Re: Richmond General Plan – Draft Environmental Impact Report

The Levin-Richmond Terminal Corporation is requesting that the following issues be addressed and/or responded to.

Figure 2-3 Proposed General Plan Land Use Diagram & Figure 2-6 Change Area 3 – Ford Peninsula in Marina Bay

The "Transitional/Buffer Zone" (Ord. No. 1808) shows the inclusion of Live-Work and Medium Density Mixed Use (Residential Emphasis.). This is not in compliance with the Buffer Zone Ordinance. This needs to be changed, with the underlined additions, to say:

23-1

The following uses are not allowed within the Transitional/Buffer Zone:

1. Single-family residences, duplexes, multi-family, and live/work units, group homes, ~~and residential care,~~ residential uses as part of a mixed-use development, transitional housing or transient lodging such as hotels and motels and rooming and boarding houses, and any use in which people reside.
2. Day care, primary, elementary, junior high, and high schools, ~~adult vocational schools~~ and after-school programs for children and teens, public or private.
3. Parks and recreation facilities, noncommercial parks, playgrounds, ~~and recreation facilities,~~ commercial amusement parks, and any use that attracts or appeals to children.

Also, currently within the "Transitional/Buffer Zone" are industrial-based businesses. It appears that there are areas now being rezoned from industrial to "Regional Commercial"



"Mixed-Use and High Intensity Mixed Use" (Major Activity Center). This would result in some of the existing industrial businesses becoming non-conforming uses.

Letter 23
23-1
(cont.)

Sincerely,

A handwritten signature in black ink that reads "Jim Cannon". The signature is written in a cursive, flowing style.

Jim Cannon
Director of Special Projects and Public Relations

cc: Gary Levin

Katrinka Ruk

LETTER 23: Levin Richmond Terminal Corporation, Jim Cannon

Response to Comment 23-1

The comment questions whether the proposed land uses in Change Area 3: Ford Peninsula in Marina Bay are inconsistent with Transitional/Buffer Zone Ordinance (Ord. No. 1805). See Response to Comment 9-6.

LAW OFFICES OF PAUL M. MINAULT
120 MONTGOMERY STREET
SUITE 2290
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE: 415-397-6152
FAX: 415-788-5768

E-MAIL:
pminault@earthlink.net

March 31y, 2011

BY EMAIL:

Richard Mitchell
Planning Director
City of Richmond
450 Civic Center Plaza
Richmond, CA 94804



Re: Comments of the Levin Richmond Terminal Corp.
on the February 2011 Draft of the General Plan

Dear Mr. Mitchell:

The Levin-Richmond Terminal Corp. ("LRTC") is pleased to submit the following comments on the February 2011 draft of the Richmond General Plan ("the Plan"). We particularly wish to thank planning staff for their revisions to the Plan in response to our previous comments. Certain of our comments were not responded to, or were not responded to fully, and they are included again here, some in revised form.

A. The Plan's List of Prohibited Uses in the Harbour Way South-Marina Way South Industrial Buffer Zone is Incorrect. The Plan describes the Harbour Way-Marina Way South Industrial Buffer Zone and lists prohibited uses within the zone. Land Use Maps 3.2 and 3.5, Land Use Element at 3.82, 3.85. On these maps, the boundaries of the Buffer Zone are shown as a dashed line and a notation on prohibited uses is included. To be consistent with the Buffer Zone ordinance (a copy of which is attached for your reference), this notation should be revised to read as follows:

The following uses are not allowed within the Transitional/Buffer Zone: 1. Single-family residences, duplexes, multi-family, and live/work units, group homes, and residential care, residential uses as part of a mixed-use development, transitional housing or transient lodging such as hotels and motels and rooming and boarding houses, and any use in which people reside. 2. Day care, primary, elementary, junior high, and high



Richard Mitchell, Planning Director
 March 31, 2011
 Page 2

schools, ~~adult vocational schools~~ and after-school programs for children and teens, public or private. 3. Parks and recreation facilities, noncommercial parks, playgrounds, ~~and recreation facilities~~, commercial amusement parks, and any use that attracts or appeals to children.

B. The Buffer Zone Should be Mentioned in the Description of the Ford Peninsula. The Buffer Zone should be mentioned in the description of the Ford Peninsula in the Land Use Element at page 3.26, as follows:

General Plan Land Use

The eastern section of the Ford Peninsula area in Marina Bay is envisioned as a mixed-use waterfront district around the marina that takes advantage of the proposed ferry terminal, easy access to regional highways, waterfront location, dramatic views and nearby employment. The western section is envisioned as a revitalized working port serving the greater region and providing employment. Between them is a transitional zone of light industrial and commercial uses. Specific land uses in this change area are described below . . .

C. The Plan Should Prohibit Residential Uses Adjacent to the 23d St. Rail Yard. The Plan designates the area surrounding LRTC's 23d St. rail yard as Medium-Intensity Mixed-Use (Commercial Emphasis). Maps 3.2, 3.17, Land Use Element at 3.82, 3.98. This use allows mixed-use and residential-only development. Land Use Element at 3.15. Locomotives operate in the yard 24 hours a day, seven days a week switching cars and trains in and out of the yard. Each time the train moves or changes direction, the locomotive engineer is required by operating safety rules to sound the horn. Consequently, horns may be sounded many times during the course of an hour, even during night time hours. Because of these conditions, the Plan should specify that residential uses are not allowed adjacent to the yard.

The text in the center column at Land Use Element 3.40 describing the Regatta/Marina Bay Change Area should therefore be revised to read as follows:

- The area west of the [Marina Bay] parkway is designated as Medium-Intensity Mixed-Use (Commercial Emphasis) to complement the transit-oriented development around the proposed ferry terminal in the Ford Peninsula area in Marina Bay. Residential uses are prohibited adjacent to the 23d St. rail yard.

24-1
 (cont.)



Richard Mitchell, Planning Director
March 31, 2011
Page 3

D. The Plan's Interim Level of Service Standard is Misguided and Misleading.

The Plan proposes to adopt a multi-modal level of service standard for all West County Routes of Regional Significance. Policy CR1.9, Circulation Element at 4.29. Until these standards are adopted, the Plan proposes to "maintain" Level of Service E or F for ten listed roadways in the City. Policy CR1.10, Circulation Element at 4.29.

24-1
(cont.)

The Draft Environmental Impact Report for the Richmond General Plan Update (DEIR) indicates that most of these roadways currently perform well above LOS E or F, including some that perform at LOS A. Table 3.14-4, DEIR at 3.14-11. The Plan gives no reason for assuming that adopting a multi-modal LOS for those roadways would be unreasonably delayed, nor does it give any reason for allowing the levels of service on these roads to deteriorate during such delay, and we can see none. Doing so would simply allow developers to flood these roadways with traffic from new development without requiring any sort of mitigation. This is unacceptable.

24-2

In addition, the statement that levels of service will be "maintained" is unclear and deceptive. The use of "maintained" leads the reader to believe that these ten roadways currently have levels of service E or F, and that these existing Level of Service standards would be "maintained," i.e. kept at current levels of service and not allowed to deteriorate further.

To correct both issues, Policy CR.10, Circulation Element at 4.29, should be changed to read:

"In the absence of adopted multi-modal level of service standards consistent with General Plan Policy CR1.9, maintain the following existing level of service (LOS) standards for West County Routes of Regional Significance found in Richmond."

[Then insert the existing levels of service for the ten roadways shown in the DEIR at Table 3.14-4.]

E. The Proposed Action to Develop Permitting Deadlines Needs Further Definition. The Plan's proposal to improve the development permitting process in Action ED1.J, Economic Development Element at 1.17, is even more vague and noncommittal than in the last draft. We believe the City should publicly set clear goals for itself in the Plan. We therefore recommend rewriting this proposal as follows:

24-3

Work with stakeholders to identify potential improvements to the development permitting process. Improvements should minimize permit processing time while still ensuring high-quality and well-designed development. Opportunities to approve projects at the administrative level and improve coordination between City agencies should be explored. The result should be a bill of rights for permit

Richard Mitchell, Planning Director
March 31, 2011
Page 4

applicants with logical, efficient and clearly defined permit processing times and procedures incorporated into the Municipal Code and made binding on the City.

↑ 24-3
(cont.)

F. The Plan Proposes a Bike Path Adjoining Richmond Pacific's Rail Yards Which is Not Feasible. The Plan proposes to develop a Class I bicycle route connecting Potrero Avenue and Marina Way South by passing alongside the Richmond Pacific Railroad Safeway and 23d St. rail yards. Map 4.1, Circulation Element at 4.53. This would presumably require a ten-foot or wider right of way. This is physically impossible now because there is no publicly owned land adjacent to the yards. Even if land were purchased for such a right of way, there is no way to accommodate the right of way on the future railroad bridge at the proposed Marina Bay Parkway underpass, because the railroad right of way directly abuts the concrete wall of the adjoining Pulte Homes development. The alignment of this path on Map 4.1 should therefore be realigned to follow Regatta Boulevard.

24-4

G. The Plan Should Show Truck Routes. The Plan states that there are 28 designated truck routes in the City. Circulation Element at 4.10, and proposes to develop alternative routes. Action CR4.B, Circulation Element at 4.43. A circulation map should be added to show the existing truck routes, just as all bicycle routes are shown on Circulation Map 4.1. Without such a map, readers cannot know the impact on truck transportation of this proposed action or Policy CR1.10, Circulation Element at 4.29, which would reduce Level of Service standards on various streets of regional significance in the city.

24-5

We appreciate the opportunity to comment on this third draft of the City's General Plan Update and look forward to continuing to work with the Planning Director, staff and the City Council through completion of the General Plan updating process.

Sincerely yours,



Paul Minault
Counsel for LRTC

Encl

Cc (w/encl):

Richard Mitchell, Planning Director
March 31, 2011
Page 5

Gary Levin, LRTC
Jim Cannon, LRTC
Bill Lindsay, City Manager
Katrinka Ruk, Council of Industries
Judy Morgan, Richmond Chamber of Commerce
Virginia Finlay, Chair, Planning Commission
Hector Rojas, Planning Department

ORDINANCE NO. 18-08 N.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND AMENDING SECTIONS 15.04.020, 15.04.320, AND 15.04.870 OF THE MUNICIPAL CODE AND AMENDING SECTIONS OF THE KNOX FREEWAY/CUTTING BOULEVARD CORRIDOR SPECIFIC PLAN RELATIVE TO THE INDUSTRIAL BUFFER ZONE

WHEREAS, in September 1991, the City of Richmond ("City") approved the Knox Freeway/Cutting Boulevard Corridor Specific Plan, Richmond, California, which sets forth an Industrial Transition/Buffer Zone bounded by Interstate 580, Harbour Way South, Hall Avenue and Marina Way South ("Transition Zone") ; and

WHEREAS, in August 1994, the City adopted a General Plan in which the Land Use Plan assigns the land use categories of Industrial/Office Flex and Light Industry to the Transition Zone; and

WHEREAS, in 1997, the City amended its Zoning Ordinance to designate portions of the Transition Zone an M-2, Light Industrial District, and portions of the Transition Zone an M-4, Marine Industrial District ; and

WHEREAS, on June 27, 2007, the City Council adopted Resolution 58-06 which directed the Planning and Building Services Director and staff to do the following:

1. Review and clearly define the boundaries of a Transition Zone within the Knox Freeway/Cutting Boulevard Corridor Specific Plan area,
2. Review the permitted and conditional uses within the Transition Zone,
3. Develop recommendations for modification of Transition Zone boundaries and for categorizing permitted, conditionally permitted, and prohibited uses within the Transition Zone,
4. Initiate a process for creating specific industrial area plan that will dovetail with the General Plan update and foster the retention of industrial uses in and near the Transition Zone,
5. Create a "good neighbor" policy between industry and City; and

WHEREAS, in working with the Council of Industries, the Planning and Building Services Department has determined that the following amendments to the Zoning Ordinance and Knox Freeway/Cutting Boulevard Corridor Specific Plan are appropriate clarifications to protect both industrial and residential development within the Marina Bay/Ford Peninsula area;

WHEREAS, the City Council finds:

1. The text amendments to be Catorgically Exempt pursuant to Section 15061 (b)(3) **Review for Exemption** The activity is covered by the general rule that the California Environmental Quality Act (CEQA) applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.
2. The location and type of use permitted under the Zoning Text revision are in accord with the objectives of the General Plan.
3. The amendment is in accordance with the objectives of the General Plan; will protect the health, safety, morals, comfort, convenience and general welfare; will promote orderly development of commercial and industrial areas; and will provide for more effective administration of the ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RICHMOND does ordain as follows:

SECTION 1. Section 15.04.020, **Definitions** of Chapter 15.04 Zoning Ordinance of the City of Richmond Municipal Code is hereby amended by adding alphabetically the following definitions (~~strikeout text~~ indicates deletion; underline text indicates insertion):

Adult Vocational School means an educational institute admitting only persons 16 years of age and older and providing a curriculum designed to develop the necessary skills for a specific job, industry or career.

Transition Zone, also known as the Buffer Zone, means the area of the Ford Peninsula bounded by I-580 on the north, Harbour Way South on the west, Marina Way South on the east and Hall Avenue on the south excluding the Marina Way Properties, LLC site (Exhibit A Transition/Buffer Zone).

SECTION 2. Section 15.04.320.020, **M-2-Light Industrial District** of Chapter 15.04 Zoning Ordinance of the City of Richmond Municipal is hereby amended by modifying the following in the list of Permitted Uses under Residential Uses:

Caretaker's residence (except in the Transition Zone),

SECTION 3. Section 15.04.320.020, **M-2-Light Industrial District** of Chapter 15.04 Zoning Ordinance of the City of Richmond Municipal is hereby amended by modifying the following in the list of Permitted Uses under Civic, Public and Semipublic Uses to read as follows:

Day care center (except in the Transition Zone)

SECTION 4. Section 15.04.320.040, **M-2-Light Industrial District** of Chapter 15.04 Zoning Ordinance of the City of Richmond Municipal is further amended by modifying the list of Conditional Uses under Residential Uses to read as follows:

Live/Work (except in the Transition Zone)

SECTION 5. Section 15.04.320.040, **M-2-Light Industrial District** of Chapter 15.04 Zoning Ordinance of the City of Richmond Municipal is further amended by modifying the list of Conditional Uses under Civic, Public and Semipublic Uses to read as follows:

Adult Vocational School

Colleges, universities, vocational schools, and educational facilities (except in the Transition Zone),

Correctional and rehabilitation facilities (except in the Transition Zone),

SECTION 6. Section 15.04.340.040, **M-4-Marine Industrial** of Chapter 15.04 Zoning Ordinance of the City of Richmond Municipal is hereby amended by modifying the following in the list of Conditional Uses under Residential Uses:

Caretaker's residence (except in the Transition Zone)

SECTION 7. Section 15.04.870.030, **Live/Work** of Chapter 15.04 Zoning Ordinance of the City of Richmond Municipal is hereby amended by modifying the Permitted Use paragraph to read as follows:

Live/work uses will be permitted in all commercial districts and in the M-1 district. Live/work is conditionally permitted in M-2 districts (except in the Transition Zone) and all applications for occupancy of a live/work building are subject to a conditional use permit. The conditional use permit procedures will be the same as indicated in Section 15.04.910. The owner of an existing or proposed live/work building or unit, or an authorized agent of the owner may apply for the conditional use permit. Live/work uses

are not allowed in M-3 and M-4 districts.

SECTION8. Establishes Section 15.04.530 Transition Zone Overlay District. The regulations contained within the Transition Zone Overlay District are intended to be applied to the Transition Zone (as defined at Section 15.04.020) to implement the following:

1. To implement policies of the General Plan and Knox Freeway Cutting Boulevard Corridor Specific Plan;
2. To guide development in order to avoid physically conflicting land uses, between residential land users, light industrial office-flex land users, and heavy industrial or marine port land users which may generate heavy truck traffic, noise, vibrations, glare, odors, dust, hazardous pollutants, and fumes; and,
3. To promote the public health, safety and welfare of all residents, occupants of property within the Transition Zone by improving the quality of their environment,

The Transition Zone Overlay District (TZOD) shall prohibit the following:

1. Residential use types of any kind, i.e. Single-family, duplex or multi-family, live-work, work-live, mixed use, caretaker residence, residential care facilities and dormitory facilities related to an educational use, including all forms of Transitional Housing or Transient Lodging i.e. overnight accommodation such as hotels and motels, bed and breakfast inns, and rooming and boarding houses; and any use in which people reside; and,

SECTION9. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

SECTION 10. Effective Date.

This Ordinance becomes effective 30 days after its final passage and adoption.

First reading at a regular meeting of the Council of the City of Richmond held July 29, 2008, and finally passed and adopted at a regular meeting thereof held September 2, 2008, by the following vote:

Ayes: Councilmembers Bates, Butt, Marquez, Rogers, Thurmond, and Mayor McLaughlin

Noes: None

Abstain: None

Absent: Councilmembers Lopez and Viramontes

DIANE HOLMES
Clerk of the City of Richmond

[SEAL]

Approved:

GAYLE McLAUGHLIN
Mayor

Approved as to Form:

LOUISE RENNE
City Attorney

State of California }
County of Contra Costa : ss.
City of Richmond

I certify that the foregoing is a true copy of Ordinance No. 18-08 N.S., finally passed and adopted by the Council of the City of Richmond at a meeting held on September 2, 2008.

LETTER 24: Paul Minault

Response to Comment 24-1

The comment suggests various revisions to the Land Use and Urban Design Element. This is not a comment on the adequacy of the analysis contained in the Draft EIR, but on information contained in the draft General Plan. The comment is forwarded to the decision-makers for their consideration.

Response to Comment 24-2

The comment suggests revisions to General Plan Circulation Element Policy CR1.10 regarding reducing the level of service for roadways designated as Routes of Regional Significance. The comment is forwarded to the decision-makers for their consideration. The comment also states that allowing the levels of service on roads to deteriorate to LOS “E” or “F” is unacceptable. Page 3.14-40 of the Draft EIR includes an analysis of level of service impacts and determined that the existing level of service would be exceeded on three roadways, with or without implementation of the draft General Plan. The Draft EIR Pages 3.14-40 through 3.14-44 of the Draft EIR include a number of proposed General Plan policies that would contribute to the mitigation of this impact. As previously discussed, the proposed General Plan language in Circulation Policy CR1.10 will be revised to keep LOS Standards consistent with the West County Action Plan for Routes of Regional Significance – 2009 Update.

Response to Comment 24-3

The comment suggests revisions to the Economic Development Element regarding permitting deadlines. This is not a comment on the adequacy of the analysis contained in the Draft EIR, but on information contained in the draft General Plan. The comment is forwarded to the decision-makers for their consideration.

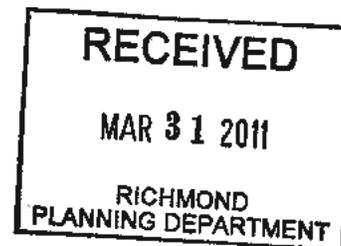
Response to Comment 24-4

The comment suggests revisions to the Circulation Element regarding Class I bicycle routes connecting Potrero Avenue and Marina Way South. The comment is forwarded to the decision-makers for their consideration. As discussed on page 3.14-50 of the Draft EIR, the proposed General Plan bicycle network is consistent with the Contra Costa Countywide Bicycle and Pedestrian Plan.

Response to Comment 24-5

The comment suggests revisions to the Circulation Element regarding a map showing truck routes. This is not a comment on the adequacy of the analysis contained in the Draft EIR, but on information contained in the draft General Plan. The comment is forwarded to the decision-makers for their consideration.

Murray Parkway Partners, LLC
P.O. Box 285
Tiburon, California 94920



March 31, 2011

Dear City Council and City Staff,

As landowners in the City of Richmond, CA, Murray Parkway Properties, LLC submit the following comments with respect to the Draft Environmental Impact Report ("DEIR") for the Richmond 2030 General Plan Update ("2030 General Plan") and the Draft General Plan ("DGP").

Murray Parkway Partners, LLP (MPP) owns 55.6 acres in the City of Richmond. Our land is located at the Northeast corner of the Richmond Parkway and Goodrick Ave. and is identified by the following APN parcel numbers: 408-100-028, 408-100-029, and 408-100-030 (Property). We have just completed our review of the Draft General Plan (DGP) and the Draft General Plan Environmental Impact Report (DEIR) released by the City of Richmond, CA last week.

Murray Parkway Partners, LLP strongly opposes the characterization of the Property in the DGP and DEIR. We also oppose the proposed changes to the zoning based on the inaccurate characterization of the Property in these two documents. "Change Area 12" in the DGP and DEIR deals with our Property. The description and definition used are grossly inaccurate. This is especially frustrating to us, because on several occasions we have supplied the City's staff with documentation to accurately document how to characterize the property. The conclusions and proposed zoning change that are based on your inaccurate characterization are what we find baffling as well as offensive.

25-1

Here are a few facts concerning the inclusion of our Property in Change Area 12.

All excerpts are from the DGP page 3.95 and DEIR page 2-25:

"Change Area 12: Northshore

The Northshore change area is located south of Point Pinole Regional Park, west of Parchester Village and between San Pablo Bay and the Richmond Parkway.

This bayfront area is representative of historic San Francisco baylands, with marshlands and uplands along the shoreline."

Our property which makes up the majority of the privately held property in Change Area 12 is not on the shoreline, nor close enough to the shore to be in the San Francisco Bay Conservation and Development Commission (BCDC) jurisdiction. Our land contains no marshlands. 7.3% of our property is Seasonal Wetlands (4.02 acres). The current and valid 2009 Army Corp of Engineers Wetland Delineation of our land was submitted to the City of Richmond Planning Department and the City Attorney's Office in 2010. A letter verifying our land is not in the jurisdiction of BCDC is attached to this letter as Exhibit A. The Delineation is attached to this letter as Exhibit B.

25-2

"Portions of the area have been identified as important habitat for endangered plant and wildlife species."

Our property does not contain nor support any special status species. These facts are contained in a report by Oiberding Environmental authored in late 2010. Copies of this report were submitted to the City of Richmond Planning Department and the City Attorney's Office in 2010. The Survey is attached to this letter as Exhibit B.

"The area lacks infrastructure and has long remained undeveloped with the exception of an outdoor shooting range."

Our land has a long history of industrial development. Mass Chemical Company purchased the land you describe as "undeveloped" in 1956 and began manufacturing phosphoric acid in 1958. The facility was subsequently owned by Victor Chemical Company through early 1960s, and then by Stauffer Chemical Company in 1963. In 1988, Rhone-Poulenc purchased the facility from Stauffer and subsequently transferred ownership to Rhodia. The manufacturing facility ceased operations in 1988 and was dismantled

25-3

between 1988 and 1989. During the facility's operative years, the land contained a phosphoric acid production unit, a chlorinated trisodium phosphate production unit, a polyphosphoric acid production unit.

This information was included in a letter from our attorney, Scott Jenny, delivered to the City Manager and copied to the Planning Director, the City Attorney, and assistant City Attorney in January of 2011.

"General Plan Land Use:

The Northshore area is envisioned as a natural open space restored and protected to continue its historic function as vital habitat and provide enhanced opportunities for public access and recreation."

25-4

As stated earlier, our land is not vital habitat and has a long history of industrial use. Also stated earlier, documentation of the history and special status species habitat were supplied to the City Staff during the development of the DGP and DEIR.

"The entire area would be designated Open Space/Parks and Recreation to achieve this vision.

Allowable uses would include publicly owned local and regional parks as well as privately owned recreational facilities such as golf courses and other recreational facilities. Small-scale recreation-supporting uses such as rental shops, bike repair facilities, small restaurants, interpretation centers and museums would complement adjacent open space areas."

Our land does not contain the "marshland", "vital habitat" and a "historic San Francisco Bay lands" that guide the "vision" of the proposed zoning change. The authors of the General Plan simply did not bother to review or chose to ignore the materials supplied by us to the City of Richmond Planning Department and City Attorney Office. If our land does not have the characteristics that begat the proposed zoning change then the changes must not be applied to it.

In conclusion, our land has a long history of industrial use. This use should remain. We purchased our land with the knowledge of its past industrial uses. We bought the land with the expectation that potential development of this land as an industrial site would continue. The proposed zoning designation is contrary to the expectations we had when we purchased the property. The DGP and DEIR must be changed to allow the historical industrial uses to continue on our land.

25-5

Sincerely,



Daniel B. Murray
Murray Parkway Partners, LLP

Exhibit A

George Condon

From: Andre Jadkowski [ajadkowski@anwest.com]
Sent: Wednesday, May 23, 2007 6:03 PM
To: George Condon
Cc: Mike Kelley; adavidson@anwest.com; vchu@anwest.com
Subject: Fwd: 5884 Goodrick 100' Offset
Attachments: 5884top1 100' Offset.pdf

George,

Attached is the Topo. with a 100 foot offset line from the Project Property Line. As you can see the lowest elevation within the 100 foot offset is above the BCDC ("five feet above mean sea level") start of the BCDC Shoreline Band (ie the BCDC Shoreline Band is measured from the approximate elevation 5 (NGVD) contour on the Bay shoreline or Marsh boundary.

This drawing, together with the Aerial (you already have) showing the Marsh limits shows that you are out of the Shoreline Band.

Andre

5/24/2007

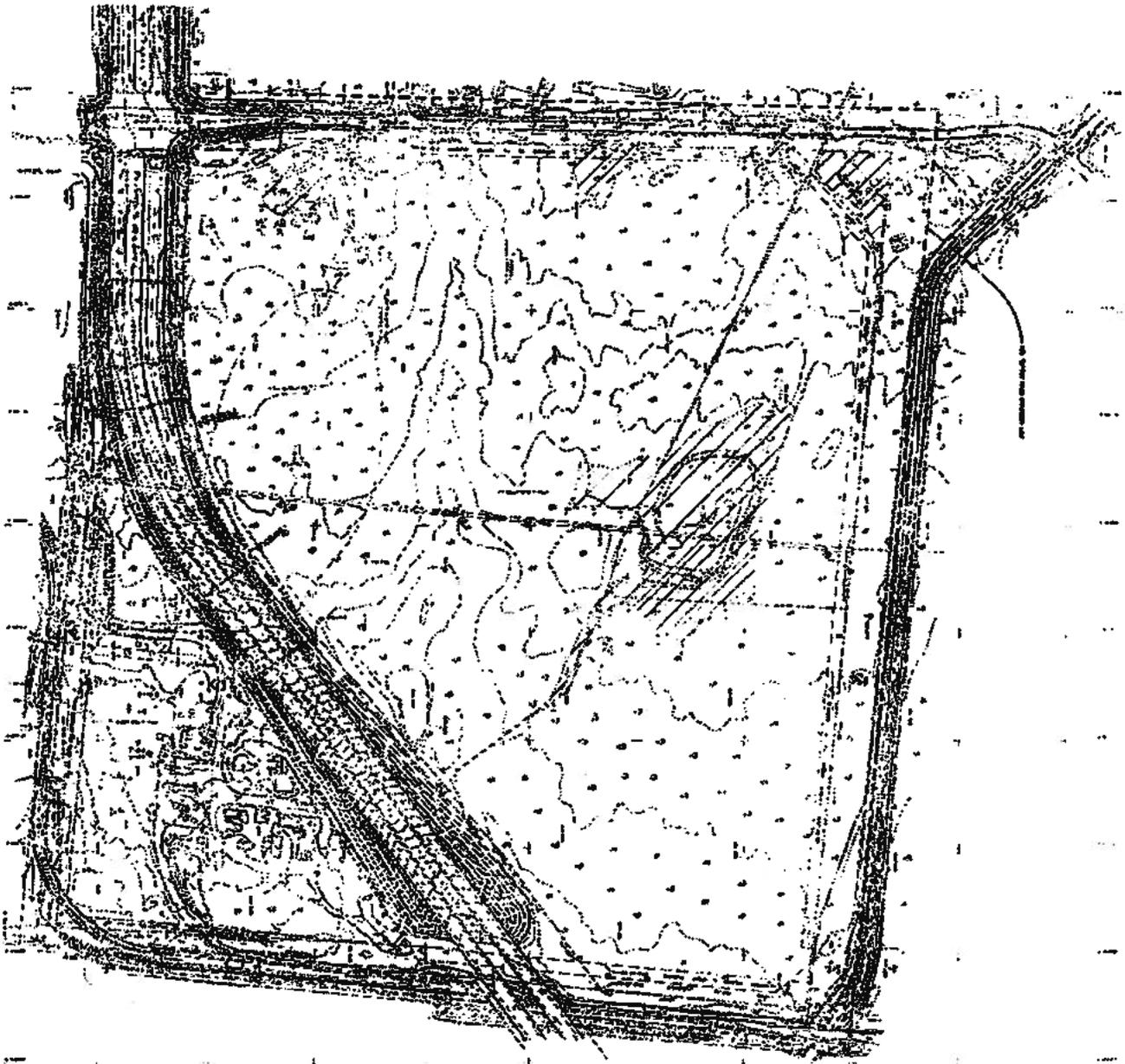




Exhibit B



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94103-1398

NOV 24 2009

Regulatory Division

SUBJECT: File Number 28051S

**Murray Parkway Properties
c/o Mr. Jeff Olberding
Olberding Environmental, Inc
193 Blue Ravine Road, Suite 165
Folsom, California 95630**

Dear Mr. Olberding:

This letter is written in response to your submittal of behalf of Murray Parkway Properties requesting confirmation of the extent of Corps of Engineers jurisdiction at their Goodrick Avenue Properties, located northeast of the intersection of Goodrick Avenue and Richmond Parkway in the City of Richmond, Contra Costa County, California.

Enclosed is a map labeled "Goodrick Avenue Property, City of Richmond, Contra Costa County, California", dated 03/20/09, showing the extent and location of Corps of Engineers jurisdiction. We have based this jurisdictional delineation on the current conditions on the site as verified during a site visit performed by our staff on March 12, 2009. A change in those conditions may also change the extent of our jurisdiction. This jurisdictional delineation will expire in five years from the date of this letter. However, if there has been a change in circumstances that affects the extent of Corps jurisdiction, a revision may be completed before that date.

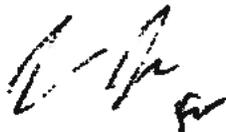
All proposed discharges of dredged or fill material into waters of the United States must be authorized by the Corps of Engineers pursuant to Section 404 of the Clean Water Act (CWA) (33 U.S.C. Section 1344). Waters of the United States generally include tidal waters, lakes, ponds, rivers, streams (including intermittent streams), and wetlands.

Your proposed activity may be within our jurisdiction and a permit may be required for your project. Application for Corps authorization should be made to this office. To avoid delays it is essential that you enter the file number at the top of this letter into Item No. 1 of the application. The application must include plans showing the location, extent and character of the proposed activity, prepared in accordance with the requirements contained in this pamphlet. You should note, in planning your project, that upon receipt of a properly completed application and plans, it may be necessary to advertise the proposed work by issuing a Public Notice for a period of 30 days.

You are advised that the Corps has established an Administrative Appeal Process, as described in 33 C.F.R. Part 331 (65 Fed. Reg. 16,486; March 28, 2000), and outlined in the enclosed flowchart and "Notification of Administrative Appeal Options, Process, and Request for Appeal" form (NAO-RFA). If you do not intend to accept the approved jurisdictional determination, you may elect to provide new information to the District Engineer for reconsideration or submit a completed NAO-RFA form to the Division Engineer to initiate the appeal process. You will relinquish all rights to appeal, unless the Corps receives new information or a completed NAO-RFA form within sixty (60) days of the date of the NAO-RFA.

Should you have any questions regarding this matter, please call Bob Smith of our Regulatory Division at (415) 503-6792. Please address all correspondence to the Regulatory Division and refer to the File Number at the head of this letter. If you would like to provide comments on our permit review process, please complete the Customer Survey Form available online at <http://per2.nwp.usace.army.mil/survey.html>.

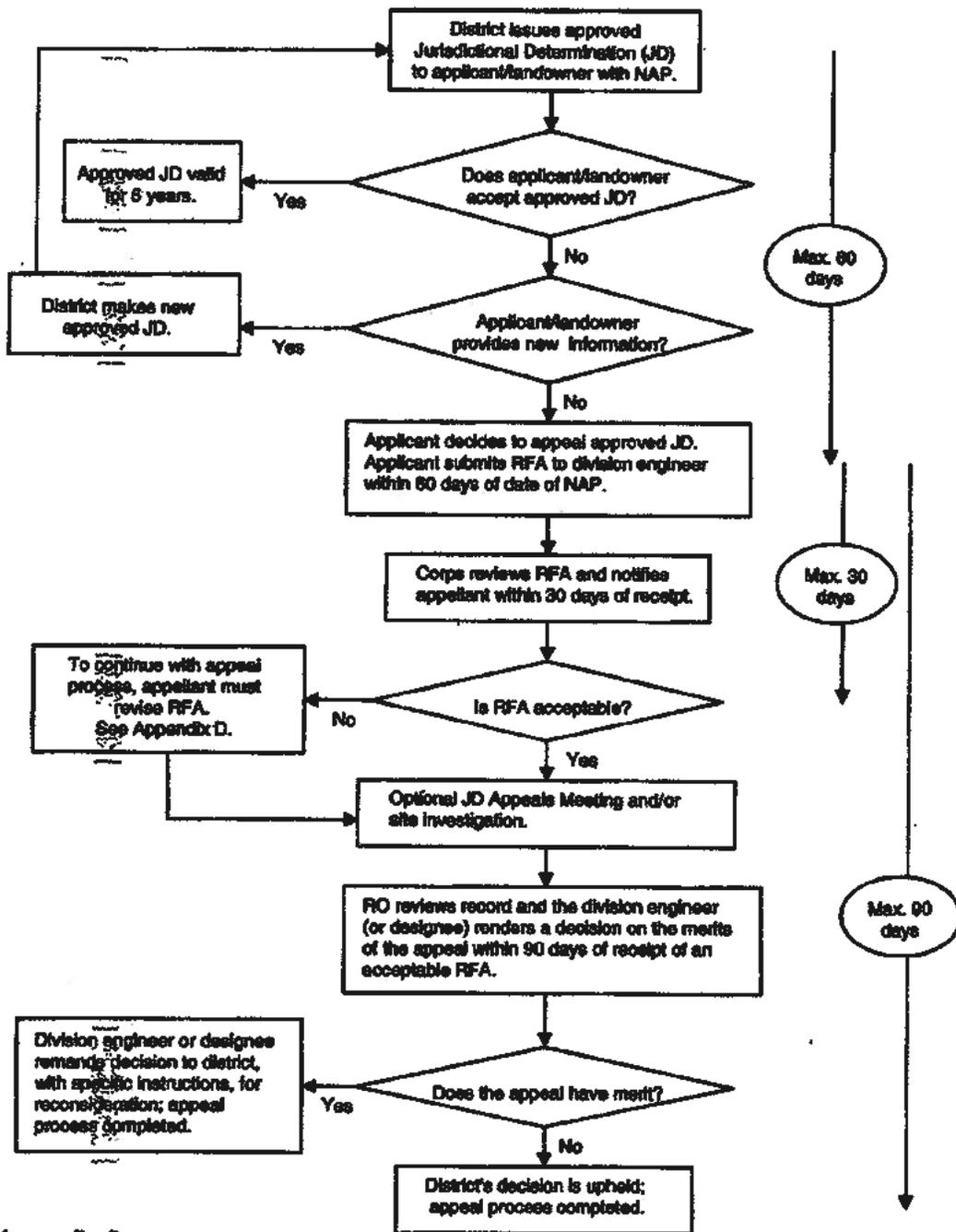
Sincerely,



Jane M. Hicks
Chief, Regulatory Division

Enclosures

Administrative Appeal Process for Approved Jurisdictional Determinations



Appendix C



LEGEND

- LEGISLATIVE WATER
- ADMINISTRATIVE WATER
- UNDESIGNATED WETLAND
- DESIGNATED WETLAND
- DUNEY BOUNDARY
- V.L.A. BOUNDARY
- PARTIAL POLE

FEATURE	ACRES
Wetland 1	1.071
Wetland 2	2.287
Wetland 3	1.778
Wetland 4	0.000
Wetland 5	0.000
Wetland 6	0.000
Wetland 7	0.000
Wetland 8	0.000
Wetland 9	0.000
Wetland 10	0.000

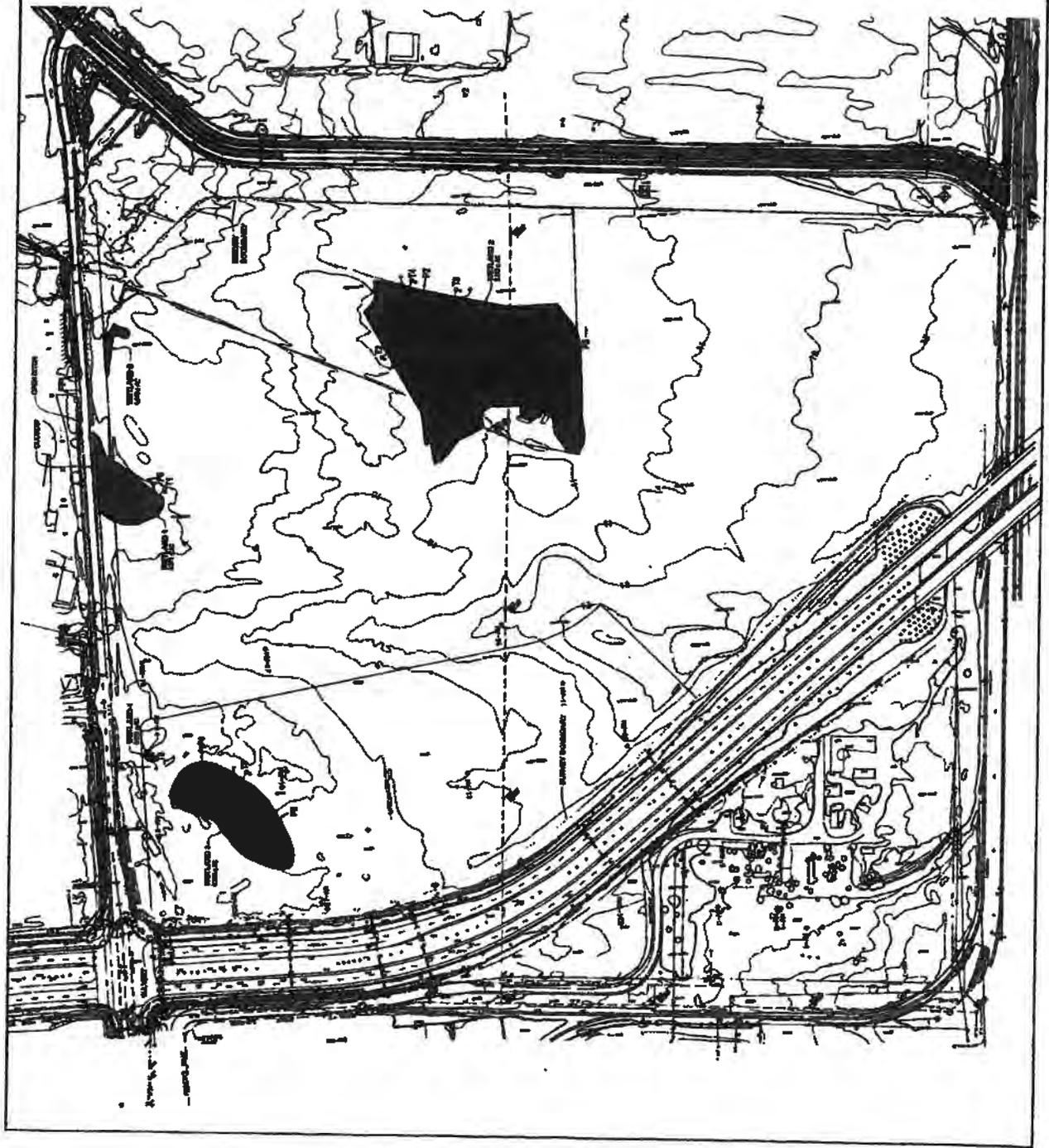


Exhibit C

OLBERDING ENVIRONMENTAL, INC.
Wetland Regulation and Permitting

December 2, 2010

Mr. Dan Murray
228 Beach Road
Belvedere, CA 94920

SUBJECT: Pre-Construction Survey for California Red-Legged Frog, Salt-Marsh Harvest Mouse, and Other Special-Status Plants and Wildlife at the Goodrick Avenue Property, Richmond, Contra Costa County, California.

Dear Mr. Murray:

Olberding Environmental, Inc. (Olberding Environmental) has conducted a pre-construction survey to detect the presence or absence of the federally threatened California red-legged frog (CRLF) (*Rana draytonii*), the state and federally endangered salt-marsh harvest mouse (SMHM) (*Reithrodontomys raviventris*), and the state and federally threatened Alameda whipsnake (*Masticophis lateralis euryxanthus*) at the Goodrick Avenue Property (Property), located in Richmond, Contra Costa County, California.

In addition, surveys were also conducted to assess the on-site habitat for the potential of occurrence of special-status ground-nesting raptor species that may be in the area such as the burrowing owl (*Athene cunicularia*), northern harrier (*Circus cyaneus*), and short-eared owl (*Asio flammeus*). The survey also included the assessment of potential habitat for the state threatened California black rail (*Laterallus jamaicensis coturniculus*) and the state and federally endangered California clapper rail (*Rallus longirostris obsoletus*). Finally, habitats were assessed for their potential suitability to contain special-status plant species, namely the federally threatened and state endangered pallid manzanita (*Arctostaphylos pallida*), federally endangered soft bird's-beak (*Cordylanthus mollis* ssp. *mollis*), CNPS List 1B species Loma Prieta hoita (*Hoita strobilina*), and the federally threatened and state endangered Santa Cruz tarplant (*Holocarpha macradenia*).

On December 1, 2010, Olberding Environmental conducted a presence/absence survey and habitat assessment for the special-status species mentioned above within the boundaries of the Property (Figure 1). In addition, a California Natural Diversity Database (CNDDB) search and review was conducted for the Property within the Richmond 7.5 minute quadrangle and eight surrounding quadrangles. During the survey, the biologist from Olberding Environmental conducted transect surveys spaced 50 feet apart throughout the entire length of the Property. A visual survey was performed on the properties surrounding the Property. Visual signs of these special-status species were noted, as well as secondary signs of the presence of burrowing owls and other raptors around small mammal burrows and any possible perch locations in the area. In addition, the amount of burrows and any other cracks in the soil was noted in order to determine the amount of potential refuge areas for CRLF. Finally, the on-site and adjacent habitats were assessed in order to determine the potential for any of these special-status species to occur on the Property. These survey methods, along with the CNDDB search and review, were employed in order to obtain a final conclusion as to the potential presence or absence of each of these special-status species to occur on the site.

PROPERTY DESCRIPTION

The Property is located approximately 800 feet southeast of the eastern shoreline of San Pablo Bay, northwest of Richmond Parkway, west of the Union Pacific Railroad tracks, north of Rheem Creek and south of Point Pinole Regional Park, in the City of Richmond, Contra Costa County, California. Access to the Property is attained by taking the Richmond Parkway exit west from Interstate-80. From Richmond Parkway, turn north onto Goodrick Avenue. The Property is situated at the north end of Goodrick Avenue.

The Property consists primarily of upland grassland habitats. The Property is contained between Goodrick Avenue to the west and Richmond Parkway to the east. Rheem Creek, a constructed flood control channel is located approximately 100 feet north of the northern Property boundary, while San Pablo is located several hundred feet to the east and is separated from the Property by Goodrick Avenue and the Breumer Property. The Richmond Rod and Gun Club is adjacent to the west of the site and is located along San Pablo Bay. The entire site is on a low-lying alluvial plain. Most of the area is level, although localized shallow depressions occur throughout the site.

Along the western edge of the Property, there is an extension of Goodrick Avenue, which separates the tidal wetlands from the site. Although signs of recent disturbance on the Property are mainly limited to disking for fire protection, it is assumed that all or most of the Property has been subject to intensive disturbance in the past. The majority of the site has been historically used as a pasture for cattle and horses. Overall, the vegetative cover on the site has been highly disturbed from past grazing. Dominant vegetation on the site includes wild oat (*Avena fatua*), black mustard (*brassica nigra*), curly dock (*rumex crispus*), and coyote brush (*Baccharis pilularis*).

SPECIAL-STATUS SPECIES HABITATS

The CRLF is found in lowlands, foothill woodland and grasslands, near marshes, lakes, ponds or other water sources. These amphibians require dense shrubby or emergent vegetation closely associated with deep still or slow moving water. Generally these frogs favor intermittent streams with water at least two and a half feet deep and where the shoreline has relatively intact emergent or shoreline vegetation. CRLF are known to take refuge upland in small mammal burrows during periods of high water flow.

The SMHM resides only in the saline emergent wetlands of the greater San Francisco Bay and its tributaries. The primary habitat for this mouse is pickleweed. These small mice build loosely organized nests in vegetation above ground and do not burrow. SMHM also require higher areas within their range where they may escape from high water. Some movement of individuals from pickleweed marsh to higher grassland occurs in the spring and summer, or otherwise as plant cover affords escape from predators.

The Alameda whipsnake is typically found in chaparral, northern coastal sage scrub, and coastal sage habitats, usually with rock outcrops; however annual grasslands, oak woodlands, and oak savannah serve as habitat during the breeding season. Egg-laying occurs near scrub habitat on ungrazed grasslands with scattered shrub cover.

California black rails inhabit saltwater, brackish, and freshwater marshes at very low elevations. They prefer coastal areas for tidal salt marshes bordering larger bays dominated by dense pickleweed with an open structure below. A dense canopy that provides optimal cover is essential for survival. The California clapper rail occurs in the San Francisco Bay Area where saltwater and brackish marshes are present that are traversed by tidal sloughs and dominated by pickleweed and cordgrass.

Burrowing owls generally require open annual grassland habitats in which to nest, but can be found on abandoned lots, roads, airports, and other urban areas. In addition to being open, habitats must meet three other requirements to be suitable for the burrowing owl. First, existing burrows must be present (or suitable substitutes). Next, elevated perches or low vegetation, generally free of visual obstruction, must be relatively close. Finally, there must be a high percentage of bare ground or ground covered with very low vegetation. Northern harriers require open annual grassland habitats and prefer dense ground vegetation or grasses in which to build nests. The short-eared owl forages in grasslands, tundra, and marshes with an abundant small mammal population. Nests are constructed on the ground, usually in a dry depression with concealing vegetation.

The pallid manzanita can be found in broadleafed upland forest, closed-cone coniferous forest, chaparral, cismontane woodland, uplifted marine terraces, and coastal scrub from 656 to 1,460 feet in elevation in siliceous shale, thin chert, sandy, or gravelly soils. It blooms from December to March. Soft bird's-beak is a saprophyte upon host plants such as salt grass and pickleweed. The blooming period for this plant is between April and July. This plant unusually is found where the high to highest flood water occurs. The Loma Prieta hoita can be found in openings in chaparral or oak woodland, cismontane or riparian woodland, serpentine, or related Franciscan-formation substrata, and descending in gravelly creekbeds draining from the mountains into the Santa Clara Valley. This legume blooms from May to October. The Santa Cruz tarplant is found in coastal prairie and valley and foothill grassland habitats in sandy clay soils, often amongst non-native plants. Yellow flowers bloom between June and October.

RESULTS

CNDDB maps of the special-status species listed in this report are included as Figures 2 and 3. The species displayed on these maps have occurred within a five mile radius of the site within the last ten years. Figure 4 has been included to display the USFWS designated critical habitat for the Alameda whipsnake occurring within five miles of the site. Below is a list of the most recent occurrences of these species within the vicinity of the site:

- CRLF was last observed in 2000 (Occurrence #407), roughly 5.8 miles northeast of the Property.
- SMFM was last observed in 2001 (Occurrence #73), roughly 0.7 miles northeast of the Property.
- Several occurrences of the Alameda whipsnake have been made within the last ten years within the vicinity of the site. Due to the sensitive nature of this species, its location information has been suppressed. Critical habitat for this species occurs less than five miles to the southeast of the Property (Figure 4).
- The California black rail was last observed in 2008 (Occurrence #33), roughly 0.7 miles northeast of the Property.
- The California clapper rail was last observed in 2000 (Occurrence #83), roughly 2.2 miles northeast of the Property.
- The burrowing owl was last observed in 2004 (Occurrence #1160), roughly 5.0 miles southeast of the Property.
- No recent occurrences of the northern harrier or short-eared owl have been made within the vicinity of the Property.
- The pallid manzanita was last observed in 2004 (Occurrence #1), roughly 5.3 miles east of the Property.
- The soft bird's-beak was last observed in 2006 (Occurrence #1), roughly 1.9 miles northeast of the Property.
- The Loma Prieta hoita was last observed in 2004 (Occurrence #15), roughly 3.5 miles southeast of the Property.

- The Santa Cruz tarplant was last observed in 2009 (Occurrence #28), roughly 4.3 miles southeast of the Property.

Observations made during the initial survey conducted on December 1, 2010, indicate that none of the special-status species occur on the Property. Based on the habitat assessment of the Property, the following conclusions were made: CRLF is presumed absent from the site based on the lack of suitable habitat and lack of recent occurrences. No deep pools occur on the site and the Property lacks suitable refuge habitat in the form of small mammal burrows. No pickleweed occurs on the Property for the SMHM, but does occur within 350 feet of the Property to the west. Habitat does not occur on the Property for the Alameda whipsnake. In addition, development and highways to the east of the Property act as obstacles to migration for this species. Habitat for the California black rail and California clapper rail occur within the shoreline vegetation to the west of the Property. However, both of these species are unlikely to occur within the Property boundaries due to lack of suitable habitats. The lack of small mammal burrows and lack of recent occurrences precludes the use of the Property to the burrowing owl. Regular maintenance and grazing of the site precludes the use of the Property for the northern harrier and short-eared owl. None of the special-status plant species are expected to occur on the site based on the lack of suitable habitat, soil conditions, and regular grazing disturbance.

No special status species currently occur on the Property. In summary, while several special-status species have the potential to occur adjacent to the Property along the shoreline to the west, the majority of these species are unlikely to occur on the Property based on lack of suitable habitats (tidal marsh and pickleweed), lack of recent occurrences, grazing disturbance, and migratory obstacles (Goodrick Avenue and Rheem Creek). Primary habitat for SMHM is absent on the Property. Grasslands act as refuge habitat for SMHM during high tide events, usually during the spring and summer seasons. However, the Property is located over 350 feet from pickleweed know to support this species and is separated from this habitat type by Goodrick Avenue. It is highly unlikely that SMHM would venture this distance from the cover of the shoreline band of pickleweed. Therefore, SMHM are assumed to be absent from the Property.

If you have any questions, please feel free to contact me at (925) 866-2111.

Sincerely,



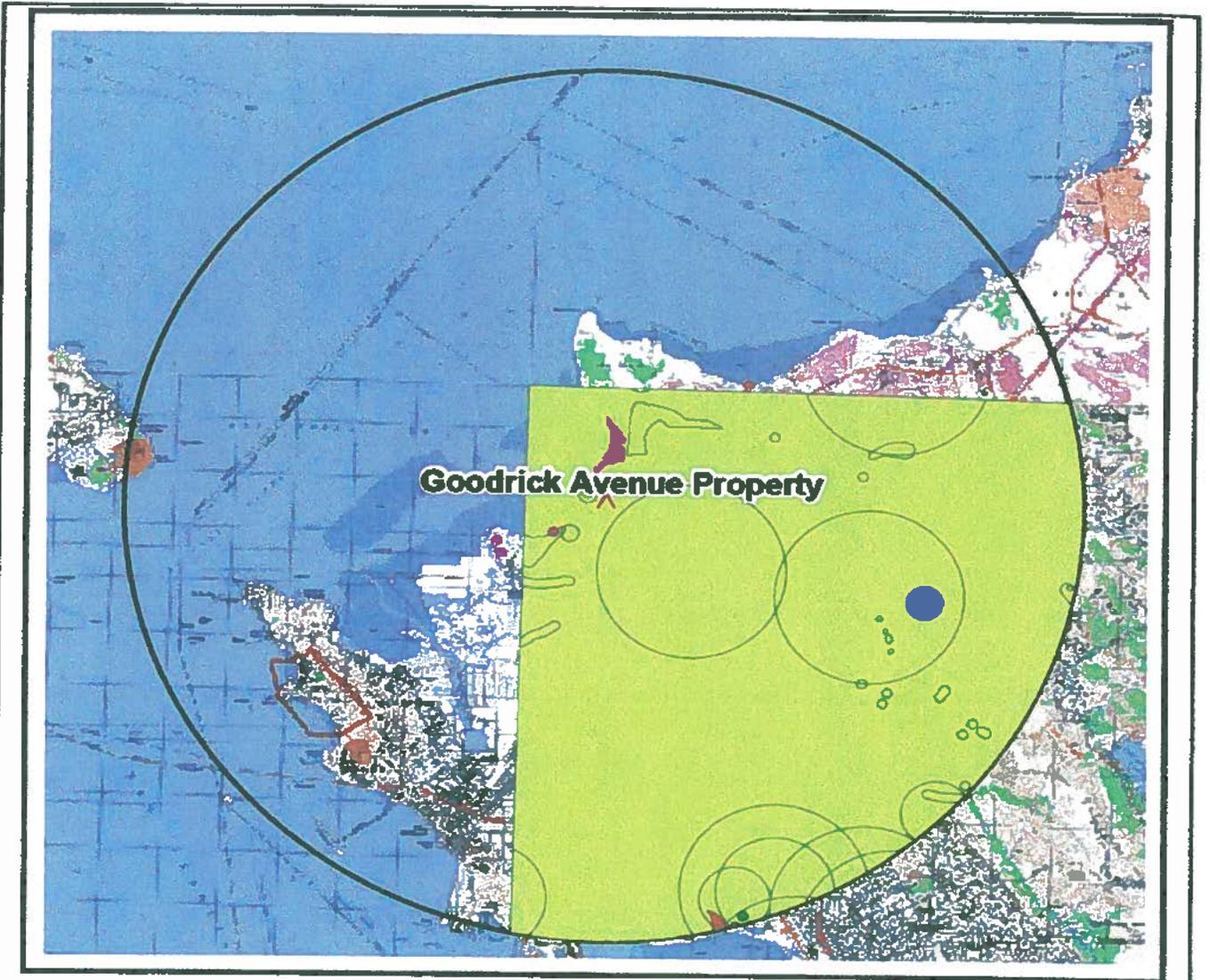
Jeff Olberding
Wetland Regulatory Scientist



Figure 1
Aerial Photograph of the Goodrick Avenue Survey Area
Contra Costa County, California

Olberding Environmental, Inc.
3170 Crow Canyon Place, Suite 260
San Ramon, California 94583
Phone: (925) 866-2111

This document is not intended for detail design work.

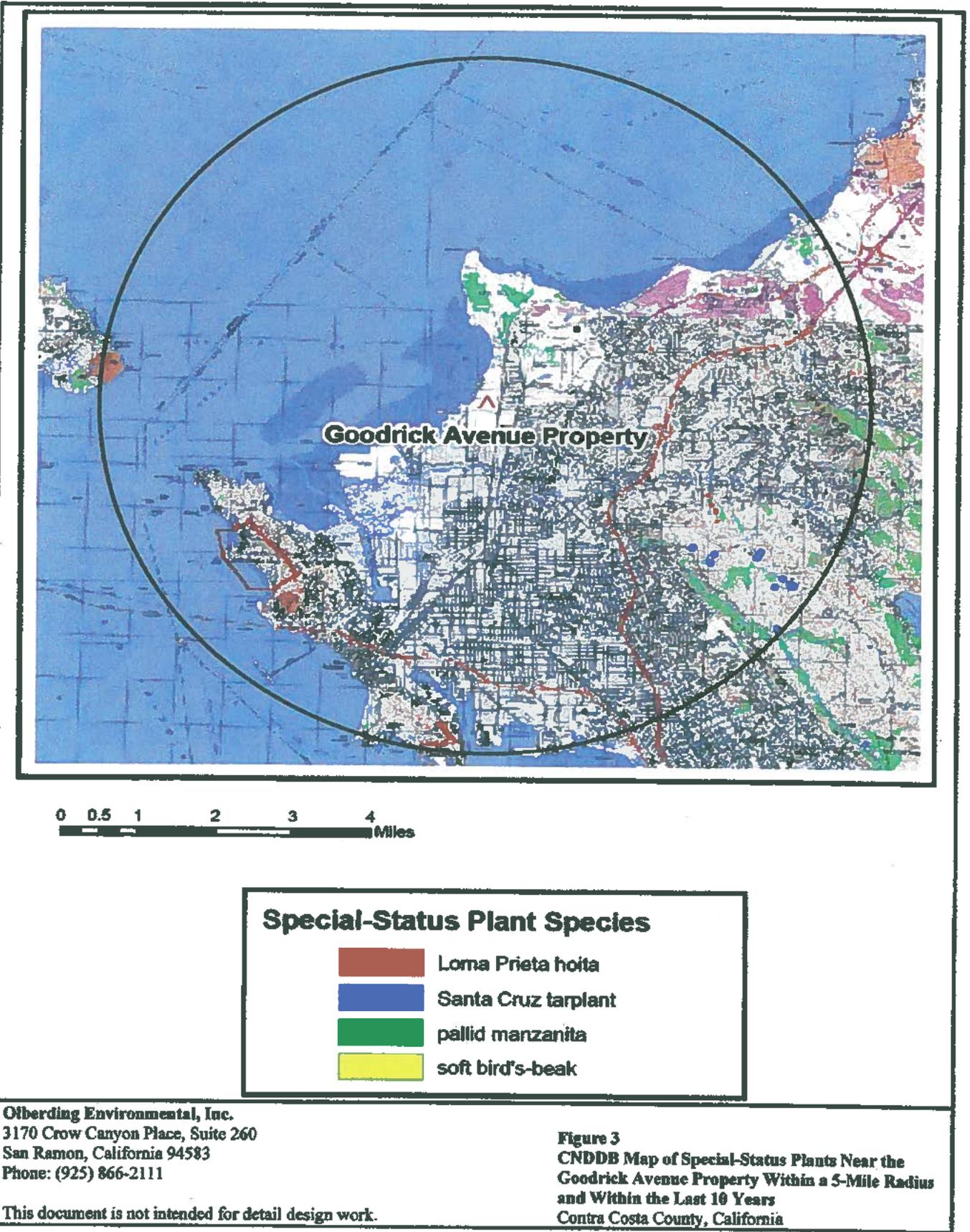


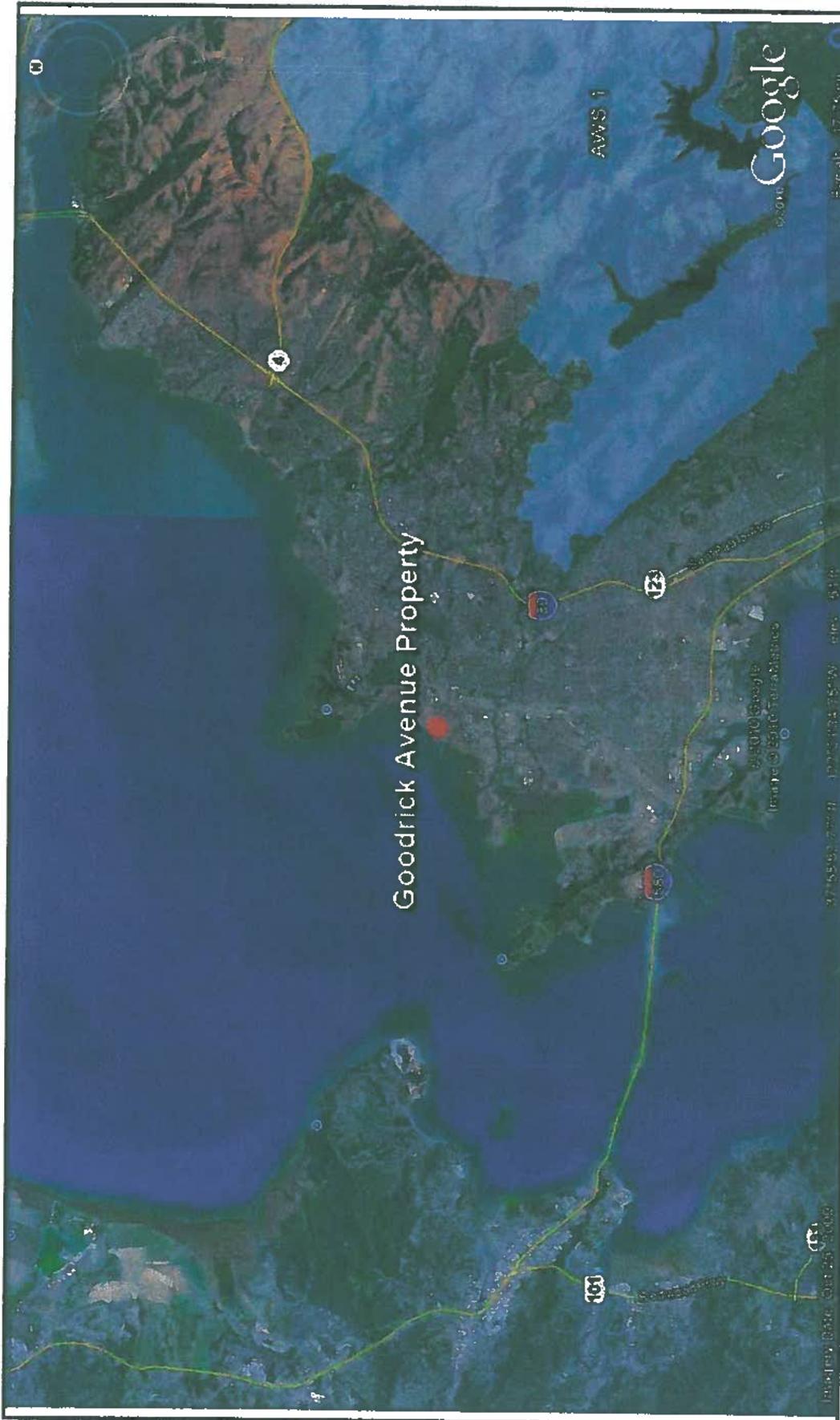
Special-Status Animals	
 Alameda whipsnake	 California clapper rail
 Bridges' coast range shoulderband	 burrowing owl
 California black rail	 salt-marsh harvest mouse

Olberding Environmental, Inc.
3170 Crow Canyon Place, Suite 260
San Ramon, California 94583
Phone: (925) 866-2111

Figure 2
CNDDDB Map of Special-Status Animals Near the
Goodrick Avenue Property Within a 5-Mile Radius
and Within the Last 10 Years
Contra Costa County, California

This document is not intended for detail design work.





Oilberding Environmental, Inc.
3170 Crow Canyon Place, Suite 260
San Ramon, California 94583
Phone: (925) 866-2111

Figure 4
USFWS Designated Critical Habitat Map for the Alameda
Whipsnake Near the Goodrick Avenue Property
Contra Costa County, California

This document is not intended for detail design work.



Photo 1. View of the upland grassland habitat on the site looking east from the northwest corner of the Property.



Photo 2. View of the pickleweed dominated habitat along the eastern shoreline of San Pablo Bay. There is a distinct difference from the habitat found on the Goodrick Avenue Property.

Olberding Environmental, Inc.

Goodrick Avenue Property – December 2010

Acknowledgement of receipt of Comment Letter

This document is to acknowledge the receipt by the Planning Department of the City of Richmond California of a comment letter described below.

I _____ have received the comments to The City of Richmond, California's General Plan Draft Environmental Impact Report.

The comments I have received are in a letter from Richmond landowners Murray Parkway Properties, LLC. I acknowledge receipt of the two exhibits as well.

This acknowledges that the comments were received within the timeframe given to the public for comment on The City of Richmond, California's General Plan Draft Environmental Impact Report.

Signature:

Time:

Date:

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Signature:

Time:

Date:

LETTER 25: Murray Parkway Partners, Daniel Murray**Response to Comment 25-1**

The comment states that the draft General Plan and the Draft EIR inaccurately describe Change Area 12: Northshore and notes its objection to the proposed land use designations for this area. The comment specifically notes the characterization of Change Area 12: Northshore as "...baylands, with marshlands and uplands along the shoreline" (Draft EIR page 2-25). While the area south of Richmond Parkway is developed with industrial uses, the change area north of Richmond Parkway is currently undeveloped, with the exception of the Richmond Rod and Gun Club and limited infrastructure. The area north of Richmond Parkway can be generally characterized as containing marshland and upland habitat types (specifically, Coastal Prairie habitat). It should be noted, however, that this characterization is intended to be general and does not imply the presence or absence of any particular species, including special-status species. The previous biological studies attached to the comment letter notwithstanding, the analysis contained in the Draft EIR conservatively assumes that sensitive species could be present anywhere within the City where suitable habitat types are present, and would require additional studies at the time any development is proposed to determine whether sensitive species are actually present.

Response to Comment 25-2

The comment states that according to a report prepared for a portion of Change Area 12: Northshore, there are no marshes on the commenter's portion of the change area, nor are there special status plants or animals. The comment is noted; however, this information does not materially affect the analysis in the Draft EIR, because if sensitive resources are not present on the site, the potential effect of the project would be less than disclosed in the Draft EIR.

Response to Comment 25-3

The comment notes the property's history of industrial development and background information about Change Area 12: Northshore. This is not a comment on the adequacy of the analysis contained in the Draft EIR. The comment is noted without response.

Response to Comment 25-4

The comment states that because the land does not support any special status plants or wildlife and does not contain marshlands, it does not have the characteristics suitable for an open space land use designation. As noted above, if sensitive resources are not present on the site, the potential effect of the project would be less than disclosed in the Draft EIR.

Response to Comment 25-5

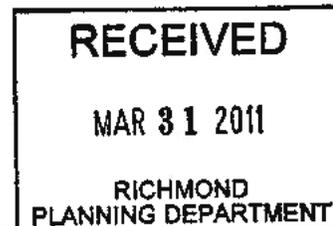
The comment summarizes topics previously discussed in the letter. See Responses to Comments 25-1 through 25-4.

Richmond Annex Neighborhood Council

Founded 1974 PO Box 264, Richmond, California 94808 * Neighbors Helping Neighbors *

March 31, 2011

Hector Rojas, Associate Planner
 Richmond Planning Department
 450 Civic Center Plaza
 Richmond, CA 94804



Project Title: City of Richmond Draft Environmental Impact Report for the Richmond General Plan Update

Dear Mr. Rojas:

The following are Richmond Annex Neighborhood Council's comments and suggestions on the above-titled project:

I. Level of Service:

While most of the direct traffic impact of local land use intensification will fall upon Regional Routes such as San Pablo Ave., Central Ave., Cutting Blvd., Carlson Blvd., Macdonald Ave., is it equally important that such activity not burden the basic route system and thus avoid deteriorated level of service for these thoroughfares and its signalized intersections.

The City should make a committed effort to reduce traffic congestion and improve the efficiency and safety of its local street system, to monitor traffic conditions on a systematic basis and develop programs to maintain reasonable level of service standards. Richmond is a "mature" city with a lot of growth potential. Incremental growth along San Pablo Ave., Central Ave., Macdonald Ave., Cutting Blvd., and Carlson Blvd. can potentially burden these regional routes and cause traffic to filter into our local collector and residential streets if not kept at a reasonable level of service (i.e. LOS C or D).

26-1

The operation of transportation facilities (freeways, roadways, intersections) is classified in 6 "level-of-service" categories. Level of service (LOS) is defined in terms of a letter grade ranging from A to F. LOS A is the best level of operation, representing free flow conditions, and LOS F is the worst level of operation, representing excessive delays, long vehicle queues, and generally intolerable conditions. The City of Richmond should establish a citywide achievement of LOS D or better conditions. This is consistent with El Cerrito, Berkeley (all thoroughfares except downtown Shattuck), and Oakland (all thoroughfares except downtown Oakland). Moving from LOS D to LOS E & F on all thoroughfares would be a significant impact! Moving from LOS A or B to LOS E on all local residential streets would also be a significant impact!

Most major thoroughfares and intersections in Richmond currently operate at LOS C or better. Most City operated intersections and residential streets (excluding the major thoroughfares) operate at LOS A - C. Portions of San Pablo Avenue in Richmond, and the Central Avenue Interchange can be as bad as LOS E or F conditions when an incident on I-80 results in a higher-than-normal diversion of regional traffic.

The proposed LOS Standards for the New Richmond General Plan would allow the level of service to deteriorate to LOS E for Central Ave., Carlson Blvd., San Pablo Dam Rd., Richmond Parkway, I-580, and would "maintain a LOS Standard of E," as stated in the General Plan. The proposal would also allow the level of service to deteriorate to LOS F for San Pablo Ave., 23rd St., Cutting Blvd., Macdonald Ave., and would "maintain a LOS Standard of F," as stated in General Plan. Moreover, the proposed LOS Standards for all of our local collector and residential streets would allow the level of service to deteriorate to LOS E and would "maintain a LOS Standard of E," as stated in the General Plan. The use of the word "maintain" implies that traffic flow would not have to be mitigated until the LOS Standards have reached "E" or "F." LOS E means congested. LOS F means gridlock, forced or breakdown flow. Both "E" and "F" are unacceptable levels of service.

TRAFFIC IMPROVEMENTS FOR NEW DEVELOPMENT: Improvements to the circulation system consisting of arterial roadways, intersections, traffic signal improvements and projects needed to accommodate new development need to be addressed. The City should impose Major Thoroughfare Impact Fees to maintain a LOS D, which may require the payment of a fee as condition of approval of a final map, or as a condition of issuing a building permit for purposes of helping to defray the actual or estimated cost of improving major roadways, traffic signals and other modifications. Such fees, if imposed either as a condition of subdivision approval or issuance of a building permit should be considered to mitigate on or off-site project specific traffic impacts for a new development, particularly a large development.

26-2

RANC recommendation: Thoroughfares. The City should not allow our major thoroughfares to deteriorate to LOS E or F, but rather establish a citywide achievement goal of LOS D (a maximum congestion threshold). Require mitigation for significant level of service impacts, if streets and/or intersections deteriorate to LOS E or F.

RANC recommendation: Residential Streets. Again, the City should not allow our collector and local residential streets to deteriorate to LOS E, but rather establish a citywide achievement goal of LOS B. Currently, the vast majority of local residential streets operate at LOS A - B. To discourage cut-through traffic on residential streets, maintain the existing system of collector streets. Where necessary, employ traffic management techniques to minimize the speed of vehicles traveling through residential neighborhoods.

26-2
(cont.)

The changing of the City's Traffic Level of Service from D to E & F and also the increased potential for development in the EIR, especially in the high growth scenario, did not seem to adequately elaborate the impacts that congestion would have on the livability, desirability of the neighborhoods, the industrial communities. Particularly, it needed to discuss the impacts, not only of the health impacts, but the desirability of living and doing business and the economic impacts it would have on property values. If product deliveries are hampered by congestion, people cannot move out reasonably, public transportation cannot move as well, how does this make for a better community.

26-3

In summary, the LOS E & F Standards being proposed citywide would negatively affect the livability of our residential neighborhoods and impact our businesses. These proposed LOS standards were not adequately discussed in the EIR. While the Pedestrian and Bicycle Plans are beneficial, there needs to be more solutions to prevent the level of service from deteriorating.

II. Land Use and Economic Development for Southern Shoreline Gateway Area:

A significant aspect of the EIR regarding potentially negative impacts of proposed mixture of "high-intensity" R & D, commercial retail, residential uses, such single-family homes, multi units, townhouses, livework, including potential human congregation in vicinity of environmental sensitive wetland areas, are not specifically addressed in Richmond's EIR of Potentially Significant Environmental Effects and should be included in the preparation of Richmond's EIR.

The scope of the EIR should also take into account potential impacts as a result of increased traffic circulation, parking, and noise from this type of proposed "Mixed Use Neighborhood along the Southern Shoreline" (Goal ED8, Policy ED8.1; including other aspects of the South Shoreline Plan, as mentioned in the General Plan). The Annex supports R & D and job development in this area, but has reservations about over-development of the South Shoreline.

a) The proposed mixture of "high-intensity" light industrial and commercial uses, restaurants, banks, recreational and health clubs, including small-lot single-family homes, multi-family, townhouse and live-work projects would overwhelm the adjoining wetlands, marshlands that are highly sensitive and extremely fragile wildlife areas. Over-development on the South Shoreline will affect bird sanctuaries in area. The Stauffer/Zeneca site in particular was never intended for recreational use or high-intensity commercial retail activity, due to the fact that it adjoins or is nearby sensitive wetlands, i.e. Stege Marsh, Meeker Slough, Baxter Creek, and other environmentally sensitive wetland areas. The EIR should also address the effects of direct lighting along the shoreline, wetland, and marshland areas.

26-4

b) We would support research & development uses within reason, but housing along the South Shoreline area should be prohibited and commercial retail development should be limited. The impacts on industrial and R&D developments with any adjacent residential housing mix or childcare centers should be discussed, implications of public health risks, safeguards, discussions of subcommittee group's findings of toxic waste levels in the vicinity, the impacts of residential adjacent to environmentally sensitive marshlands, wetlands, creeks, etc.

26-5

c) The Bayview & Regatta on & off ramps already have traffic issues (very limited minor roadways) and could not handle a major South Shoreline development. Any major South Shoreline development will highly affect Carlson Blvd. and local traffic.

26-6

d) Any UC, State, Federal development on the South Shoreline will have no height restrictions and destroy the aesthetics of the marshlands and wetlands, and the phenomenal Bay view. This was not adequately discussed in the GP or the EIR.

26-7

e) Project is exempt from State and local taxes and the economic impacts on the City were not discussed. Also, the residential developments, name recognition with the City, revenue to expenditures, etc, need to be discussed. Alternatives for other developments could be introduced.

26-8

f) It is extremely important that the Stauffer Chemical/Zeneca site and adjacent Richmond Field Station are properly cleaned up of toxic wastes and not merely capped, before any development.

26-9

g) Lack of adequate storm drains and sewer capacity need to be addressed before development can occur. This particular area is known to flood, due to the fact that it's old, deteriorated, at sea level and on the shoreline. It is also prone to sea rise.

26-10

h) The capacity of the existing sewer pump plant at Pt Isabel is at maximum, it has frequent illegal overflow discharge during the winter storm months. There is known flooding in the southwest area. The impacts on future development in the Stege or Richmond Municipal Sewer systems need to be addressed in the EIR. The impacts on development, growth, funding sources to improve the storm water and sewer capacity needs to be also identified and explained in the GP. How

26-11

is the City monitoring the capacity of individual water and sewage lines and how will its information be used in the determination of large developments (more than 1 % increase)? Discussion should also describe the infrastructure costs and how to pay for improved infrastructure capacity.

↑ 26-11 (cont.)

- i) Parking, noise, and scale & intensity of commercial retail, residential, and other development adjacent to wetland areas creates a conflict and land use compatibility issues between the proposed Mixed Use Neighborhood Development along the Southern Shoreline and the wetland areas. Intrusions into wetland areas from residential areas and non-residential areas, such as noise, air pollution, and particularly human foot traffic and congregation would be unavoidable. This area has always been off limits to human traffic, congregation, and disturbance. There are resident birds and the area is in the path of the Pacific Fly Way, where migrating birds stop over to rest and nest. The Draft EIR needs to acknowledge and discuss these land use incompatibilities, environmental, and safety issues throughout the document in each category.

26-12

III. EIR Alternative Model

Why did the City decide to use an EIR Alternative Model with development way above the ABAG's projection for our fair city? The past 20 years of growth never came close to ABAG projections. Were the assumptions for development to over-inflate and would provide overriding consideration to obviate any future environmental considerations to development (particularly traffic, congestion, improvements, infrastructure, livability over development)? Who would this help more: the developer, special interests, or the city residents/taxpayers? The Alternative Model needs to be changed with assumptions that are more reasonable development expectations.

26-13

As stated policy, the Annex Council strongly believes in working with our City toward goals common to the best interests of all. It is surely preferable for both City and residents (and for developers) to have a consistent, relevant and technically workable General Plan, which, as its stated policy proclaims, will sustain already established wetland areas, including residential neighborhoods and commercial areas throughout the City.

Please keep us advised as to the status of this project. We appreciate having the opportunity to review and work with you on the draft General Plan.

Sincerely,

Mary Selva, President
Richmond Annex Neighborhood Council

Attachment: Short Photo Presentation of Stege Marsh, Meeker Slough, Baxter Creek areas

Stege Marsh

Stege Marsh is a wetlands area in the South Shoreline area of Richmond Annex. The marsh is the delta at the mouth of Baxter Creek also known as Stege Creek, especially at this location. That creek drains from a watershed extending into the El Cerrito Hills. The marsh is opposite Meeker Slough from where Meeker Slough Creek drains into Campus Bay a baylet of the Richmond Inner Harbor of the San Francisco Bay. The site is polluted from UC Berkeley Field Station and a former Zeneca and Stauffer Chemical site who manufactured sulfuric acid, fertilizers, and pesticides. Facility operations and on-site disposal of spent pyrite ore have resulted in pollution of groundwater and the adjacent Stege Marsh with high levels of metals, pesticides, VOCs, and acidic ground water. Half of Stege Marsh has undergone a cleanup. The other half is awaiting cleanup.

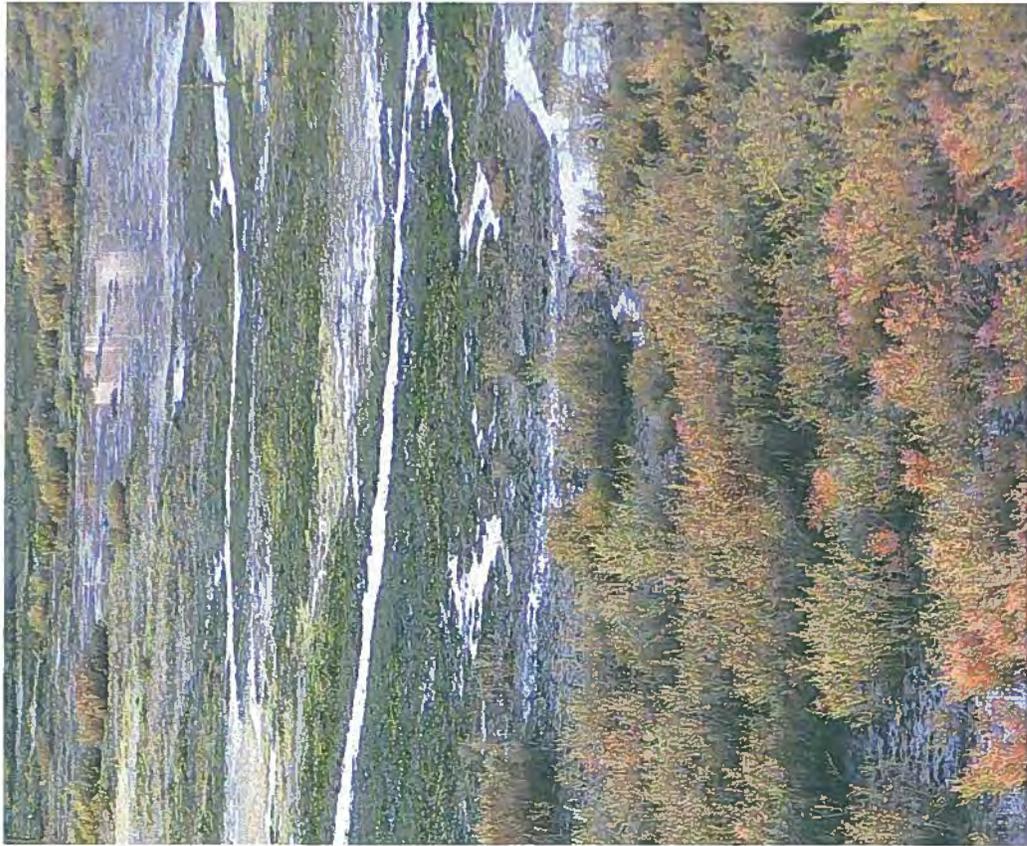


Historical Development of Tidal Channels
Western Stege Marsh Restoration Project - Year 5 Monitoring

FIGURE 18



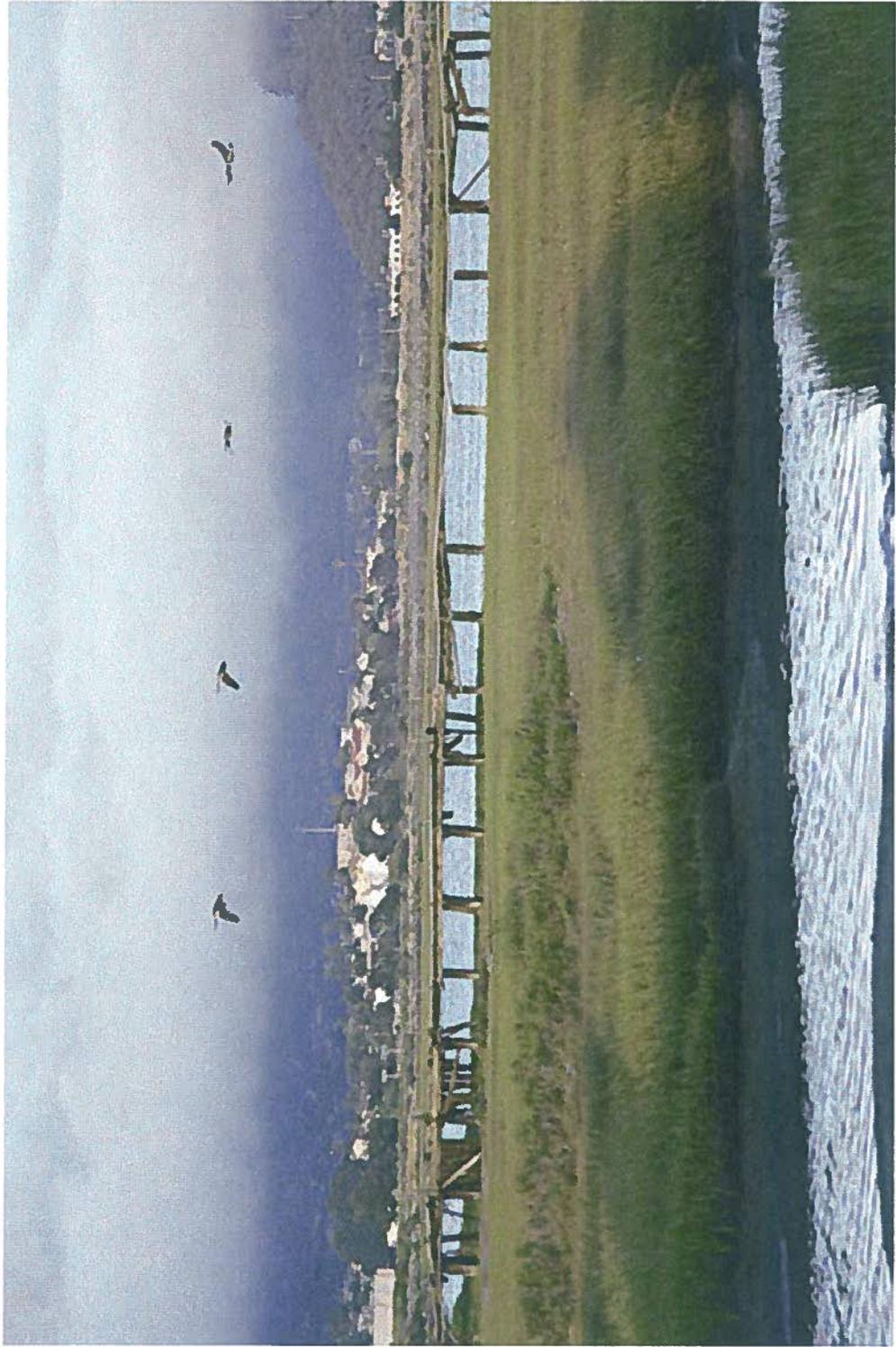
Stege Marsh is 20 acres. Cleanup and remediation of wetland habitat of East Stege Marsh, 10 acres, costing Cherokee-Simeon developers \$12 million, has been completed and approved by the Department of Toxic Substances Control. The other 10 acres, not owned by the developers, have not been cleaned up. The Community Advisory Group (CAG) is requesting that the Regional Water Quality Control Board add Stege Marsh to the EPA's 303(d) list to undergo a timely cleanup plan.



Meeker Slough

Meeker Slough is a slough in the Richmond South Shoreline area formed by a creek of the same name and drains into the Richmond Inner Harbor, part of San Francisco Bay. The area lies between the former Zeneca and Stauffer Chemical site and Marina Bay in the Richmond Annex. The slough is across from Stege Marsh from which Baxter Creek drains across from a small bay they both form known as Campus Bay. The site is currently undergoing wetlands restoration.

Looking across Meeker Slough towards El Cerrito and Albany. The yellow shadows of the setting sun lit the grasses and the old wharf with a soft richness.



White-tailed kite is spotted at Meeker Slough, January 2008



Clapper Rail sitting at Meeker Slough, February 2008



Meeker Slough
California Clapper Rail sitting, adult with two chicks, August 2008.



Looking down Meeker Slough, southward, where it meanders into the marsh along Richmond's South Shoreline. In that fog is Emeryville.



**Looking due south with Meeker Slough turning left in front of us.
Geese winging east.**



View from Stege Marsh looking out towards Meeker Slough. Brooks Island in the background where over 200 pelicans are roosting, June 2008.



Richmond South Shoreline

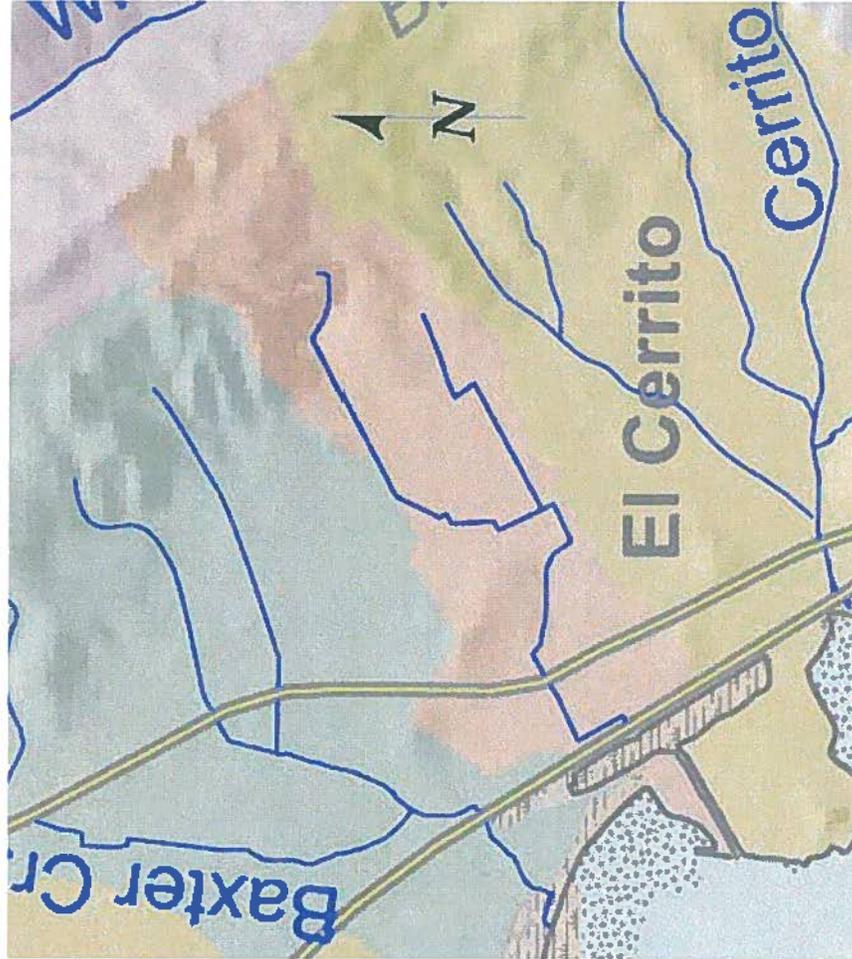
Looking southeast you can see Albany hill and the apartments against the foot of the hill with the USPS blue building in the foreground. Berkeley is in the fog to the right of center with Albany and El Cerrito coming towards us.



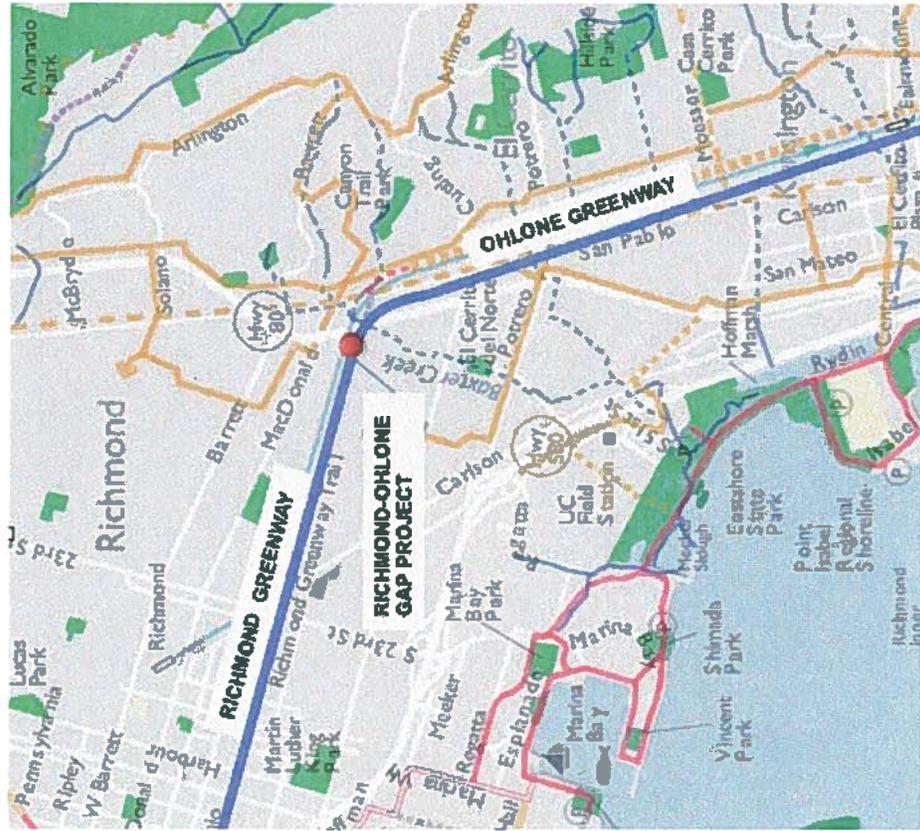
Baxter Creek

Baxter Creek or **Stege Creek** and archaically **Bishop Creek** is a three-branch creek in Richmond and El Cerrito, forming the Baxter Creek watershed. The creek has three sources and flows from the El Cerrito Hills to Stege Marsh and the San Francisco Bay. The creek has been largely culverted over the years since the Rancho San Pablo and the subdivided Bishop Ranch, then known as Bishop Creek, were developed urbanly. This caused the residents to miss the creek as it disappeared under the asphalt and the Friends of Baxter Creek formed. This group has aided in the restoration of several portions of the creek at Baxter Creek Park, Poinsett Park, and Booker T. Anderson Park to a more natural riparian condition.

Fluvius Innominatus Watershed shows Baxter Creek, which flows from the El Cerrito Hills to Richmond's South Shoreline



Specific map shows route of Baxter Creek



Baxter Creek during heavy rains, traveling through Richmond South Shoreline, industrial area.



Mouth of Baxter Creek



LETTER 26: Richmond Annex Neighborhood Council, Mary Selva**Response to Comment 26-1**

The comment states that the draft General Plan would allow the level of service (LOS) on select streets to deteriorate to level “E” or “F” and these levels are unacceptable. This is not a comment on the adequacy of the analysis contained in the Draft EIR, but on information contained in the draft General Plan. While the current LOS standards used by the City are derived from the West County Action Plan for Routes of Regional Significance – 2009 Update, the proposed General Plan, particularly through Policy CR1.9 and Action CR1.N, makes clear that the City’s circulation system should be managed, going forward, to ensure balanced access to all modes of travel, and that vehicle capacity and LOS would not be the sole criteria by which physical and operational improvements are planned and implemented.

Response to Comment 26-2

The comment suggests the City impose Major Thoroughfare Impact Fees to maintain a LOS D on thoroughfares. This is not a comment on the adequacy of the analysis contained in the Draft EIR, but on information contained in the draft General Plan. The comment is forwarded to the decision-makers for their consideration.

Response to Comment 26-3

The comment states that the Draft EIR does not adequately discuss the impacts that could be caused by changing the LOS from “D” to “E” and “F.” Page 3.14-40 of the Draft EIR includes an analysis of level of service impacts and concludes that because the existing level of service would be exceeded in some portions of the City, this would be a significant impact. Regarding the potential for effects on the livability and desirability of neighborhoods, while “livability and desirability” are not quantifiable standards that can be applied in an EIR, on pages 3.14-40 through 3.14-44 the Draft EIR includes a number of proposed General Plan policies intended to promote livability by providing balanced modes of travel and equitable access (General Plan Circulation Policy CR1.), expanded and affordable public transit (General Plan Circulation Policy CR1.4), safe and convenient walking and biking (General Plan Circulation Policy CR1.5), and the place-based circulation approach (General Plan Circulation Policy CR1.8).

Response to Comment 26-4

The comment states that the proposed land uses of the Southern Shoreline area will lead to development that will overwhelm the wetlands and sensitive wildlife present in that area. The designation of an area for a particular use does not mean that the area can be developed without an evaluation for impacts on sensitive biological resources. Development would only occur after project-specific environmental review, which could include an opportunity for public review and comment. The future project-specific review would examine the details of the project to determine the extent to which policies and mitigation measures of the General Plan EIR would reduce impacts of the project. If the project-level analysis determines there would be a significant impact, the City would

impose additional mitigation measures, to the greatest extent feasible, to reduce the project effects. The Draft EIR is a program-level EIR and, therefore, does not speculate on what type of development may occur in the future. If Southern Shoreline development is proposed in the future, it will be reviewed by the City and, based on the details and specifics of the project, the City will determine the appropriate environmental review. The City will implement mitigation measures and require compliance with applicable existing regulations to protect biological resources.

Response to Comment 26-5

The comment states that industrial and research and development uses in the Southern Shoreline area could expose adjacent residential developments and sensitive wildlife areas to hazardous materials. Any development proposed in the Southern Shoreline area would be reviewed by the City and, based on the details and specifics of the project the City will determine the appropriate environmental review. As part of the future environmental process, the City will require compliance with applicable existing regulations to reduce impacts associated with hazardous materials and other mitigation, as required.

Response to Comment 26-6

The comment states that the Bayview and Regatta on- and off-ramps are currently congested and could not accommodate a major Southern Shoreline development. As discussed above, any future development proposed in the Southern Shoreline area would be reviewed by the City to determine if the project would result in physical environmental effects. Among the issues that would be addressed in future environmental review would be traffic conditions. If future development would result in traffic impacts, the City would require mitigation to reduce effects, if feasible measures are available. However, the Draft EIR (Impact 3.14-1, pages 3.14-40 through 3.14-45) found that traffic associated with the General Plan could result in development that exceeds traffic standards, and because the City cannot guarantee that measures would be available to reduce traffic impacts, this was found to be significant and unavoidable.

Response to Comment 26-7

The comment states that state, specifically University of California, and federal development in the Southern Shoreline area would have no height restrictions and would destroy the aesthetics of the wetlands and bay. It is true that that any development on property owned by the public entities noted in the comment would not be subject to local land use regulations and it would not be subject to any height restrictions contained in the proposed General Plan. It should be noted, however, that development by state or federal agencies would not be attributable to the General Plan. Therefore, such development need not be addressed as a consequence of the project.

Response to Comment 26-8

The comment states that the “project” is exempt from state and local taxes and economic impacts on the City were not discussed. It is not clear to which project the comment is referring. The General Plan itself is not a development project that is subject to taxes. If the comment is referring to a state

or federal project, the comment is correct that these would not directly increase local tax revenue. The comment also states residential developments, name recognition with the City, and revenue expenditures need to be discussed. However, the General Plan does not include approvals of any specific development project and would not grant entitlements for any development. Lastly, economic impacts are not subject to CEQA review.

Response to Comment 26-9

The comment states that the Stauffer/Zeneca site and adjacent Richmond Field station must be properly cleaned up of toxic wastes before any development. If development of those sites is proposed in the future, the developer will be required to clean up the site to levels appropriate for the site's intended use before construction would occur. The City requires those who apply to develop potentially contaminated sites to retain a Registered Environmental Assessor (i.e., a professional environmental scientist or engineer registered as an Registered Environmental Assessor in California) to inspect the subject site for the presence of hazardous materials and wastes. The investigation and cleanup of a contaminated site would be subject to federal and State laws and regulations that are administered at the local level. Please see pages 3.8-21 through 3.8-23 of the Draft EIR for a discussion of hazardous site cleanup.

Response to Comment 26-10

The comment states that there is a lack of adequate stormdrains and sewer capacity in the Southern Shoreline area which needs to be addressed. While the Draft EIR, as a program EIR, does not include project-level analysis of each location where utilities infrastructure may not be able to accommodate additional growth, the Draft EIR does acknowledge the need for improvements as development occurs. As discussed on Draft EIR page 3.13-19, implementation of the proposed General Plan policies and the City's revised development fees would ensure facilities are funded as development occurs. However, because the precise plans for any improvements are currently not known, potential impacts and mitigation measures cannot be determined at this time. Therefore, the EIR determined this would remain a significant and unavoidable impact.

Response to Comment 26-11

The comment states that impacts on future development in the Stege or Richmond Municipal Sewer systems need to be addressed in the Draft EIR and that funding sources to improve the systems needs to be discussed in the draft General Plan. As discussed in Response to Comment 26-10, the City would require payment of development fees as development occurs to ensure that adequate capacity at the treatment plants is provided. However, because the General Plan does not include specific plans for wastewater improvements, potential impacts and mitigation measures related to the treatment facilities cannot be determined at this time. Therefore, the EIR determined this would be a significant and unavoidable impact.

Response to Comment 26-12

The comment states that residential development along the Southern Shoreline and the wetlands areas would create intrusions such as noise, air pollution, and foot traffic and that the Draft EIR needs to discuss these land use incompatibilities. As previously discussed, the Draft EIR is a program-level EIR and therefore does not speculate on what type of development may occur in the future. Without details of future projects, such as the type and intensity of land use and the location relative to sensitive receptors or sensitive habitats, the level of analysis requested in the comment cannot be performed without considerable speculation. The Draft EIR identifies General Plan policies and program-level mitigation measures that would reduce the potential for the incompatibilities noted in the comment. Please see Draft EIR sections 3.1 Land Use Consistency and Compatibility; 3.3 Air Quality; 3.4 Biological Resources; 3.10 Noise; and 3.15 Visual Resources.

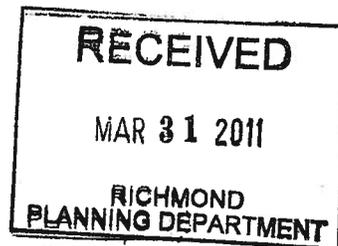
Response to Comment 26-13

The comment states that the Draft EIR evaluates development alternatives above ABAG's projections for the City and that more reasonable assumptions need to be analyzed. The Draft EIR analyzes a scenario with the City absorbing 13 percent of the growth in Contra Costa County by 2030, which is higher than the historic growth rate. Alternative 1 assumes different land uses with a lower intensity of development in the City that absorbs a lower share of the County's growth, 8.39 percent of the population growth in Contra Costa County. Between 1980 and 2005, Richmond's share of regional population growth was 8.39 percent, so this alternative represents no change from the past growth trend. Alternative 2 assumes that Richmond would capture 10.19 percent of population growth for the County over the next 20 years. This growth rate is higher than the historic growth rate in the region (8.39 percent) and is a moderate growth rate. Please see Chapter 5.0, Alternatives to the Proposed Project for a further discussion of alternatives.

Richmond Development Company, LLC

March 31, 2011

Mayor Gayle McLaughlin
Vice Mayor Tom Butt
Councilmember Corky Booze
Councilmember Jovanka Beckles
Councilmember Jim Rogers
Councilmember Nat Bates
Councilmember Jeff Ritterman
City of Richmond
450 Civic Center Plaza
Richmond, CA 94804



Re: Proposed New General Plan and Draft Environmental Impact Report

Dear Mayor McLaughlin, Vice Mayor Butt and Honorable City Councilmembers:

The Richmond Development Company, of which Jerry Overaa and I are the members, is the owner of eight improved industrial lots in Richmond located at the intersection of the Richmond Parkway and Goodrick Avenue. Under the proposed new General Plan, our land would be downzoned to open space. We are not, as you might imagine, happy about that proposal. In order for you to understand and appreciate our opposition and the reasons why you should not adopt that portion of the proposed new General Plan, let me tell you a story:

Horace "Stoney" Stonework and I were serving on the Economic Development Committee of the Richmond Chamber of Commerce in 1998, when we heard a presentation by a representative of the Richmond Redevelopment Agency about an imminent Request for Proposals to build a commercial center on Wright Avenue near Marina Bay. The Redevelopment Agency's decision matrix for evaluating proposals gave very little preference to local developers and contractors, so the Chamber's Committee convinced the Agency to change its matrix to give a much greater preference for local participants. Stoney and I then decided that there should be a truly local developer who could both take advantage of those preferences and develop quality projects for our home town.

Stoney lived in Richmond, then, and owned two local McDonald's restaurants, including the one at 23rd and Macdonald in Richmond. I was born and raised in Richmond, educated at the local public schools (Kennedy High School, class of '76), lived in Richmond and I was the second generation of my family to practice law in Richmond. Stoney and I were, therefore, about as local as it was possible to be.

27-1

March 31, 2011
Page 2 of 5

We feared that economic development was going to leave Richmond behind, because developers were afraid to bring quality projects to Richmond, perhaps because of Richmond's reputation as a hotbed of crime, perhaps because of Richmond's reputation for NIMBYism, perhaps because of Richmond's reputation for dysfunctional City government. But we knew better. We knew that Richmond could be home to beautiful new buildings housing businesses bringing jobs, tax revenues and an entirely new image. So, we formed the Richmond Development Company to pursue opportunities for economic development here in Richmond.

Were our motives entirely altruistic? Of course not; we expected to make a profit, but we knew even then that it would have been much easier to make a profit from real estate development in other cities.

We put together our development team for the Redevelopment Agency's RFP, and we approached Gerald "Jerry" Overaa of Overaa Construction. Overaa Construction had been in Richmond for almost 100 years, and Jerry had been born and raised here (Harry Ells High School, Class of '60-something). We were delighted, then, when Jerry said that he not only wanted to be part of our team for this proposal, but that he wanted to be part of the Richmond Development Company.

The Richmond Development Company was unsuccessful in our bid for the Marina Bay project, but we proceeded to work on a number of other development projects in Richmond. We took an old industrial building and rehabilitated it and turned it into industrial condominiums. In partnership with a partnership run by Vice Mayor Tom Butt, we built two new office and retail buildings in Point Richmond and rehabilitated three older buildings.

Our biggest venture, however, was the purchase of the Freethy Industrial Park on the Richmond Parkway. Elmar Freethy was a contractor and developer in Richmond who, in the 1960's, subdivided a plot of industrial land and developed it for industrial users. The Freethy Industrial Park was fully improved, with public streets, sewers and utilities, and on it was built three industrial buildings. When the Richmond Parkway came along, the Freethy Industrial Park was cut in two, and two of the three buildings were demolished. In 2000, we bought eight lots of the portion of the Freethy Industrial Park to the north of the Parkway, and the other eight lots were purchased by Joe and Heidi Shekou, experienced real estate investors and developers with most of their projects having been in Marin County.

2000 was an exciting year, because the dot-com boom was driving up rents, driving many established businesses out of Silicon Valley, San Francisco, Oakland and Berkeley, and those businesses were giving serious consideration to locating in Richmond. For a few months, I was fielding several calls per week from businesses and real estate brokers who were interesting in relocating to Richmond and who were soliciting proposals for us to build buildings for them on our land. Unfortunately, construction costs were also high,

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then, so there was some sticker shock even though Richmond was, in other respects, less expensive. Before we could actually close any deals, though, the dot-com boom became the dot-bomb, and demand for industrial real estate fell through the floor.

Well, changes in market conditions is the risk one takes when one invests in real estate, and we knew that someday demand would return, so we settled down to wait.

Then, along came the boom in demand for residential real estate. We still would have preferred to develop industrial or commercial projects that would generate more jobs and tax revenues, but it would also help Richmond to bring in more tax-paying residents, so we began to consider developing a residential subdivision on our property. We knew from the beginning that we didn't want just to plop a bunch of houses on our property, because that wouldn't do the property justice. The property is quite beautiful, right next to a salt-water marsh with views of Mount Tamalpais, but it is also not close to any other residential properties, nor to amenities such as grocery stores. We, therefore, designed a self-contained live-work community, where every residential unit was designed to accommodate someone working at home, and where the entire village was designed to overcome the disadvantages of working at home: isolation and lack of resources. The design was intended to be one of the first to receive LEED certification as an environmentally sensitive community.

Before we could actually develop this project, we would have had to change the zoning. We had started the application process, but we were frustrated at every turn by the Planning Department, which refused to acknowledge that our application was complete, no matter how often we submitted the additional material requested. Eventually, we were told to wait for Richmond's new General Plan.

We knew going into the General Plan process that there were people in Richmond who believe that all of the land on the northern shoreline ought to be retained as open space and not developed. We disagree with them. We believe that responsible development of some of the shoreline has many benefits for all of the shoreline, such as opening up public access, creating gateways to adjacent parks, and generating the tax revenues to pay for the adjacent parks. Also, if Richmond is ever going to attract the kinds of business that have historically avoided Richmond, it would have to be because of the opportunity to locate at an extraordinary location, like on the shoreline.

We respect that there are those who have different priorities and disagree with us, but we never expected that the City would attempt to steal our property from us.

The Draft General Plan designates our property as "Open Space, Parks and Recreation." Under that designation, there would be no viable economic use for the property. This designation is a not-very-subtle attempt to transform our property into a park without having the City or the Regional Park District incur the costs of buying it from us at its value as industrial land.

27-1
(cont.)

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The insult is compounded by the falsehoods set forth in the Draft General Plan, in which it is stated that, "The area lacks infrastructure and has long remained undeveloped with the exception of an outdoor shooting range," and "The Northshore area is envisioned as a natural open space restored and protected to continue its historic function as vital habitat..."

Excuse me, what happened to the subdivision, the public streets, the sewers, the utilities and the industrial users that were there until forced out of the way of the Parkway? Since when did heavy industrial use become an historical precursor to "vital habitat?"

The Draft Environmental Impact Report for the Draft General Plan is even worse, for not only does it repeat the falsehoods about the area's history and level of improvement, but it fails to study the impacts of the downzoning of the property. What will happen when industrial development takes place in Hayward or Tracy or Fairfield, instead of Richmond, because there's no place in Richmond to put it as nice as would be our property, and Richmond's citizens have to drive farther, out of town, to work? What will happen to the Redevelopment Agency's budget and to its ability to repay its bonds when it loses the tax increment from the property? What happens to Richmond's unemployed when employers won't locate here because there's no attractive place to put a modern industrial park? What could Richmond have accomplished with the tax revenues and development fees from a development on our property? Who will construct the portions of the Bay Trail that we would have been obligated to (and happy to) build when we developed our property?

And, of course, what happened to basic fairness? Why should Richmond's own, who made a good faith investment in our city, be deprived of the value of our property just because someone who has the power decided that the property should not be used?

Rotary International has a four-way test "of the things we think, say or do:

1. Is it the TRUTH?
2. Is it FAIR to all concerned?
3. Will it build GOODWILL and BETTER FRIENDSHIPS?
4. Will it be BENEFICIAL to all concerned?"

The proposed General plan and the Draft Environmental Impact Report fail that test:

1. The contents of the Draft General Plan and of the Draft Environmental Impact Report are untrue. They both portray the history and the existing status of the property falsely.
2. The designation of our land as open space, without compensation for the lost value of the land, is unfair to us, the property owners. The insistence by some

27-1
(cont.)

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- upon the expansion of open space is unfair to those who hope for the benefits of jobs and tax revenues that may flow from development on the site.
3. The designation of our land as open space would certainly not build goodwill and better relationships between investors in Richmond's industrial lands and the City, and imagine what signals this sends to other developers and business owners considering investing in Richmond.
 4. Making our land into open space is obviously not beneficial to the property owners, nor to those for whom employment opportunities and tax revenues are more important than a few more acres of park, and we question just how important it is to add to the already-existing one-thousand-plus acres of Point Pinole Regional Park our twenty-four.

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Stoney and Jerry and I thought we were doing great things for our beloved City of Richmond, but it turns out the City is trying to do not so great things to us, instead. Please reject the downzoning of the industrial land on Richmond's north shoreline, and retain land use designations under the new General Plan similar to those existing under the current General and Specific Plans.

Very truly yours,

Joshua Genser

Joshua Genser

cc: Hector Rojas
Planning Commission

LETTER 27: Richmond Development Company LLC, Joshua Genser

Response to Comment 27-1

The comment states that Freethy Industrial Park is incorrectly described in the draft General Plan as not having infrastructure. The comment also states that the land use designation for the property should not be changed. As discussed in Response to Comment 25-1, the area south of Richmond Parkway is developed with industrial uses and contains infrastructure to support those uses. The area north of Richmond Parkway referenced in the comment includes vehicular access to the property via Goodrick Avenue, but there are no remaining surface or overhead improvements on the property that are readily visible from the public right-of-way. The status of any underground improvements at the property is unknown and not within the scope of a program-level EIR. The remainder of the area north of Richmond Parkway east of Goodrick Avenue is currently undeveloped, and the characterization in the Draft EIR of Change Area 12: Northshore as containing upland habitat is generally accurate. See also Response to Comment 25-1.

March 31, 2011

Hector Rojas, Associate Planner
City of Richmond
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Re: Comments Regarding Proposed General Plan and Draft
Environmental Impact Report – Down-Zoning of Freethy
Industrial Park

Dear Mr. Rojas,

Thank you for the opportunity to provide comments on the City of Richmond’s (“City”) Draft General Plan 2030 (“2030 General Plan”) and General Plan Update Draft Environmental Impact Report (“DEIR”). SSL Law Firm LLP has been retained by two long-term Richmond properties owners, Joe and Heidi Shekou (“JHS”) and Richmond Development Company LLC (“RDC”), whose property interests will be unlawfully and adversely impacted by proposed changes reflected in the 2030 General Plan.

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JHS owns 8 separate legal lots, and RDC also owns 8 separate legal lots, in the 23.3 acre Freethy Industrial Park (“Property”).¹ The 2030 General Plan proposes to amend the Property’s long-standing Industrial/Office Flex land use designation to an Open Space designation that would render these lots undevelopable. This is reflected in 2030 General Plan Change Area 12.

As we explain below, the proposed downzoning of the JHS and RDC Property would violate numerous legal principles, including Constitutional protections guaranteeing the right to equal protection and guarding against a taking of private property without just compensation. In addition to exposing the City to potential liability that could run into the tens of millions of dollars, the downzoning of an existing Industrial Flex property to Open Space is bad policy, particularly at a time when Richmond is seeking to revitalize and strengthen its local economy. Accordingly, we

¹ The Property is comprised of 16 legal lots and 18 Assessor’s Parcels. The Assessor’s Parcel Numbers are 408-220-032, 408-220-033, 408-220-034, 408-220-035, 408-220-036, 408-220-037, 408-220-038, 408-220-039, 408-220-041, 408-220-042, 408-220-043, 408-220-003, 408-220-006, 408-220-007, 408-220-023, 408-220-024, 408-220-025, and 408-220-026.

strongly oppose the proposed Open Space designation set forth in Change Area 12 and urge the City to maintain the Property’s existing Industrial/Office Flex designation.

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In addition, our clients are deeply concerned by the inadequacies presented in the DEIR which purports to analyze the impacts of General Plan 2030. In order to comply with the California Environmental Quality Act (“CEQA”), the DEIR must provide a good faith, reasoned analysis of the 2030 General Plan proposal, including identifying the significant, adverse impacts of the 2030 General Plan and the measures required to avoid or mitigate those impacts. The DEIR’s analysis must be both comprehensive and accessible, so that decision-makers and the public are provided a meaningful opportunity to understand and comment on the impacts of the 2030 General Plan and the feasible means to avoid or mitigate those impacts.

28-2

The DEIR fails to meet these CEQA mandates by engaging in a result-oriented approach, designing its assumptions, methodologies and analysis in a way that avoids the identification of the full scope of the project’s potentially significant impacts. This has resulted in a material understatement of potential impacts – a foundational flaw that undermines the entire DEIR’s analysis. It also undermines CEQA’s very purpose, which is to ensure informed decision-making. Ultimately, the City of Richmond will suffer significant adverse environmental impacts, and no one will benefit from the concealment of those impacts in the DEIR.

Below we provide our detailed comments that highlight the illegal nature of the proposed downzoning of the Property and identify the flaws associated with that proposal as well as with the DEIR. In addition, by this reference, we incorporate the comments provided by Cox Castle & Nicholson on behalf of Murray Parkway Properties, LLC and Bay Area Wetlands, LLC, which comment letter is attached hereto as Exhibit A. We respectfully request that the City revise the 2030 General Plan, revise the DEIR, and recirculate the revisions for public comment.

I. Background on the Property and Freethy Industrial Park.

The Property is located in the northwest industrial area of the City and is comprised of 16 lots totaling 23.3 acres within the Freethy Industrial Park, located at the intersection of the Richmond Parkway and Goodrick Avenue. The current General Plan designation is Industrial/Office Flex and the zoning is Light Industrial. The Property is also included in the North Richmond Shoreline Specific Plan (“NRSSP”) area which designates the Property for “the exclusive development of modern, non-nuisance industrial space, office, and warehouse facilities which would include uses such as office, high technology sales and services company and supporting retail to serve the immediate area.” NRSSP at 47. The use category “accommodates the creation of campus-like environments for corporate headquarters, research and development facilities and office or warehouse uses in high quality single or multi-occupant buildings.” NRSSP at 47-48. The Property’s M-1 Light Industrial zoning would allow these uses as a matter of right.

28-3

The Property has historically and consistently been put to industrial-office flex uses. This dates back to at least 1963-1966 when the then-owner, Elmer Freethy, placed several hundred thousand cubic yards of fill on the property, graded the Property, installed sewer, electric and gas systems and, after issuance of a building permit by the City, constructed three industrial buildings on the Property.²

In the 1980s, Mr. Freethy sought and secured City approval for a revised industrial plan to expand the industrial uses on the Property, which culminated in the certification of an EIR on August 27, 1980 and the recordation of Subdivision Map 5754 on June 18, 1982 approving the Freethy Industrial Park. See Exhibit B (Subdivision Map 5754). The three industrial buildings remained as part of the new 20-lot Freethy Industrial Subdivision.³

Pursuant to those approvals, Mr. Freethy completed a series of subdivision improvements, as reflected in the Subdivision Improvement Agreement dated May 10, 1982. These improvements include the construction of two new roads (Freethy Boulevard and Elmar Court), drainage facilities, power, water, street lighting and grading. These improvements were extended to and served the three existing industrial buildings on the Property. In Resolution No. 185-82, the City (1) confirmed these improvements were completed in accordance with the terms of the Subdivision Improvement Agreement and, (2) accepted the dedication and maintenance responsibilities for Elmar Court and Freethy Boulevard (as public roads) and various drainage easements and concrete lined ditches. To date, the City has entirely ignored its road and drainage maintenance obligations and has allowed this infrastructure to substantially deteriorate – adversely impacting their utility and functionality as well as the value of the Property.

In the early 1990s (1993-1995), the City exercised its eminent domain power to condemn a portion of the Freethy Industrial Park to make way for the Richmond Parkway. City’s condemnation had the effect of severing a portion of the Freethy

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² In August 1973, the U.S. Army Corps of Engineers filed a lawsuit against Elmer Freethy, the then-owner of the Freethy Industrial Park, seeking removal of prior fill at the site. The U.S. District Court ruled in Mr. Freethy’s favor on February 24, 1975, finding that the fill had been lawfully placed on the Property. The primary reasoning underlying the court’s decision was that the City had informed Mr. Freethy that the filling of marshland areas was (at that time) exempt from City permit requirements and the Army Corps of Engineers did not require a permit to fill marshland until 1972, long after Mr. Freethy had substantially filled and developed the Property.

³ Lots 13 and 14 of the original 20-lot subdivision are located to the south and west and are predominantly marshland that was preserved as a condition of Subdivision Map 5754. The City owns Lot 14, on which it constructed the Bay Trail segment and habitat mitigation areas for impacts from the Richmond Parkway construction. Lot 13 remains in separate private ownership and is restricted to permanent natural open space.

Industrial Park. Two of the developed lots (lots 16 & 20) are now located south of the Parkway under different ownership. However, the bulk of the original Freethy Industrial Subdivision remains intact north of the Parkway, with only minor modifications to the original lotting and street pattern as a result of Parkway construction. As part of the City's condemnation and construction efforts for the Parkway, the City demolished two of the three industrial buildings on the Property, though their foundations, building pads and the utilities serving those parcels remain.

In 1999/2000, RDC and JHS purchased the Property with the direct and specific intent of developing it for Industrial-Office Flex uses. One of the key attributes that made the Property attractive was the extent of infrastructure and site improvements – particularly the fully developed road, drainage, utility and street lighting. The existing improvements and ongoing industrial use had a significant impact on the market value of the Property. At the time JHS and RDC purchased the Property, they paid approximately six times higher price per square foot as compared to nearby and surrounding properties that lacked this critical infrastructure and long term use patterns. This increase in cost is directly attributable to value of the improvements installed on the Property and the vested right it created for industrial/office flex uses. Kister, Savio, & Rei has performed an Engineer's Cost Estimate (attached as Exhibit C) establishing that the site improvements alone are worth \$3.34 million dollars.

In 2002, JHS filed the Shoreline Tech Center, Phase A application for a portion of the Property which sought to develop Lots 1 through 4 with 48,144 square feet of light industrial buildings, a McDonald's restaurant and a gas station on 4.68 acres. The City processed JHS's application with a Categorical Exemption per CEQA Guideline 15332 (Infill Development Projects), and on June 12, 2002, and July 18, 2002, granted Design Review Permits 01-173, 175, 176 and Conditional Use Permits 01-42, 01-43 authorizing the proposed development of the industrial flex and restaurant/gas station uses. The City also issued JHS a grading permit that authorized the placement of 9,000 cubic yards of fill in order to meet approved building pad heights. JHS completed the fill and grading work, but, due to declining market conditions, the approved structures have yet to be constructed. While the Conditional Use Permits remain valid, the Design Review Permits have expired. As discussed in more detail below, JHS will be re-submitting the Design Review application for this project and hopes that it will proceed expeditiously through the City's design review and approval process.

In 2005, JHS and RDC engaged in new site planning efforts for the Property and developed plans for a live/work project, known as Bayside Village. The project proposed an innovative and green development comprised of a 256-unit contemporary live/work/play community that would facilitate a combined place of residence and working into a single domicile. The project design model would utilize compact, pedestrian friendly neighborhoods with mixed uses in close vertical and/or horizontal relationships and was designed to meet the new LEED Neighborhood Development certification.

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This Bayside Village project was prepared in close consultation with City staff, including the City’s Planning Director. JHS and RDC representatives met on numerous occasions with the City’s Planning Director, and on each occasion, the Director requested substantive, and often contradictory, project changes. Over the course of these meetings, members of the project team came to suspect that the Planning Director was attempting to prevent the application from reaching completion. This was based, in part, on frequent comments by the Planning Director that he was facing political pressure from certain green party members and local open space advocates to prevent development of the Property. The Planning Director then raised the issue that the City was in the process of revising its General Plan and requested that JHS and RDC put the Bayside Village project on hold until a revised draft General Plan was released.

Given the expressed political pressure aimed at preventing development of the Property, JHS and RDC elected to submit the application in September 2007 and requested a “deemed complete” letter. This application was met with an extensive laundry list of additional information the City claimed was necessary, which JHS and RDC responded to in January 2008 at its considerable expense. This should have completed the application. Instead, however, the Planning Director shifted his tactic and claimed the proposed Bayside Village proposal would require a General Plan amendment. JHS and RDC disagreed with that conclusion and requested a formal determination from the Planning Director, which the Director refused to provide for several months. Finally, in July 2008, the Planning Director made a written determination that the Bayside Village Project required a General Plan amendment because it failed to meet the definition of a live/work project under City codes. JHS and RDC appealed that determination to the Planning Commission, and on December 4, 2008 – almost a full year after JHS and RDC had submitted a complete application – the Planning Commission found in favor of JHS and RDC and confirmed that the Bayside Village project was consistent with existing General Plan live/work policies and definitions and did not require any amendment.

Despite the Planning Commission’s ruling, the Planning Director continued to stonewall the Bayside Village Project application. The Planning Director unilaterally disputed the Planning Commission’s ruling and otherwise maintained a hostile position on the project. During meetings in January 2009, the Planning Director again stated he was under strong political pressure from a certain City Council member and activist open space groups to prevent development of the Property. The Planning Director again urged JHS/RDC to delay its application until the new draft General Plan was released.

Again, JHS/RDC insisted that it would pursue its Bayside Village application and again requested a deemed complete letter. This request was met with yet another letter from City staff requesting a list of information, all of which had been provided a year earlier. This letter also again asserted that the Bayside Village application would require a General Plan amendment, despite the Planning Commission’s earlier ruling to the contrary.

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JHS and RDC were then invited to join a “working group” of interested stakeholders in the North Shoreline area, where the Property is located. The stakeholders included property owners, nearby residents and open space advocates. The stated purpose was to reach a development compromise for the area that could be incorporated into the new 2030 General Plan. While JHS and RDC attended these meetings with an open mind and willingness to compromise, the open space advocates offered no compromise. Their position was stated clearly – they only wanted to consider the purchase or condemnation of the Property and would not consider any compromise solution that would allow any level of development at the Property or in the North Shoreline area.

Meanwhile, the 2030 General Plan was moving through its public process. In order to obtain a clear understanding of the goals and expectations of a wide spectrum of the Richmond community, the City Council appointed a General Plan Advisory Committee (“GPAC”) which met with the City’s consultant more than twenty times over a period of more than two years. The GPAC included a diverse cross-section of the Richmond community, including representatives of business organizations, environmental groups and neighborhoods. One member of the GPAC was a member of RDC, Joshua Genser.

The City’s consultants identified certain areas of the City as “Change Areas,” those areas where it was possible for land use designations under the new General Plan to differ significantly from the old, and, in consultation with the GPAC, developed three alternatives for each Change Area. The GPAC was told that the EIR for the General Plan would study the three alternatives for each of the Change Areas. The GPAC was also told that it would be voting on which of the three was to be identified as the “preferred” alternative, again for the purposes of study in the EIR, although the City Council would have the final choice. The land owned by JHS and RDC was within the Change Area called “South of Parchester,” which is substantially the same as General Plan Change Area 12. The three alternatives identified for the South of Parchester Change Area were open space, business mix and medium-density residential. In May of 2009, at a public meeting attended by City planning staff, the GPAC voted for the preferred alternative, with 9 preferring open space, 8 preferring business mix and 14 preferring medium-density residential. In other words, the GPAC recommended developed uses in this area at 22 to 9 vote.

In June 2009, the City released the first draft of the 2030 General Plan. This draft proposed designating the Property as “Planned Area District,” a designation containing no development density ranges or list of allowed uses. Instead, this initial draft offered the narrative that the preferred future use is “envisioned as ecologically sensitive to the unique natural assets of the area.” In February 2010, the City Council met in a public study session to discuss the 2030 General Plan designation for the North Shoreline. Councilman Butt made a motion to re-designate the Property as open space, parks and cultural use. This motion failed to pass. Councilman Butt followed this failed effort with an email campaign where he attempted to smear and discredit the North Shoreline property owners and those council members who failed to vote with him. Councilman

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Butt went so far as to threaten to withdraw his vote on the wholly unrelated Point Molate Casino project, unless other council members would vote with him on his desired open space designation for the North Shoreline.

Then, on February 11, 2011 the City published the revised 2030 General Plan which proposed for the first time to change the designation of the Property to Open Space/Parks & Recreation. JHS and RDC were informed by staff that the Parks and Recreation land use designation (with a sham 0.5 FAR development allowance) was included as City’s attempt to avoid a takings claim by JHS/RDC and the surrounding landowners. This strategy is reflected in correspondence from open space advocates, including Citizens for East Shore Parks (“CESP”). See Exhibit D, (Email from CESP stating: “North Richmond: The area between the Park District’s new acquisition at Breuner Marsh and the landfill to the South should be designated in the General Plan [sic] as open space and be zoned to the lowest zoning designation to protect the city from a taking claim.”).

In the meantime, JHS and RDC continue to work towards development of the Property. These efforts have, without doubt, become extraordinarily difficult given the stonewalling the owners have experienced from the Planning Director and other isolated City representatives. Nonetheless, the Property and the surrounding North Shoreline areas are viable candidate sites for exciting and innovative development opportunities that will work towards achieving the City’s economic and job growth policies. These potential projects include:

- **Salvation Army Regional Campus**

JHS and RDC are currently in contract to sell their land for the potential development of a Salvation Army Regional Campus. This campus would consolidate multiple existing and replicative Salvation Army Bay Area facilities and programs into one state-of-the-art, environmentally sustainable campus. Bay Area wide charitable and faith operations would be headquartered at this facility, which would include a chapel, administrative offices, warehouse and retail facilities, and an innovative Delancey Street type live/work job training and counseling program for at risk men and women with drug and alcohol dependency problems.

This project would facilitate a wide range of local jobs – ranging from construction, administration, management, retail, education, religious and community serving jobs and ultimately long-term employment opportunities for those who move through and complete the job training programs. This facility would employ and serve local Richmond residents, and would be consistent with the Property’s current Industrial/Office Flex General Plan designation.

The proposed downzoning of the Property would effectively bar this innovative and community serving project. The immediate impact is that the proposed Salvation Army project will die, with no likelihood that any such facility would be constructed in



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the foreseeable future. The long term impact is that members of underserved populations will be denied an important source of job training and support services that would otherwise help these individuals get back on their feet and contribute more to the City and regional economy.

- **Lawrence Berkeley National Laboratory Annex Facilities**

As the City is aware, the Richmond Parkway Research Campus has been identified as a candidate site for the Lawrence Berkeley National Laboratory’s (“LBNL”) Second Campus. The Richmond Parkway Research Campus is located in the 2030 General Plan Change Area 12, and is directly adjacent to the JHS and RDC Property.

The Richmond Parkway Research Campus’ submittal in response to LBNL’s Request for Qualifications identified the adjacent RDC/JHS Property (with our client’s consent) as additional available land that could support LBNL Campus uses or adjacent supporting uses such as office, industrial, commercial or community supporting retail and services.

Contrary to its proposed downzoning efforts, the City has cast its support in favor of the Richmond Parkway Research Campus proposal for LBNL. In a letter dated March 2, 2011, the City Manager submitted a letter to LBNL “to express the City of Richmond’s strong support for the Richmond Parkway Research Campus as a candidate site for the [LBNL] Second Campus.” The City Manager committed that “[s]hould the Richmond Parkway Research Campus be selected for LBNL’s second campus location, City staff would work closely with LBNL and the Richmond Parkway Research Campus’ ownership to accommodate LBNL’s needs.” See Exhibit E.

Should the City proceed with its proposed downzoning of this property, and the adjacent JHS and RDC Property, contrary to its expressed intent to cooperate with LBNL, the City will unnecessarily construct a significant barrier to development of this exciting and cutting edge campus that could serve as an outstanding source of job creation, innovation and a wide range of supporting uses.

- **Light Industrial/Office Flex Phased Development**

In case the Salvation Army and LBNL Second Campus projects do not proceed, RDC and JHS are also in the process of preparing a re-development application for the Property that fully complies with the Property’s existing Industrial/Office Flex designation, zoning, subdivision improvements and the City’s 2002 conditional use (and other) approvals for the Shoreline Tech Center. As with that 2002 City approval, JHS and RDC will pursue the Shoreline Tech Center in phases, commencing with the already approved Phase A application for Lots 1 through 4 which would redevelop these parcels with 48,000 square feet of light industrial buildings, a restaurant and a gas station. It is JHS and RDC’s position that the categorical exemption adopted by the City in 2002 for the Phase A application would remain valid. The Phase A application would then be



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followed by subsequent phased industrial/office flex development on the remaining parcels.

This application is designed to be in full conformance with existing general plan and zoning requirements and JHS and RDC’s vested right to redevelop the property for industrial/office flex uses. Ultimately, at full build-out, the Property would contain approximately 400,000 square feet of industrial/office flex uses and community supporting retail services (such as a restaurant and gas station). Our preliminary analysis indicates this would support approximately 1,000 new jobs within the City, thereby contributing to the City’s economic and job creation goals. As discussed in more detail below, this development would avoid the small areas of wetland resources located along the Property’s border.

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The proposed downzoning would run directly contrary to the vested and fully compliant land use development. Because JHS and RDC has a vested right to this use, the proposed general plan cannot serve as a bar to this application. Given these vested rights, it makes little sense for the City to adopt a land use designation that contains a fundamental conflict with the existing and future uses of the Property. Ultimately, it sets the stage for an unnecessarily complex and conflict-ripe redevelopment process. We submit that City resources are much better directed at facilitating the responsible development of this key industrial/office property in order to work towards – rather than against – City goals of economic growth and job creation.

II. The Property Has No Unique Physical Attributes.

From a physical and regulatory perspective, the Property does not possess any unique physical attributes that would stand in the way of achieving the exciting development opportunities outline above. Nearly all of the 23.3 acre site is comprised of filled land that has been graded, improved with roads, utilities, drainage facilities, lighting and other improvements. It is routinely disced for weed and fire control, and thus contains only highly disturbed and primarily invasive vegetation. There are two very small wetland areas along the Property edge – a 340 square foot patch of land at the Property’s shoreline border and a small drainage ditch at its border with the Richmond Rod & Gun Club – both areas would be easily avoided as part of any development application. These site conditions are well-documented through biological reports and formal wetland delineations that have been shared with City staff.

28-4

These reports include the November 2007 biological survey performed by LSA Associates (attached hereto as Exhibit F). The LSA survey explains that the vast majority of the site is graded and filled, and is highly disturbed as a result of past fill activities, development activity and routine disking practices to control weed growth. The vegetation on the site is primarily comprised of invasive species such as thistle, vetch and burr clover. This has resulted in disturbed habitat conditions on the entire project

site. Accordingly, only a small number of wildlife species can occupy the site, including rodents (mice, rats, gophers), songbirds and transitory hawks who hunt over the Property.

While the western/shoreline edge of the Property is adjacent to tidal salt marsh, the vegetation upslope from the salt marsh to disturbed upland (above the mean high water line) is abrupt rip rap, and corresponds to the historic fill activities on the Property dating back to the early 1960s. While three listed species – the California Clapper Rail, California Black Rail and Salt Marsh Harvest Mouse – can be present in tidal marshes near the Property and can, on occasion, use upland areas adjacent to the marsh as refuge during high tide events, these species have not been identified on the Property. The likelihood of the occurrence of these species on the Property is extraordinarily unlikely given the disturbed site conditions. Specifically, the Property’s current value as upland refugia is extremely limited given that the transition between salt marsh and upland is riprap which serves as a refuge for predators and the upland areas lack the critical landscaping cover the listed species require. (We note that previous development applications had proposed inclusion of an 80-foot buffer from the tidal salt marsh, plus fencing and landscaping improvements that would have actually provided improved refuge habitat for these species.

The Army Corps of Engineers has also confirmed the limited extent of wetland resources on the Property. On August 8, 2007, the Army Corps of Engineers verified a wetland jurisdictional delineation for the site. The Corps exerted jurisdiction over a very small portion of the Property, which is limited to a drainage ditch along the northern and eastern property boundaries and a small patch of salt marsh (approximately 340 square feet) along the western Property boundary (below the rip rap). The Corps confirmed it did not have jurisdiction over the remainder of the Property. See Exhibit G. (We note that the Bayside Village development application would have avoided construction within these two limited areas.)

In addition, the Property as a whole, including its shoreline, is exempt from Bay Conservation and Development Commission (BCDC) jurisdiction. Attached as Exhibit H is a letter from BCDC dated August 15, 1977 which grants a claim of exemption brought by the former property owner Mr. Elmer Freethy. This letter confirms that given the extent of industrial development activities and uses taking place on the Property as of 1965, any future industrial uses are vested and exempt from review by BCDC. In the letter granting the claim of exemption, BCDC explains

[A]s of September 17, 1965, the claimant had prepared and adopted a detailed and specific plan for the development of a light industrial park ... with sufficient utilities, road and rail services to accommodate full development of the property then controlled by claimant.

Ex. H page 2. In addition, the Commission found the then-owner had secured the necessary determination (from the City) to commence construction of the project pursuant to the specific light industrial development plan. This was evidenced by a long

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list of approvals and agreements the owner had secured with public agencies and public utilities to service the Property; including the issuance of three building permits by the City of Richmond for three industrial buildings on the Property (which were completed but ultimately demolished by the City when it constructed the Richmond Parkway), the placement of "several hundred thousand cubic yards of fill on the property," the installation of roadways and utilities to service the Property and other substantial expenditures. Ex. H at 4-5. Collectively, these activities have eliminated any potential for significant wetland or protected species habitat to occur on the Property.

III. Proposed Open Space/Parks & Recreation General Plan Designation.

As demonstrated above, the Property has a long-standing industrial history and has been improved with substantial infrastructure. In addition, it contains two industrial building pads that are serviced by utilities and other improvements and is a disturbed site with minimal natural resource value. The Property also presents a ripe opportunity to enhance the City's employment and economic base through several exciting and viable development alternatives that will facilitate local jobs, tax revenue, worker retraining and much needed public services in the North Richmond area.

The 2030 General Plan seeks to negate each of these extraordinary Property attributes and replace its long standing Industrial/Office Flex land use designation with an Open Space designation that would effectively render these 16 industrial lots unbuildable. This drastic change is contained in the 2030 General Plan's Change Area 12 which would rezone 100 acres (including the 23.3 acre Property) from Industrial/Office Flex to Open Space Uses. The 2030 General Plan describes Change Area 12 as follows:

Change Area 12: Northshore

The Northshore change area is located south of Point Pinole Regional Park, west of Parchester Village and between San Pablo Bay and the Richmond Parkway. This bayfront area is representative of historic San Francisco baylands, with marsh-lands and uplands along the shoreline. Portions of the area have been identified as important habitat for endangered plant and wildlife species. The area lacks infrastructure and has long remained undeveloped with the exception of an outdoor shooting range.

General Plan Land Use

The Northshore area is envisioned as a natural open space restored and protected to continue its historic function as vital habitat and provide enhanced opportunities for public access and recreation. The entire area would be designated Open Space/Parks and Recreation to achieve this vision. Allowable uses would include publicly owned local and regional parks as well as privately owned recreational facilities such as golf courses

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and other recreational facilities. Small-scale recreation-supporting uses such as rental shops, bike repair facilities, small restaurants, interpretation centers and museums would complement adjacent open space areas.

GP 3.37; DEIR 2-37. The proposed downzoning is also reflected in the 2030 General Plan’s land use diagrams. See GP Map 3.14; DEIR Figure 2-3, 2-25 (“The Northshore Area is **envisioned as open space**, restored and protected to continue its historic function as vital habitat and provide enhanced opportunities for **public access and recreation.**”).

As we detail below, the downzoning reflected in Change Area 12 brings with it a host of legal issues that mandate the City abandon its unlawful attempt to shift a vested industrial/office flex use to open space. Should City continue down this ill-advised path, it will expose itself to significant financial liability in the form of a taking and other constitutional violations. But that is not all – this policy is also contrary to long-standing and contemplated City goals and plans and could result in significant adverse environmental impacts that the DEIR analyzing the 2030 General Plan fails to acknowledge and analyze.

IV. The Proposed Downzoning Is Illegal and Exposes the City to Significant Financial Liability.

A. The Proposed Open Space Designation Is Directly Contrary To the Property’s Vested Right to Proceed with Industrial/Office Flex Uses.

The City’s proposal to change the Property’s General Plan designation from Industrial to Open Space directly interferes with the JHS and RDC’s vested right to proceed with development consistent with the current Industrial/Office Flex General Plan designation and subdivision improvements. Under California law, a property owner’s right vests once the owner has, as in this case, had a final map approved and completed substantial improvements on the site consistent with the final map and subsequent permits. *Avco Community Developers, Inc. v. South Coast Reg’l Comm’n* (1976) 17 Cal.3d 785, 839-94. Here, the Property readily satisfies all pertinent vesting requirements – it has been improved with roads, drainage, utilities, street lighting, and contains building pads that are served by this infrastructure. In addition, two industrial buildings had been constructed on the site – pursuant to City building permits. They would, in all likelihood, still be present on the Property had the City not demolished them to make way for a construction staging area for the Richmond Parkway.

JHS and RDC have a vested right to proceed with the development of their industrial subdivision and the City cannot now eliminate that right through the General Plan update process.

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B. The City’s Downzoning of the Property to Open Space Constitutes a “Taking” and the City will be Liable for Inverse Condemnation.

The 2030 General Plan’s proposed Open Space downzoning constitutes a “taking” of the Property for which compensation must be paid. The proposed downzoning deprives JHS and RDC of all reasonable use of the Property and prevents them from receiving a fair return on their legitimate investment-backed expectations.

The *Fifth Amendment of the United States Constitution* and *Article 1, section 19, of the California Constitution* guarantee that private property shall not be taken for public use without the payment of just compensation. Governmental land use regulations, including the promulgation of zoning laws, may effect a “taking” when that regulation is “so onerous” and goes “too far” so as to deny the owner any economically viable use or prevent a fair return on reasonable investment backed expectations. *See Twain Harte Associates, Ltd. v. County of Tuolumne* (1990) 217 Cal.App.3d 71, 80-81.

1. The City’s Proposed Downzoning Deprives the Owners of All Economically Beneficial or Productive Use of the Property.

The City’s downzoning to Open Space constitutes a per se taking of the Property because it compels the JHS and RDC to surrender all economically viable uses of their Property in favor of a public goal to provide open space. The United States Supreme Court held in *Lucas v. So. Carolina Coastal Council* that “regulations that leave the owner of land without economically beneficial or productive options for its use – typically, . . . by requiring land to be left substantially in its natural state – carry with them a heightened risk that private property is being pressed into some form of public service under the guise of mitigating serious public harm.” (1992) 505 U.S. 1003, 1018. When an owner of real property “has been called upon to sacrifice *all* economically beneficial uses in the name of the common good, that is, to leave his property economically idle,” the owner has suffered a taking and is entitled to compensation. *Id.* at 1019.

That is exactly what the City is asking of JHS and RDC here. The City is attempting to foist upon the Property an Open Space designation that by City’s own definition would put the Property to public open space and recreational uses. These uses are described as follows:

“natural open space restored and protected to continue its historic function as vital habitat”

“enhanced opportunities for public access and recreation”

“publicly owned local and regional parks”

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“wetlands, mudflats, creek corridors and other natural preservation areas”

“private lands deed restricted for open space preservation”

“Public access should be allowed where appropriate”

“land for preservation of natural resources”

“space for outdoor recreation, space for public health and safety”

GP 3.37, Table 3.5, 7.4; DEIR 2-37. As demonstrated above, all of these contemplated land uses are wholly public in nature and use – such that it is tantamount to total taking of the Property. It is undeniable that this list of authorized uses would completely deprive the Owners of their vested industrial/office flex development rights and any other economically viable use of the Property.

The description of Change Area 12 does include one extraordinarily limited category of private land uses that was purportedly included to ward off a potential taking challenge. See e.g. Exhibit D. These private uses are:

“privately owned recreational facilities such as golf courses and other recreational facilities.”

“Small-scale recreation-supporting uses such as rental shops, bike repair facilities, small restaurants, interpretation centers and museums would complement adjacent open space areas.”

GP 3.37. To that end, the 2030 General Plan purports to authorize a 0.5 FAR development intensity standard to accommodate “small-scale recreation-supporting uses.” This is an unlawful attempt by the City to deflect its uncompensated take of the JHS and RDC Property. The Property is comprised of 16 lots that total almost 24 acres. Utilizing the 0.5 FAR, the General Plan would theoretically authorize up to **12 built acres** of a random assortment of “small-scale recreation supporting uses.” Regardless of their size, this narrow subset of uses is simply not financially viable in any market or setting – and this is particularly true given the Property’s location and its vested industrial uses. In other words, the reference to a 0.5 FAR for small scale recreation serving uses is a sham and an ineffective attempt to avoid compensation for the taking of our client’s Property. Change Area 12 simply “goes too far.”

The City’s proposed 2030 General Plan unequivocally deprives the Owners of any and all economically beneficial or productive uses of the Property, in violation of the United States Supreme Court’s decision in *Lucas*.



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2. The Proposed Downzoning Prevents the Owners From Receiving a Fair Return on Their Legitimate Investment-Backed Expectations.

Even if the City's taking does not deprive the Owners of *all* economic use of the Property, the proposed downzoning constitutes an impermissible taking without compensation under the factors enunciated by the United States Supreme Court in *Penn Central Transportation Co. v. New York City* (1978) 438 U.S. 104. *Penn Central* emphasized the following three factors in particular:

- (1) the economic impact of the regulation on the claimant;
- (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and
- (3) the character of the governmental expectation.

Id. at 124; see also *Kavanau v. Santa Monica Rent Control Board* (1997) 16 Cal.4th 761, 775.

Application of the *Penn Central* balancing test weighs heavily in favor of the finding that the proposed downzoning would deprive JHS and RDC a fair return on their reasonable investment-backed expectations, and therefore constitutes a compensable taking.

First, the proposed downzoning has a severe "economic impact" as the Open Space/Parks and Recreation designation – with its heavy emphasis on public uses and extraordinarily limited private uses – could not support any economically viable use.

Second, the proposed downzoning stands in stark contrast to the JHS and RDC's reasonable investment-backed expectation that the Property could be built out as an industrial/office complex. This reasonable expectation is supported by a number of factors including: (a) the Property's long-standing General Plan, Specific Plan and zoning designations all of which encourage industrial and office flex uses; (b) the presence of substantial infrastructure improvements that support these uses; (c) the City's acceptance and approval of these improvements; (d) the presence of foundations and building pads that are served by utilities and other infrastructure; and (e) the premium JHS and RDC paid for the Property because of its improved and vested condition as an industrial subdivision.

Finally, the character of the City's expectation of the use of the Property is wholly unreasonable. Implementation of Change Area 12 would circumscribe the Property to an unjustifiably narrow set of public open space uses, without any corresponding benefit to JHS and RDC. In other words, the proposed downzoning fails to provide any benefits or rights that "mitigate whatever financial burdens the law has imposed." *Kavanau*, 16 Cal.4th at 775.

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Ultimately, it cannot be disputed that the proposed downzoning to Open Space prevents JHS and RDC from receiving a fair return on their legitimate investment-backed expectations. It stands in the way of achieving the best use of the land and effectively extinguishes the fundamental right of ownership in the Property.

Courts have acknowledged a full taking in circumstances much less egregious. For example, in *Twain Harte Assocs. v. County of Tuolumne* (1990) 217 Cal.App.3d 71, the County downzoned a 1.7-acre portion of a larger parcel, the remainder of which had already been developed as a shopping center. As here, the downzoning moved the parcel from light industrial to open spaces uses. The effect of the downzoning was to limit the authorized uses to only recreational, public utility, or agricultural uses and prevent the plaintiffs from receiving a fair return on their investment-backed expectations by effectively precluding property development. The Court held that the plaintiff has stated a viable inverse condemnation claim and denied the County’s motion for summary judgment. As in *Twain Harte Assocs.*, the downzoning here goes “too far” and constitutes a taking since it deprives the JHS and RDC of all economically viable uses of the Property, runs contrary to their distinct and reasonable investment backed expectations and is contrary to the Property’s long standing and vested industrial/office flex uses.

3. The Proposed Public Access Corridors Could Destroy the Property’s Development Potential.

The 2030 General Plan and DEIR propose to include a Class 1 bicycle route and public access trail running from the existing Bay Trail spur trail, along the Property’s bayside border and up along its boundary adjacent to the Richmond Rod & Gun Club. See GP 4.53; DEIR 3.14-9. The City makes no effort to disguise the purely public use expectations for this land. While JHS and RDC may be willing to consider implementation and dedication of a public access trail as a component of future economically viable industrial/office flex development of the Property, the City may not mandate the dedication of this land to serve public access uses. See *e.g.*, *Nollan v. California Coastal Comm.* (1987) 483 U.S. 825; *Dolan v City of Tigard* (1994) 512 U.S. 374. Otherwise, should City wish to construct this public trail, it must acquire this land under its eminent domain powers and pay for its fair market value.

Similarly, to the extent the City attempts to mandate the dedication (and improvement of) a public access corridor, City should correct and confirm its anticipated scope of this corridor. Otherwise, property owners such as JHS and RDC, are not able to determine the impact a proposed corridor may have on the development potential of a property and how it may interfere with reasonable investment-backed expectations.

This issue is well illustrated by the conflicting maps presented in the DEIR, 2030 General Plan and the North Richmond Shoreline Specific Plan (NRSSP). The DEIR and

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2030 General Plan maps contain identical renditions of “planned pedestrian improvements” that closely trace the Property’s shoreline and northern borders with a planned Class 1 bicycle route. These maps appear to track the text of the NRSSP which establishes a public access corridor along this portion of the Property, but limits it to the 100-foot shoreline band (in order to correspond to BCDC’s jurisdictional band). See NRSSP at 40, 58, 60. Unfortunately, Figure 6 of the NRSSP grossly expands the proposed public access corridor and reaches well-inland of the 100 foot band, reaching even further inland along the Property’s northern border. If applied literally, it would dramatically impact the Property, including rendering two large parcels completely unbuildable. And while the Figure 6 acknowledges that its delineation is “not precise” and must be “verified by the regulatory agencies,” the erroneous extension of the corridor has been repeated and amplified in City maps, most notably its online GIS zoning maps.

Moreover, the NRSSP, General Plan and DEIR do not address how this overlay will interact with the Property’s exempt status from BCDC’s jurisdiction. As explained above, in 1977, BCDC granted the Property a claim of exemption based on the Property’s historic industrial uses that pre-date 1965.⁴ Where the public access overlay is contingent on the BCDC’s extent of jurisdiction, and no such jurisdiction exists over the Property, there is no legitimate basis to impose this overlay on the Property.

Accordingly, Figure 6 (and Figure 4) must be revised to accurately depict the scope of the City’s proposed public access corridor so as to allow JHS and RDC to determine the impacts of this proposed public use.

C. The City’s Proposed Action Constitutes a Denial of the Right to Equal Protection.

The proposed downzoning would also violate JHS’s and RDC’s right to equal protection. The Fourteenth Amendment provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” *See also* California Const. art I, § 7(a). “The Equal Protection Clause ensures that ‘all persons similarly situated should be treated alike.’” *City of Cleburne v. Cleburne Living Center, Inc.* (1985) 473 U.S. 432, 439.

Here, the General Plan 2030 has unfairly targeted the properties in Change Area 12 to bear the full burden of the City’s perceived open space needs. The Equal Protection Clause forbids the City from placing this disproportionate burden of alleviating widespread community concerns on a small and discrete group of property owners. *Squaw*

⁴ We note that Figure 4 of the NRSSP contains an inaccurate mapping of BCDC jurisdictional band, in that it shows BCDC jurisdiction extending along the Property’s full bayside border. Figure 4 also purports to extend the 100 foot shoreline band inland along a drainage ditch – an area well outside BCDC’s jurisdiction. Accordingly, this Figure should likewise be revised to reflect an accurate portrayal of BCDC jurisdiction.

Valley Dev. Co. v. Goldberg (9th Cir. 2004) 375 F.3d 936, 944. This is particularly problematic where, as here, the City attempts to do so by prohibiting existing and established industrial/office flex uses.

Ultimately, the proposed downzoning is a pretext by which the City is attempting to secure an additional 100 acres of public open space at reduced or no cost in order to satisfy political pressure from open space advocates. The 2030 General Plan makes no attempt to disguise the intended uses of Change Area 12 as public open spaces uses: it contemplates **“natural open space”** and **“enhanced opportunities for public access and recreation.”** GP 3.37. When these intentions are coupled with the statements provided by the Planning Director to representatives of JHS and RDC (i.e., that the Director was under intense political pressure to ensure no development occurs on the site), a clear strategy emerges: downzone the properties in the North Shoreline area in order to depress their market value so that they may be acquired by the City or the East Bay Regional Park District at a reduced price, or no cost at all.

As recognized in *Kissinger v. City of Los Angeles* (1958) 161 Cal.App.2d 454 and *Gypsum Resources, LLC v. Masto* (2009) 672 F.Supp.2d 1127, these unlawful attempts to reduce development potential and/or property value for public purposes runs directly contrary to the Equal Protection Clause. In *Kissinger*, the court overturned a spot zoning ordinance that rezoned plaintiff’s property from R-3 to R-1 because “the inference is clear that the true purpose of the ordinance was to prevent the improvement of the subject property in order that it might be acquired at a lesser price for airport purposes.” *Kissinger*, 161 Cal.App.2d at 461-62. In *Gypsum Resources*, the court found that a downzoning effort targeted to create an economically unviable land use classification constituted a violation of equal protection. *Gypsum Resources*, 672 F.Supp.2d at 1143.

Through this letter, our goal is to inform the City of the consequences of its contemplated downzoning of the Property in the hopes that the City will change course and thus avoid significant financial exposure. While JHS and RDC do not wish to engage in protracted litigation, JHS and RDC will have no other option should the City proceed with downzoning in violation of JHS and RDC’s constitutional rights.

It bears reinforcing that City is contemplating a very expensive mistake – should our clients be forced to litigate this case, the City could be faced with a seven to eight figure damages award, in addition to attorneys’ fees and its own costs. *See, e.g., Yamagiwa v. City of Half Moon Bay* (2007) 523 F. Supp. 2d 1036 (awarding a judgment of \$36.8 million against a city for an inverse condemnation claim). We urge the City to abandon its unconstitutional attempts to downzone the Property and maintain its current and long-standing Industrial/Office Flex land use designation in the 2030 General Plan.



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V. The Proposed Downzoning Conflicts with City Policies and Directives.

A. Downzoning Change Area 12 to Open Space Uses Conflicts with the 2030 General Plan’s Primary Goal of Stimulating Higher-Intensity Development within the City.

California requires that all cities maintain a general plan as a “constitution for future development.” *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540. The general plan is “atop the hierarchy of local government law regulating land uses.” *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1183. This serves as a blueprint for all future development in the jurisdiction. Because the general plan is so critical to future development, the state holds general plans to exacting standards. Not only must they contain seven mandatory elements (Gov’t Code § 65302), but these elements must comprise an internally consistent whole general plan (Gov’t Code § 65300.5). “If a general plan is to fulfill its function as a constitution guiding an effective planning process, a general plan must be reasonably consistent and integrated on its face.” *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 97. *See also Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332. Only where a general plan contains all of the necessary elements in an internally consistent manner can it adequately guide development within a city.

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The 2030 General Plan and DEIR both acknowledge that the “primary goal of the proposed General Plan is to stimulate higher-intensity development within the City.” and to “expand economic opportunities in existing commercial and industrial areas and develop new opportunities to diversify the local economy.” DEIR at 3.2-7; GP Goal LU3, 3.46. Contrary to these goals, the 2030 General Plan proposes to remove a significant portion of the City’s existing commercial and industrial base and replace it with open space uses.

This is especially problematic considering the adverse impact the removal of this land from commercially developable uses will have on the City’s current downward economic trend, whereby the City has experienced job loss and unemployment at rates that far exceed the surrounding community. Table 5.7 of the draft Housing Element notes that between 2000 and 2010, unemployment rates for the City and County remained high. Though much of this is due to the recession, the City’s unemployment rate is still 2.5 to 6.6 percent higher than the County unemployment rate. Also, as noted on page 5.68 of the 2030 General Plan, these official unemployment statistics do not reflect the dramatic impact of the loss of “informal” jobs that many of the City’s residents have suffered.

The 2030 General Plan must address and reconcile how the proposed significant narrowing in commercial/industrial development opportunities will affect the goals, policies and objectives within the rest of the Plan. Otherwise, the 2030 General Plan is

internally inconsistent and cannot serve as an effective guide for meeting primary City’s goals and policies favoring economic growth.

B. The 2030 General Plan Is Internally Inconsistent.

Without uniformity between General Plan elements, the General Plan cannot serve as a clear guide and does not meet basic legal requirements. Decision makers will face conflicting directives, citizens will be confused as to policy standards and methods of implementation, findings of fact required for discretionary permits will be impossible to make, and owners and business people will not be able to rely on the document for business decisions. *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 97. Inconsistencies expose jurisdictions to expensive and lengthy litigation.

These consistency mandates extend to the General Plan’s texts, charts, diagrams, and support information: all are integral pieces of the plan. Gov’t Code § 65300.5. Internal consistency requires that the diagrams of land use, circulation systems, open space and natural resources areas reflect the written policies and programs in the text for each element.

The 2030 General Plan contains several critical inconsistencies, particularly as it relates to Change Area 12. These inconsistencies are as follows:

1. Inconsistent Land Use Designations. The draft Land Use element maps designate the Change Area 12 properties as “Open Space.” The text in the same element indicates a different designation of “Open Space/Parks and Recreation.” GP 3.37. The General Plan must consistently and accurately reflect the land use designation for the Property. If the intent is to designate the Property “Open Space/Parks and Recreation” the General Plan must include a description of this proposed designation, as none currently exists, which takes into account these dual designations. If it intends to limit the properties to open space, it must state so clearly and consistently throughout the document.

2. Identifies Improved Industrial/Flex Developed Land as Open Space. The JHS and RDC Property cannot meet the 2030 General Plan’s definition of Open Space. The Conservation, Natural Resources and Open Space Element defines “open space” as “any parcel or area of land or water in public or private ownership that is **essentially unimproved** and is **designated in a local, regional or state open space plan** for open spaces uses. These uses are broadly defined and include the following: land for preservation of natural resources, space for outdoor recreation, space for public health and safety (including fault zones and flood plains).” GP 7.4.

As described in detail above, the Property is certainly not “unimproved,” and the City has admitted as much. For example, the Agenda Report for the March 9, 2010 City Council meeting acknowledges that the Property has “some existing improvements.”

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Consistent with the Property’s Subdivision Improvement Plan, the previous owner has completed a comprehensive list of subdivision improvements – including curb, gutter, sidewalk, roadways, street lighting, public right of way storm drainage, individual lot storm drainage, water, sewer, gas, electricity infrastructure, cable, etc. – that were designed to accommodate industrial/office flex uses. These improvements were conveyed to and accepted by the City on December 6, 1982. [See Resolution 185-82 (which resolution (1) confirmed the improvements were completed and (2) accepted the dedication and maintenance responsibilities).]. This has created a vested right to industrial/office flex uses. Accordingly, statements within the 2030 General Plan that the Property is unimproved are clearly false. In addition, the Property contains two building pads that are served by this infrastructure.

The Land Use Element includes another definition of “Open Space,” which is defined as “wetlands, mudflats, creek corridors and other natural preservation areas, as well as private lands deed restricted for open space preservation. Public access should be allowed where appropriate. Except in delineated wetlands and other resources preservation areas, uses permitted in the Parks and Recreation designation are allowed.” GP 3.21

The Property does not meet this definition, either. The Property is not a wetland, mudflat, or creek corridor. Likewise, the Property is not in a natural state under any definition as it was graded, filled, and improved as an industrial subdivision. Moreover, public access would not be allowed as the Property (and the other parcels in Change Area 12) is private property and does not contain any private recreational uses.

Designating the Property as an Open Space use is like attempting to fit a square peg in a round hole – the Property is far removed from the open space lands defined and envisioned in the 2030 General Plan.

3. Incorrect Description of Baseline Conditions of Change Area 12. Page 3.37 of the draft Land Use Element states that the Change Area 12 “lacks infrastructure and has long remained undeveloped.”⁵ This is incorrect.

As noted, the Property contains significant site infrastructure including storm water, sanitary sewer and water distribution systems, streets and sidewalks, a street lighting system, electric and gas distribution, telephone and cablevision, and street and boundary monuments. It contains rough-graded building pads that are served by this infrastructure, as well as building foundations. Moreover, as recognized by BCDC, the Property’s long-term industrial uses reach as far back as the early 1960s.

⁵ Page 16.4 of the Draft General Plan Glossary defines “infrastructure” as encompassing a wide range of public services including “water, sewer, garbage collection, flood control, gas and electricity, solid waste disposal, wastewater treatment, and streets.”

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4. Fails to Identify Strategies to Acquire Open Space. Pursuant to Government Code Section 65564, every local open space element is required to contain a specific action program which discusses specific techniques to be employed to acquire open space. There is no such detailed discussion.

5. Fails to Address Economic Impact of Downzoning A Significant Portion of City’s Developable Land. There is no discussion in the draft Economic Element, the Conservation, Natural Resources, and Open Space element, or any other element of the 2030 General Plan relative to city services or economic issues related to this proposed change from the existing Industrial/Office Flex classification to Open Space. For example, a change to open space would have the following unaddressed consequences: loss of property tax revenues to the County and the City as a result of a reassessment of appraised value, increased police and City maintenance costs, a reduction in City development fees, a reduction in future construction work, a reduction of future employment opportunities, legal costs to defend this taking of a vested project, and costs to acquire the property from the owners.

6. Fails to Accurately Identify Wetland Resources. As noted above, the Army Corps of Engineers has made a formal determination that the site contains only limited wetland resources. We note that the General Plan Map 7.1 and DEIR Figure 3.4-1 contain vague and imprecise mapping of wetland resources, which could possibly be interpreted as expanding the actual and confirmed extent of jurisdictional wetlands on the Property. It is critical that these resources are mapped carefully and precisely to reflect actual conditions. Otherwise, to the extent this erroneous mapping impacts the development potential of the Property (or any other erroneously mapped parcel), the City could face substantial liability. *See Adam Bros. Farming, Inc. v. County of Santa Barbara* (9th Cir. 2010) 604 F.3d 1142.

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C. The Proposed Downzoning Conflicts with the North Richmond Shoreline Specific Plan.

The North Richmond Shoreline Specific Plan (“NRSSP”) is a comprehensive land use plan, approved by the City and Contra Costa County in 1993, to guide development of the North Richmond Shoreline, which includes Change Area 12. The NRSSP designates the Property as Industrial/Office Flex in order to provide for the exclusive development of modern, non-nuisance industrial space, office, and warehouse facilities to enhance the Richmond employment base. The concern driving these industrial and office flex uses are the same concerns the 2030 General Plan purports to address in its pro-development policies – underemployment in the City is chronic problem and the City has an intense need to increase employment opportunities and expand its tax base.⁶ By stabilizing the existing industrial base, encouraging new light industrial uses, and

⁶ For example, page 31 of the NRSSP notes that unemployment in Richmond “is historically higher than the County as a whole.” Unemployment was estimated at 6.6 percent in 1991 while County unemployment was 3.8 percent for the same year.

providing the potential for quality office, research and development uses, the NRSSP's objective is to increase jobs for the local unemployed and underemployed. See NRSSP at 31.

The NRSSP recognizes the Property as an ideal site to work towards reducing this chronic problem. To that end, the NRSSP envisions the Property as a job creating site that would draw from the local labor pool to help address unemployment and underemployment. The NRSSP recognizes important market factors that would facilitate development here – notably the existence of accessible less expensive land (as compared to Marin, Berkeley and San Francisco) in close proximity to major transportation networks, labor pools and affordable housing and with existing infrastructure.

Despite the 2030 General Plan's primary focus on job creation within the City, it proposes to rescind the NRSSP and the important job creating uses and policies contained therein. GP 3.71. This comes at a time when, more than ever, the City needs to take advantage of its economic opportunity sites, particularly when those sites can be developed in an environmentally responsible manner and also achieve critical goals that will reduce vehicle miles travelled and improve the jobs/housing ratio.

D. Downzoning the Property Is Inconsistent with Redevelopment Area Funding Obligations.

The Property, as well as the remainder of Change Area 12, is included in the Hensley Addition of Redevelopment Area 8A of the Joint City/Contra Costa County Redevelopment District. As reflected in the Contra Costa County and City Redevelopment Agency Property ("RDA") Tax Increment Fiscal Year 2007/2008 Report, Redevelopment Area 8A, and the Hensley Addition, both carry with them substantial tax increment financing potential. Our research indicates the Property was added to the Redevelopment Area 8A in 1998/1999. According to the Tax Increment Report, the redevelopment area value increase total \$148,302,734, and will result in the provision of \$1,702,515.39 in redevelopment area tax increments. This substantial tax increment is used to secure the RDA's bond financing efforts.

Thus, to the extent the RDA has issued bonds that are reliant on this tax increment financing, the RDA's ability to meet its bond obligations will be significantly hampered by the proposed downzoning of this significant redevelopment area from industrial/office flex uses to open space. This adverse impact will happen immediately. The Property value will plummet, with a corresponding decrease in its tax assessment (i.e., secured value). In addition, the RDA will be denied the future significant increase in Property values associated with redevelopment of the Property and thus denied a critical share of tax increment financing (again to service existing and future bond obligations).

We also note that this Redevelopment Area 8A is a joint City/County redevelopment district. As such, this adverse financial impact extends to both jurisdictions.

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The General Plan fails to acknowledge or discuss – let alone reconcile – the conflict with City and County redevelopment policies and financing structures that will result from the downzoning of the Property to open space uses.

VI. The Proposed Downzoning is Bad Policy.

Given the City’s financial difficulties and limited resources, it would be a violation of the City’s duty to its constituents to pursue a downzoning of the Property that so blatantly violates Constitutional and other legal protections and exposes the City to significant liability. As reflected in the *Yamagiwa v. City of Half Moon Bay* and *Adam Brothers* cases, should the City move forward with the downzoning of the Property, City faces financial liability that will run into the tens of millions of dollars. The City must consider whether it is worth the risk of draining limited resources, and potentially bankrupting the City, in order to satisfy the whims of few to convert long-standing industrial land (with no unique wetland or natural resource features) into a public open space resource. We submit that that the risk is an unreasonable one that no responsible government would undertake.

The City must also consider whether it has a need for and can support this additional 100 acres of open space land. As stated in the DEIR, “Open space uses comprise approximately 49% of the land are in the City, making it the largest overall land use category.” DEIR 3.1-3. Richmond already has more than 4,000 acres of regional and state parklands, and more than 250 acres of urban parks. DEIR 3.11-8. This far exceeds the state and City guideline of 1 acre for every 3,000 people. DEIR 3.11-6. In fact, the City’s existing parks and open space could support a city of more than 12 million people.

In fact, the City itself has officially opposed adding new parkland within the City. In 2005, it adopted a resolution that stated its opposition to the East Bay Regional Park District plan to condemn the land just north of the Property. Redevelopment Resolution No. 05-31; City Council Resolution No. 124-05 (attached hereto as Exhibit I). The City explained its position clearly.

- The City found that its “parklands and other open space areas are abundant for a city the size of Richmond and many parks, including Point Pinole Regional Park, are very underutilized.”
- “The loss of additional land from the tax roll would be a hardship on the City because it would further reduce the City’s ability to provide the services that the people of Richmond deserve.”
- A new park would not “be compatible with the greatest public good and the least private injury.”
- The creation of new parks requires CEQA review.

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- The Redevelopment Agency “has no intention of allowing land designated under a Project Plan for redevelopment to be use for purposes contrary to the Project Plan and Implemental Plan without an appropriate public process and approval of the Agency Board.”

There is no justification for an about-face now: the City has plenty of parkland and cannot afford to lose the tax revenues nor the redevelopment potential of additional parkland.

We submit the downzoning of an economically viable industrial property is a bad policy choice given the City’s overarching desire to further develop its commercial and industrial base within its own border. Accordingly, for all the reasons stated above, we urge the City to abandon this risky, expensive and bad policy choice and maintain the Property’s current Industrial/Office Flex designation.

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VII. The DEIR Contains Fundamental Analytical Flaws That Mandate a Full Revision and Recirculation.

One of CEQA’s primary functions is to ensure that decision makers and the public are provided with a sufficient degree of analysis and information to make intelligent judgments concerning a project’s environmental impacts. CEQA Guidelines § 15151; *Napa Citizens for Honest Gov’t v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 256. To that end, the DEIR must adequately identify the significant environmental effects of the 2030 General Plan, identify feasible measures to avoid or mitigate those impacts and to the extent those impacts cannot be mitigated, provide a complete analysis of the extent of the project’s adverse impacts.

28-5

Unfortunately, the DEIR fails in its duties. While we recognize the importance of the 2030 General Plan, and are generally supportive of many of its policies (excluding, of course, Change Area 12), it is critical that the DEIR accurately assess and analyze the environmental impacts that will flow from the policies and action items contained in the Plan. Accordingly, we submit the following comments on the DEIR, and hereby request that the DEIR be revised to address the inadequacies detailed herein, and re-circulated for meaningful public comment.

A. The DEIR Ignores Impacts Associated with the Downzoning of Change Area 12.

1. The DEIR Contains an Inaccurate Description of the Baseline Setting of Change Area 12.

28-6

The DEIR contains an inaccurate description of the environmental setting and baseline in its description of the Proposed Change Area 12, particularly as it relates to the Property. “The baseline is critical to a meaningful assessment of the environmental

impacts of a project.” Kostka & Zische, *Practice Under the California Environmental Quality Act*, (2d, 2011), §12.16; *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 119; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 955.

The DEIR states that this area has “been identified as important habitat for endangered plant and wildlife species ...lacks infrastructure and has remain undeveloped with the exception of an outdoor shooting range” and envisions its use as “open space, restored and protected to continue its historic function as vital habitat and provide enhanced opportunities for public access and recreation.” DEIR 2-25; see also, GP 3.37 (explaining Change Area 12 is recommended for designation as open space because the land is “historic baylands”); Figure 3.4-1, DEIR 3.4-1.

The Property conditions are completely contrary to the 2030 General Plan and DEIR’s baseline descriptions.

- **Habitat Conditions:** recent biological surveys confirm the Property contains no suitable habitat for endangered plant or wildlife species given its disturbed condition and routine land management practices.
- **Infrastructure:** The Property contains full build-out of infrastructure, including roads, utilities, drainage, lighting, and other key infrastructure necessary to support a full industrial/office flex subdivision. The City accepted these improvements as complete on December 6, 1982.
- **Development:** The Property has long been put to industrial uses, reaching back to the 1960s when three industrial buildings were constructed on the site. These buildings were demolished by the City as part of the Richmond Parkway construction project/eminent domain proceedings, but their building pads and the Property’s infrastructure remain.
- **Public Access and Recreation:** the Property is privately held and not suitable for public access or recreation.

Thus, the Property’s condition is far removed from the almost pristine state the 2030 General Plan and DEIR portray.

Where, as here, an EIR misstates the environmental setting, the EIR must be revised and re-circulated in order to account for an accurate analysis. Failure to do so will require the document be set aside. *Galante Vineyards v. Monterey Peninsula Water Management District* (1988) 60 Cal.App.4th 1109, 1122 (“Due to the inadequate description of the environmental setting for the project, a proper analysis of project impacts was impossible.”). *Id.*

28-6
 (cont.)

2. By Ignoring the Downzoning of Change Area 12, The EIR’s Project Description Is Inaccurate and Insufficient.

CEQA requires that an EIR contain an accurate project description that provides “enough information to ascertain the project’s environmentally significant effects, assess ways of mitigating them, and consider project alternatives.” *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523. Failure to include a component in the project description leads to a flawed impact analysis. *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645; *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 27; *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818.

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The DEIR project description is confusing and incomplete. It omits any mention of the portions of the 2030 General Plan that propose downzoning a significant portion of the City’s industrial base to open space uses.⁷ Even in its description of Change Area 12, the DEIR fails to inform the reader of the current Industrial/Office Flex designation, thereby depriving the reader of critical information as to the scope and extent of the proposed change.⁸

Instead, the DEIR focuses exclusively on the ways in which the General Plan will induce growth within the City. The DEIR repeatedly categorizes all change areas (including Change Area 12) as areas that would provide and facilitate development and growth to meet the City’s housing and job related goals.

Indeed, the DEIR's analysis reflects a contrary approach where the singular focus is the growth impacts associated with the proposed change areas and acknowledges that restoring change areas to less developed conditions would be inconsistent with the General Plan's goals. This is well illustrated on DEIR page 4-5:

⁷ It should also be noted that Tables 2-3 and 2-4 purport to describe overall changes in land use designations, but they are misleading because they do not show changes within the change areas between the existing and proposed land uses. 2-41-42. This hides the fact that some land is downzoned even though the General Plan calls for growth.

⁸ Nor does the DEIR contain a clear description of the shift in land uses between the existing and proposed General Plan. For example, Tables 2-3 and 2-4 attempt to show the existing and proposed breakdown of zoning designations throughout the City and quantify the number of acres within each category under the existing and proposed General Plan. DEIR 2-41 to 2-42. Unfortunately, these tables are almost impossible to track to determine how much land is being transitioned from existing to new uses – including Industrial/Office Flex and Open Space/Parks and Recreation uses. Adding further confusion, the two tables have inconsistent zoning categories. As a result, it is impossible for the reader to determine the actual shift in land uses throughout the City.

28-8

The proposed General Plan would result in the commitment of concentrated development resources within the identified change areas. The General Plan would increase building densities, population concentration, and transit oriented development opportunities, providing more walkable urban development context, thereby precluding any other proposed development opportunities for the lifespan of the plan. Restoration of the change areas to a less developed condition would be inconsistent with the goals and policies of the General Plan, which focus on the development of a dense and concentrated urban core. Restoration of the area to natural (undeveloped) state would not be feasible given the degree of disturbance, the urbanization of the area, and the level of capital investment.

28-7
(cont.)

See also DEIR 2-40 (“the General Plan focuses on 16 change areas within the City where future growth is most likely to occur.”); ES-2 (“the change areas would experience the most drastic change in land uses and would be the focus of development and redevelopment efforts.”); ES-1 (“majority of development planned within the 16 change areas”); 3.5-22 to 26 (re-designation of change areas to accomplish growth and increase density (3.10-26)); 4-8 (describing the commercial, residential, retail, and transportation development resulting from the 2030 General Plan). The DEIR altogether ignores the General Plan’s reductions in density, constraints on growth, or limits on new development. This omission from the project description renders the resulting environmental analysis incomplete.

Because of the inadequate project description, the DEIR ignores the potential impacts caused by downzoning. Eliminating this critical source of commercially developable land will have a significant negative impact on future employment, the jobs/housing balance and will facilitate urban blight. There are additional significant secondary impacts by making this land unavailable for its long-standing industrial and commercial uses – such as worsened air quality and traffic impacts associated with pushing more jobs out of the City and lengthening commutes and vehicle miles traveled. In addition, the City will be denied important tax revenues (including a source of redevelopment tax increment financing funds) that are currently generated by the properties within Change Area 12, which would no doubt increase as these lands are redeveloped for enhanced industrial and office flex uses. At the same time, transitioning the land in Change Area 12 to open space will result in increased demands on City resources, such as police and fire to protect against vandalism, unlawful camping, and wildfires. Moreover, given that the DEIR relies on new development to fund additional public services, preventing new development thwarts the collection of revenue necessary to fund this increased demand on public services. None of these consequences were contemplated, much less adequately analyzed in the DEIR.

28-9

The DEIR also assumes, without data or analysis, that less intensive land uses would create fewer significant environmental impacts. DEIR 2-1. In fact, less intensive

land uses create different environmental effects, as described above, and can even create greater environmental impacts. For instance, less intensive development can facilitate urban blight and would mean fewer people living and working in the City. With fewer people, there would be less demand for transit services and lower transit revenue, thwarting transit improvements and thereby discouraging transit use. Discouraging people from transit to individual automobiles would have a negative effect on air quality, greenhouse gas emissions, and traffic. Modern urban planning is based on the idea of higher densities in cities specifically to avoid the negative impacts associate with dispersed population and job centers.

28-9
(cont.)

The DEIR’s failure to analyze downzoning means that the public and the decisionmakers lack the information necessary to make an informed decision about the General Plan.

3. The DEIR Does Not Accurately Describe Impacts of Downzoning the Change Area 12.

Because the DEIR contains an inaccurate baseline and project description regarding the downzoning impacts associated with Change Area 12, the DEIR fails to accurately describe or analyze the impact of removing 100 acres of historic industrial/office flex land from the City’s development base.

28-10

For example, Table ES-1 reports that there will be no change to Parks and Open Space resources under any of the scenarios analyzed in the DEIR (Proposed Project, No Project, Alternative 1, Alternative 2). CEQA requires that all impacts, even those that could be potentially beneficial, be analyzed in order to ensure the public and the decision makers have a full appreciation of the environmental consequences of their proposed actions. CEQA Guideline 15063(b)(1) (requiring analysis of adverse and beneficial effects); *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1580.

The DEIR also contains false information on the categories of land that the 2030 General Plan designates as public open space resources. The DEIR erroneously reports that those properties proposed for open space, parks and recreational resources and agricultural land have been designated as priority conservation areas. See DEIR ES-3, 2-9. Yet, none of the land included in Change Area 12 has ever been classified as a priority conservation area. The JHS and RDC Property in particular is ineligible for this classification given its improved condition and historic industrial uses.

4. The Land Use Analysis Fails to Address the North Richmond Shoreline Specific Plan.

The 2030 General Plan proposes to rescind the long-standing North Richmond Shoreline Specific Plan, which was created in 1993 to guide development in this area of the City.

28-11

Yet, the DEIR altogether ignores the existence of this NRSSP and makes no reference of City’s apparent intent to rescind this critical planning document. This stands in contrast to the DEIR’s express reference to and discussion of numerous other City specific plans (such as the Macdonald Avenue Revitalization Plan, Civic Center Master Plan and Point Molate Reuse Plan), including analysis of whether and to what extent these plans are compatible with the 2030 General Plan policies. See DEIR 3.1-8.

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The DEIR must contain a full and detailed analysis of the impact of rescinding a critical land use plan that has guided development of this portion of the City, including the Property and Change Area 12, for eighteen years. The DEIR must be revised and re-circulated to reflect a full and complete analysis of the potential environmental impacts of rescinding this long-standing specific plan.

5. Implementation of the Proposed Downzoning Will Physically Divide North Richmond.

The DEIR acknowledges that one basis for finding a significant land use consistency and compatibility impact is if a proposed action creates a barrier that will result in the physical division of an established community. DEIR 3.1-6. The DEIR identifies “open space that is not developed for recreational use” as an example of a land use control that can result in an adverse physical division.

28-12

Yet, the DEIR undertakes absolutely no analysis to determine whether downzoning 100 acres from Industrial/Office Flex to Open Space would result in a physical division of the North Richmond Community. It is arbitrary and capricious for the EIR to ignore this potential impact, particularly given that the proposed open space land is private property that will be subjected to a land use designation that would allow no economically viable use. Common sense dictates that impact of this land use designation will create an island of unimproved, and publicly inaccessible land, that is otherwise surrounded by developed uses. This will facilitate physical blight and run contrary to the General Plan’s often repeated goals of creating mixed-use, walkable, integrated neighborhoods with an equitable distribution of retail, public amenities, community facilities and infrastructure. See DEIR 3.1-6; GP Policy LU2.1 – LU2.4.

B. The DEIR’s Flawed Growth Rate Assumptions and Impact Analysis Methodology Results in Significantly Understated Impacts.

The DEIR adopts a flawed growth rate assumption that results in significantly understated impacts throughout the document. This runs contrary to CEQA, which is meant to “afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259. “The EIR has been aptly described as the ‘heart of CEQA.’ Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’” *Citizens of Goleta Valley v. Board of Supervisors*

28-13

(1990) 52 Cal.3d 553 [internal citations omitted]. To this end, an EIR may not artificially narrow the scope of a proposed project simply to reduce the potential for environmental impacts. See, e.g., *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1450; *Rural Land Owners Ass'n v. City Council* (1983) 143 Cal.App.3d 1013; *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193. Rather, it must consider all "reasonably foreseeable" future consequences of the project. *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376. An EIR "must necessarily include a consideration of the larger project, i.e., the future development permitted by the amendment." *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 409. "While it might be argued that not building a portion of the project is the ultimate mitigation, it must be borne in mind that **the EIR must address the project and assumes the project will be built.**" *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 206. The DEIR has failed to do so.

The DEIR contends it "has provided a 'worst-case' scenario level of analysis to ensure that all potential impacts are accounted for" and acknowledges "it is the responsibility of this EIR to remain conservative in its assumptions." DEIR ES-5. Yet, the DEIR fails in this obligation by ignoring full general plan build out, instead using shifting and unsupported growth rate assumptions.

Instead of evaluating the environmental impacts of full build-out as would be allowed under the General Plan, the DEIR evaluates impacts based on an "adjusted build-out scenario." Apparently, this scenario is based on a City concept that "'build-out' of the Proposed General Plan would not occur for many years beyond the 2030 horizon." DEIR 3.0-4; see also DEIR 1-1. Accordingly, the DEIR adopts a hybrid growth rate that looks at Association of Bay Area Government (ABAG) growth projections from 2007, plus some additional unexplained growth allocation, and assumes an arbitrary 13% population growth projection. According to the DEIR, this would result in an increase in population of 30,147 with an additional 22,488 jobs and 15,548 housing units. DEIR 2-40; see also 3.0-1 to 3.0-2, 3.2-7. While the DEIR utilizes these projections to determine the significance and proposed mitigation for all General Plan impacts, the 2030 General Plan and DEIR contains no institutional controls, mitigation measures or other policies that would limit growth to the assumed reduced growth projections.

Consequently, the DEIR contains no calculation or quantification of the population, job or housing growth under a full build out scenario and thus by default contains no substantive analysis of how this level of growth could impact the environment. This is particularly problematic in the context of infrastructure demand and planning. Indeed, the DEIR boldly admits that its analysis does not account for full build out demands and defers any analysis of future infrastructure needs to some undetermined date:

For some impact areas, including all of those that involve demand/capacity increase, it is acknowledged that the magnitude of



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additional demand that could occur under full buildout is greater than the demand of development anticipated during the General Plan’s planning horizon. Where applicable, the DEIR acknowledges that capacity does not exist for that additional demand. It should be noted, however, that the additional demand of full buildout of the Plan would occur in a time period beyond the horizon of the plan, and future planning efforts would address that growth, the implications of the growth, how to provide additional capacity if necessary to accommodate the growth. Environmental analysis will be conducted for those future plans as they are proposed.

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DEIR 3.0-4 to 3.0-5.

The chief and critical role of an EIR, especially one analyzing a general plan, is to provide information revealing the impacts of the planned growth. This is particularly important when the EIR is evaluating impacts associated with a new general plan whose fundamental purpose is to direct growth and to identify and address the core-infrastructure needs. This DEIR completely fails this to meet this fundamental mandate. The failure to contain a detailed analysis of the full 2030 General Plan build out renders the DEIR’s analysis of each of the impact areas (Chapters 3.1 through 3.15) inadequate.

C. The DEIR’s Demographic Estimates and Analysis Are Not Supported by Substantial Evidence.

Chapter 3.2 of the DEIR contains a discussion of existing and anticipated demographics in the City in terms of population, employment and housing. According to the DEIR, the purpose of this chapter is “to identify, estimate and evaluate population, employment, and housing changes that would be caused by development under the proposed General Plan and have the potential to cause environmental effects.” DEIR 3.2-1. The DEIR then utilizes these demographic estimates to analyze projected growth, jobs/housing balances and also as the foundation for quantifying General Plan impacts in the various resource categories.

28-14

In addition to failing to account for full 2030 General Plan build out, this demographic data is fundamentally flawed. Because this data serves as the foundation for the DEIR’s impact analysis in all categories, the DEIR as a whole must be revised and re-circulated.

1. The DEIR Relies Upon Stale Census, Employment and Population Data.

The DEIR’s demographic analysis relies on dated census, employment and population data. For example, the DEIR utilizes the 1990-2000 Census data rather than more recent 2000-2010 Census data. See DEIR 3.2-1 to 3.2-3. In between these two census periods, the City and County have experienced substantial population growth that

is not accounted for in the DEIR. The result is another occurrence of undercounting population levels and a corresponding under-estimation of potential environmental impacts. See DEIR 3.2-1.

The DEIR also relies on dated economic information reporting employment levels from 2001 to 2004 from the Employment Development Department (“EDD”) and the City’s Issues and Opportunities Paper 9: Economic Trends and Market Analysis. DEIR 3.2-4. The Issues and Opportunities paper draws on EDD data. Given that EDD data through 2009 are available; such up-to-date information must be used to inform the DEIR’s demographic and impact analyses.

In addition, the DEIR utilizes dated ABAG Projections data, relying on the 2007 Projections data rather than the more current 2009 Projections data. See DEIR 3.2-2.⁹ A critical aspect of ABAG’s 2009 Projections is the first time inclusion of “Performance Targets” which identify environmental, land-use and transportation related impacts of growth, as well as alternative land use scenarios to test how these objectives can be addressed and balanced through land use policies. By relying on the 2007 Projects, the DEIR failed to incorporate these key policies and goals for guiding growth in the region. Moreover, the ABAG Projections in and of themselves are not a sufficient stand-alone source for growth forecasting. ABAG’s Projections are based, in part, on the existing City General Plan. Thus, these Projections do not account for the changing development patterns and increased jobs, housing and population growth that would be authorized in the Draft General Plan.¹⁰

As a result, the DEIR’s analysis is fundamentally flawed for its failure to use the most recent and best data available, which would constitute the proper CEQA baseline. This entirely undermines the DEIR’s analysis of the 2030 General Plan’s impacts on population, employment and housing growth as well as its analysis of all population/demand related impact categories (such as air quality, hydrology, climate change, parks and recreation, and transportation among others). The DEIR must be revised to reflect the most recent and best available data.

2. The DEIR Contains an Inaccurate and Incomplete Assessment of the 2030 General Plan’s Impacts to the City’s Jobs/Housing Balance.

The DEIR’s demographic analysis also purports to undertake an analysis of the jobs/housing balance. As with the other impact sections, this analysis is based upon dated information and thus does not accurately reflect the most recent market and population conditions. See e.g., 3.2-6 (relying on US Census data collected in 2000, rather than more recent 2010 Census data). For this factor alone, the analysis must be

⁹ See <http://www.abag.ca.gov/planning/currentfcst/#>

¹⁰ See <http://www.abag.ca.gov/planning/currentfcst/modeling1.html>



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28-15

revised to ensure the DEIR has utilized the best available information and the DEIR must be recirculated so that the decision-makers and the public will have an accurate portrayal of General Plan impacts.

We also note that the DEIR's analysis of jobs within the City is based on dramatic variations in data. According to the DEIR, the US Census reported there were 35,625 jobs within the City in 2000; but according to the EDD, in 2004, the City had a total of 26,507 jobs – reflecting the loss of over 9,000 jobs in a four year period. The DEIR then latches onto the EDD data to conclude that, as of 2004 at least, the City had a jobs/housing ratio of .75, which is well below the goal of a 1.0. The DEIR then asserts, again without any data or analysis, that implementation of the proposed General Plan could improve the City's job/housing ratio to be more in line with County statistics (at a 0.93 ratio). Later, the DEIR adopts a hybrid mix of ABAG and EDD employment and housing projections (based on dated information), and concludes that with implementation of the 2030 General Plan, the City will achieve a 1.24 jobs/housing ratio – a dramatic .50 shift over the purported current ratio.

Given this dramatic shift in the jobs/housing ratio, and the continued imbalance (albeit in contradictory directions), one would expect the DEIR to contain a detailed analysis to support the dramatic shift in jobs and housing between the existing and 2030 General Plan. Yet, again, all the DEIR offers is a conclusory statement that the General Plan will achieve an improved jobs/housing ratio. DEIR 3.2-6. CEQA requires that EIRs be prepared “with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental differences.” Guideline 15151. Where, as here, the DEIR contains bare conclusions and opinions, without adequate facts and analysis, the EIR is inadequate. *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 404.

Even a superficial review of the DEIR's analysis and conclusions reveals its inherent flaws. The DEIR fails to explain how the 2030 General Plan's commercial/industrial development policies will interact with its residential growth policies, and whether the housing supply will be affordable to the City's residents. This is well illustrated by the City's proposed shift in land use policies for Change Area 12. According to the DEIR, the City will experience significant growth in jobs, yet the DEIR proposed to rezone 100 acres of long-standing industrial/office flex land to open space. Where and how will this job growth occur under the General Plan if it cannot occur in these key industrial/flex development areas?

One of the chief functions of the 2030 General Plan is to address, plan for and balance jobs and housing. The DEIR fails to provide an accurate assessment of whether the 2030 General Plan policies are capable of achieving the desired balance, and outright ignores the environmental impacts of failing to do so (such as increased vehicle miles travelled, higher energy consumption rates and road congestion).

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3. There Is No Evidence to Support the DEIR’s Conclusory Statement that Buildout Under the General Plan Will Not Exert Housing Pressure Outside City Limits.

The EIR’s demographics chapter also purports to analyze the potential for 2030 General Plan policies to create housing pressure in adjacent and nearby communities. Yet again, instead of providing any substantive analysis on this topic, the DEIR proffers a bare conclusion that “new housing would not have to be built outside of Richmond to accommodate the City’s growth,” and thus “[t]his issue is not addressed further in the EIR.” DEIR 3.2-1 to 3.2-2. This conclusion is entirely lacking in analysis and evidentiary support, and thus is not supported by substantial evidence. “Conclusory comments” are inappropriate, particularly where “the EIR provides no information to the public to enable it to understand, evaluate, and respond to the bare assertion.” *Laurel Heights*, 47 Cal.3d at 404.

28-16

Indeed, the DEIR’s bald conclusion fails to account for a later conclusion in the very same chapter that, under the 2030 General Plan, the City will experience a jobs to housing ratio of 1.24 jobs per household. Where will these new employees live given the apparent shortage of housing?

The DEIR must engage in a substantive discussion which reflects accurate population, housing and job growth levels authorized under the 2030 General Plan, how this growth will affect existing and planned housing stocks within the City, whether those stocks are sufficient to meet the anticipated demand in a range of income categories (including very low, low and moderate income categories), and whether the authorized growth will require housing to be built outside Richmond City’s limit. The DEIR’s one sentence summary dismissal of this potential impact is wholly inadequate.

D. DEIR Improperly Relies Upon Full Compliance with General Plan Policies to Mitigate Impacts – Where Such Policies are Vague and Unenforceable.

The DEIR’s analysis of environmental impacts hinges upon the suspect assumption that all future projects will achieve full compliance with all General Plan policies and that the City will fully implement all General Plan policies. See DEIR 3.0-1 (“The proposed General Plan EIR is based on the assumption that all policies in the proposed General Plan will be implemented and all development will be consistent with the proposed General Plan Land Use Diagram”); see also 3.0-3 (Significant defined as “An adverse and substantial effect on the environment, where even with application of proposed General Plan policies, it cannot be reduced to levels that are less than significant.”).

28-17

The flaw with this approach is that many of the General Plan policies that the DEIR had deemed will be fully complied with (and thus in most instances will mitigate all impacts) are vague, amorphous, and unenforceable policies that lack any form of an

implementation plan, performance standard or mandatory element to ensure that they will be complied with.

This is wholly inadequate and unjustified assumption. "Lead agencies should avoid vague, incomplete, or untested mitigation measures. Mitigation measures must not be remote and speculative." Kostka & Zische, *Practice Under the California Environmental Quality Act* (2d Ed. 2011) §14.11, (citing *Federation of Hillside & Canyon Assns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260). Mitigation measures that are so undefined as to render it impossible to estimate their effectiveness are legally inadequate. *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 79; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727. Mitigation measures must be "fully enforceable through permit conditions, agreements, or other measures." Pub.Res.Code § 21081.6(b). A city must ensure that mitigation measures are "not merely adopted and then later neglected or disregarded." *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261. The city must analyze the efficacy of proposed mitigation measures. See Pub.Res.Code sections 21002, 21100; *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099.

28-17
(cont.)

Here, the DEIR fails in each of these mandates. The following list highlights examples of vague and unenforceable policies upon which the DEIR relies:

- Mitigation Measure 3.3-1 asks that the City "encourage a ferry terminal," provide "bicycle and pedestrian amenities;" and "promote" reduced transit fares. 28-18
- The Best Management Practices identified for climate change avoidance like use of alternative fuels, local building materials, and significant recycling of construction waste are expensive, and may not even be possible. 3.6-12. There is no evidence in the DEIR that there are enough local building materials to make any difference in emissions. 28-19
- For greenhouse gas emissions, the City adopts such policies as "take a leadership role in advocating for local, regional, and national solutions to climate change," "raise awareness," "continue to collaborate," and "explore the potential." 3.6-17 through -29.
- With regard to hazardous materials, the City vows to do such things as "develop an awareness program," and "educate the community." 3.8-18. 28-20
- For schools, the City intends to "continue to track and evaluate," "support" the school district in providing quality education; and "support the school district's "efforts to collaborate with community colleges and other educational institutions." 3.12-15. 28-21

The DEIR offers a number of mitigation measures that would be very expensive, but for which the City clearly lacks funding and none is identified in the DEIR. For example, the DEIR admits that the existing stormwater drainage facilities in the City are inadequate to meet the baseline requirement of handling the 10-year 24-hour storm. 3.9-2; 3.9-24. There is no basis, therefore, for the City to rely as mitigation on an unfunded promise to “maintain municipal infrastructure or “provide storm drainage in accordance with best management practices and guidelines” - particularly when it is not capable of doing so now, without the increased demand that will occur under the 2030 General Plan. 3.9-19. Similarly, the DEIR relies on significant infrastructure work on railroad crossings to make them safer, but there is no guarantee that there will be funding. 3.14-5.

28-22

E. The DEIR Improperly Defers Key Infrastructure Improvements.

The DEIR acknowledges that the City’s existing public infrastructure is unable to meet current needs, and that development under the General Plan would exacerbate these failing conditions. This is particularly of concern in the impact categories of Hydrology/Water Quality (stormwater system), Public Utilities and Transportation. Yet, the DEIR concludes impacts associated with these impact categories will be less than significant by relying on an amorphous requirement that future development provide proportionate facilities and infrastructure improvements to mitigate project-specific impacts. See DEIR 3.0-3.

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In essence, the DEIR relies exclusively on a vague reference to implementation of fair share contributions by future developers to fully mitigate impacts to infrastructure. But CEQA requires more. The DEIR fails to meet CEQA’s demand that the DEIR: (1) quantify existing infrastructure conditions and whether it is sufficient; (2) anticipated future infrastructure needs; (3) identify an infrastructure improvement plan with specific actions and performance standards; (4) mandate the implementation of the infrastructure plan as a condition to development; (5) identify how such plans will be funded, including both development and city generated fees; (6) and provide an accurate assessment of whether, with implementation of the infrastructure plans and other feasible mitigation, impacts can be fully mitigated; and (7) if such impacts cannot be fully mitigated, identify that impact and the extent of the impact. The DEIR fails in each of these steps.

What is the most problematic is the DEIR’s methodology has resulted in the deferral of mitigation of core City-infrastructure; CEQA prohibits the deferral of mitigation measures. Guideline 15126.4(a)(1)(B) states, “formulation of mitigation measures should not be deferred until some future time.” “Impermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR.” *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 915. A mitigation plan may not be based on future studies. *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 95. Moreover, a plan to develop mitigation measures after future analysis is inadequate.

28-24

Endangered Habitats League, Inc. v. County of Orange (2005) 131 Cal.App.4th 777, 794.

This concept is further explained in *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, where the court rejected mitigation measures in the form of a “generalized goal” because “no specific criteria or standard of performance is committed to in the EIR.” *Id.* at 670. There, as here, the EIR “leaves the reader in the dark about what ... steps will be taken, or what specific criteria or performance standard will be met...the success or failure of mitigation efforts...may largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review within the EIR.” *Id.*

The instant DEIR falls far short of the mark: it has no specific criteria, no plan in place, no commitment to implement any particular course of action, no enforcement mechanism to ensure that infrastructure will be provided, and no performance standard. Nor does the DEIR articulate any rationale for deferring mitigation. Such an amorphous approach improperly defers mitigation.

The fundamental lack of commitment is also evident elsewhere in the DEIR, including at page 2-43, where the DEIR blatantly defers the identification of key performance standards and confirms that future infrastructure improvements are optional:

The Zoning Ordinance would further define land use designations and the **performance standard** applicable to the land use designations. Additional approvals **may** include:

- Adoption of financing or fee programs for public infrastructure.
- Construction of public infrastructure projects or consideration of private development requests for infrastructure projects such as transit and roadway improvements, water distribution facilities, wastewater facilities, drainage improvements, other capital improvements, and natural resource preservation and/or restoration. ...

DEIR 2-43. CEQA does not permit the City to put off developing such critical performance standards until the future.

The City’s approach is strikingly similar to the approach the court struck down in *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, the Calaveras County General Plan land use element included proposals that would result in increased population. In that matter, the circulation element of the plan failed to provide feasible mitigation for the anticipated traffic impacts that would follow the anticipated buildout under the general plan; instead, the County stated it would lobby for funds to solve the future traffic problems. The court held this vague response was

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insufficient. The court reasoned that “all conflicts between the various elements of a general plan – no matter how obvious, severe or dramatic – could be made magically to disappear by inclusion in the plan of the incantation, ‘We will lobby for funds to solve the problems causing the conflicts.’” *Id.* at 103. Such an incantation would be an “abracadabra,” eviscerating statutory requirements.

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The DEIR’s critical function is to predict (based on an accurate growth assessment that accounts for full build out potential) the potential extent and need for these important infrastructure projects, determine if such needs can be met, identify feasible mitigation measures to minimize impacts to infrastructure, and if such impacts cannot be mitigated to a less than significant level inform the City and the public of this fact. The DEIR must be revised and recirculated to reflect this critical missing analysis.

F. The DEIR Fails to Analyze the 2030 General Plan’s Consistency With Local and Regional Plans.

CEQA mandates that the DEIR analyze the 2030 General Plan’s consistency with existing land use plans and policies, including regional plans. CEQA Guidelines § 15125(d). Here, that means the DEIR is required to analyze the General Plan’s consistency with existing specific plans – including the NRSSP (a City/County plan) – as well as regional plans such as the San Francisco Seaport Plan, the San Francisco Bay Plan, San Francisco Bay Area Housing Needs Plan, ABAG’s Regional Land Use Policy Framework, BAAQMD Bay Area 2010 Clean Air Plan, the Metropolitan Transportation Commission’s Transportation 2030 (including greenhouse gas reduction targets), the Integrated Regional Water Management Plan for the San Francisco Bay Area; the RWQCB Basin Plan for the San Francisco Bay Basin, West Contra Costa County Transportation Advisory Committee plans, Contra Costa Congestion Management Program, and 511 Contra Costa Comprehensive Transportation Demand Management Program plans.

28-25

The DEIR improperly punts on this analysis: “If there are potential inconsistencies with other regional land use plans that could result in physical environmental effects, those effects are addressed in applicable technical sections in this EIR.” DEIR 3.1-1. The DEIR never undertakes the requisite analysis to determine whether – and to what extent – the General Plan conflicts with these other local and regional plans and what modifications must be made to the 2030 General Plan in order to ensure future compliance. Thus, the City and the public are denied the analysis and information that CEQA mandates.

Indeed, the only reference to any analysis of compatibility with local or regional plans is a brief two sentence statement that asserts, without any evidence or explanation, that the 2030 General Plan “would not conflict the San Francisco Bay Plan” and “would not be inconsistent with the [San Francisco Seaport Plan].” There is no mention of the local and regional plans listed above; nor is there a description of how these plans relate to the proposed uses in the 2030 General Plan or evidence or analysis to support the

DEIR’s findings of consistency. This violates CEQA’s requirement that an EIR must identify the basis for its environmental conclusions. “An EIR must set forth the bases for its findings; a bare conclusion regarding an environmental impact without an explanation of its factual and analytical basis is not sufficient.” *Laurel Heights Improvement Assn* (1988) 47 Cal.3d 376, 404). *See also Berkeley Keep Jets Over The Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371 (rejecting an EIR that failed “to support its many conclusory statements by scientific or objective data”).

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The DEIR likewise ignores the 2030 General Plan’s compatibility with the surrounding jurisdictions that share borders with the City, including the cities of El Cerrito, San Pablo, Pinole and the unincorporated areas of the County. Nowhere does the EIR explain how the proposed policies of the General Plan will interplay and impact the key connection points, housing or other potential impacts with these surrounding jurisdictions.

The closest the DEIR gets to any level of analysis is the bare assertion that “depending on the specific location of certain uses that could be developed under the proposed General plan, potential incompatibilities could occur.” DEIR 3.1-9. The DEIR does not describe what those “potential incompatibilities” might be, or how they could be mitigated. Nonetheless, without any further discussion, the DEIR somehow leaps to the conclusion that the implementation of the General Plan “would not result in substantial land use incompatibilities” and thus finds there is no significant impact.

28-26

This is a wholly deficient analysis. The DEIR artificially conscribed the scope of review and engaged in a purely superficial analysis which ultimately concludes the General Plan could result in “potential incompatibilities” Despite this acknowledgement, but without any analysis or identification of mitigation measures, the DEIR leaps to the unsupported conclusion that land use impacts will not be significant. CEQA mandates the City correct these critical errors through a completely revised and recirculated land use compatibility analysis.

G. The DEIR’s Hydrology and Water Quality Analysis Is Not Supported By Substantial Evidence.

The DEIR’s analysis of hydrology and water quality impacts is fundamentally flawed, particularly as it relates to impacts and mitigation related to storm drain systems, groundwater impacts, of City’s storm drainage system.

28-27

1. The DEIR Fails To Analyze or Mitigate Known Existing Storm Drainage Infrastructure Impacts.

As acknowledged in the DIER, the City’s existing storm drain system cannot handle existing stormwater flows, resulting in frequent and severe flooding. “The storm drain system is designed to handle the flow of a 10-year, 24-hour storm event. However, ...the existing system is generally inadequate for collecting and conveying that storm

event.” DEIR 3.9-2. According to the 2005 Storm Drainage Master Plan for the City, the City routinely experiences “[s]everal flooding problem areas” as a result of the following factors:

- Undersized pipes for runoff, even for minor storms
- Damaged curb and gutters where raised gutters and other obstructions disrupt the flow
- Area(s) without a storm drainage system
- Damaged pipes or debris/large solids build up within pipes

According to City reports, this flooding is frequent and often severe. At best only 40% of the pipes have capacity to convey the 2-year storm event and only 29% have capacity to convey the mandatory design level 10-year storm event. See 3.9-7. Only 20% of the pipes and channels have the capacity to convey the 100-year storm event. In each of these storm events, there are high occurrences of severe street flooding, including 7% of the time during a 2-year storm event, 20% of the time during the 10-year storm event and 32% of the time during a 100-year storm event. This violates Clean Water Act stormwater permit mandates and poses a hazard to public safety.

In other words, the City has an existing severe problem with the capacity of its stormwater system – yet, somehow the DEIR concludes that development under the General Plan will not result in a significant adverse impact to drainage infrastructure or result in flooding.

The DEIR does so by relying an unrealistic assumption that the City will be able to comply with various General Plan policies related to stormwater management and infrastructure improvements. For example, the DEIR cites to General Plan Policy CN3.1, which addresses stormwater management and includes action items that would require the City to “continue to comply with the City’s National Pollution Discharge Elimination System (NPDES) Permit” and to “maintain municipal infrastructure.” DEIR 3.9-18. Yet, as demonstrated in the City’s own reports and the DEIR, the City has failed to comply with its NPDES stormwater permit requirements and its infrastructure has not been maintained or improved to meet mandatory flow requirements. With increased growth under the General Plan, the City will experience increased demand on the City’s already taxed stormwater infrastructure – yet the DEIR provides no explanation as to how the City might cure the current deficient system and improve it to accommodate the growth the General Plan favors. Mere compliance with regulatory standards is not sufficient mitigation without a project-specific analysis of potential impacts of regulatory compliance. *Californians for Alternatives to Toxics v. Department of Food and Agriculture* (2005) 136 Cal.App.4th 1 (“compliance with regulatory standards is not sufficient mitigation without a project-specific analysis of potential impacts of regulatory compliance.”); *Ebbetts Pass Forest Watch v. California Department of Forestry & Fire Protection* (2008) 43 Cal.4th 936, 956.

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The DEIR also appears to adopt a deferred mitigation approach to its stormwater management issues, by relying on General Plan Policy CF 1-1 which would require the City to “maintain high-quality facilities and infrastructure to sever diverse community needs.” This would theoretically be accomplished through action items CF1.D and CF1.E which would require the City to (1) assess its stormwater drainage systems and capacity to serve new development, (2) to recommend improvements to the system, (3) adopt a plan that will address deficiencies in the system, (4) and identify funding mechanisms to implement the needed stormwater infrastructure improvements. See DEIR 3.9-19.

28-28

This is classic deferred analysis and mitigation that violates CEQA’s full disclosure mandates. See *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1187 (where there is evidence that a given mitigation measure lacks funding and is therefore infeasible, the mitigation measure is inadequate). Each of the steps identified in Policy CF 1-1 are the substantive heart of what the DEIR’s analysis of impacts to stormdrainage facilities should have contained. See e.g., *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 670. (See above for further discussion of deferred mitigation.)

The DEIR wholly fails in its duty to accurately define the scope of existing stormwater management problems, assess how the new development promoted in the 2030 General Plan will contribute to this problem, quantify those impacts, identify mitigation (a plan and funding) that will alleviate this impact to the extent feasible, and if those impacts cannot be mitigated inform the City and the public of the presence and extent of this significant impact to allow an informed and politically responsible decision.

Nonetheless, despite acknowledgement of existing infrastructure failures and the lack of any improvement plan or funding mechanisms in place to address significant storm water quality impacts, the DEIR somehow concludes that the 2030 General Plan will have a less than significant impact on the City’s ability to comply with its stormwater discharge requirements (or WDRs). This conclusion cannot be supported by the evidence.

2. The DEIR Fails to Analyze Potential Groundwater Infiltration Impacts.

The DEIR repeats its analytical missteps in its analysis of potential groundwater impacts by omitting substantive analysis in favor of a conclusory statement. The DEIR acknowledges that new development under the 2030 General Plan would increase the amount of impervious surfaces, “[b]ecause the infiltration rate of soils in the City tends to be quite slow, stormwater runoff would be naturally high and infiltration relatively low. Thus, changes in pervious surfaces would not substantially affect groundwater recharge.” DEIR 3.9-20.

28-29

The DEIR goes on to rely on vague and unenforceable General Plan policies and action items to designed to protect and increase open space as a means to further reduce groundwater recharge impacts. For the reasons stated above, this is inadequate mitigation.

The DIER’s analysis of groundwater infiltration impacts is entirely contradictory. On one hand the DEIR concludes that groundwater impacts will not be significant because of low infiltration rates. DEIR 3.9-20. On the other hand, the DEIR relies upon vague General Plan policies and action items that encourage the preservation, acquisition and expansion of open spaces uses, presumably because such uses will facilitate better groundwater recharge rates. Both cannot be correct – an actual analysis must be performed to understand development impacts on groundwater recharge rates utilizing the full General Plan build out scenario. Anything less is inadequate.

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3. The DEIR Improperly Defers Mitigation of Erosion Impacts.

The DEIR acknowledges that development under the 2030 General Plan “would substantially alter drainage patterns by changing the land cover, land slope, drainage pathways and susceptibility of materials to erosive forces.” DEIR 3.9-22. Yet, again, the DEIR concludes that through implementation of General Plan policies, this impact will be less than significant.

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For the reasons stated above, the analysis is wholly lacking and the reliance on vague and unenforceable General Plan policies in not sufficient. In particular, the DEIR relies upon compliance with Policy CN1.1, which would simply calls for the City to “Establish performance standards for creek corridors that accomplish” a vague set of design, herbicide management and best management practices for creek corridors. DEIR 3.9-23. The same flaws are present in the DIER’s reliance on Policy CN2.3 addressing “natural topography protection.” The DEIR’s mere reference to these future planning efforts are inadequate mitigation. As explained in *SOCA*, 229 Cal.App.3d 1011, CEQA demands the existence of established and enforceable standards in order to qualify as legitimate mitigation.

In addition, the DEIR wholly fails to account for construction related impacts to drainage patterns and erosion levels.

This pattern is repeated throughout the DEIR’s discussion of hydrology impacts including 3.9-4 (alter drainage patterns), 3.9-5 (increase the amount of runoff and pollution in runoff), 3.9-6 (groundwater quality degradation), 3.9-7 (exposure to people and structures to flood hazards), 3.9-8 (exposure of people to sea level rise).

4. The DEIR Fails to Analyze Potential Impacts Associated with Construction of Needed Storm Water Infrastructure.

The DEIR acknowledges that new storm drains and infrastructure to serve new and existing development would be constructed under the proposed General Plan. The DEIR again concludes – without any supporting analysis – that construction impacts associated with these infrastructure improvements would be less than significance in reliance on various General Plan policies. DEIR 3.9-37.

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This analysis is anemic. It fails to account for the extent of upgrades required, where those will be located, whether there is a plan in place for the needed improvements and the source of funding (particularly for improvements necessary to address currently deficient capacity levels). While the mitigation measures set forth a plan to collect fair share contributions for improvements necessary to accommodate new development, the DEIR contains no mention of any plans, funding sources, or other assurance that the City will have the ability to fix the current capacity crisis.

Moreover, without a plan in place, the DEIR fails to meet the requirement set forth in CEQA Guidelines Appendix G that the DEIR evaluate the constructed related impacts associated with this substantial infrastructure improvement.

H. The DEIR’s Analysis of General Plan Impacts on Parks and Recreation Is Inadequate.

1. The DEIR’s Analysis Ignores Impacts of Additional Parkland.

The DEIR fails to analyze whether additional parkland in the City will have an environmental impact. The City estimates that an additional 90.4 acres of new parkland will need to be created in order to accommodate anticipated General Plan growth and maintain parkland ratios. DEIR 3.11-8. CEQA Appendix G, Environmental Checklist Form requires the lead agency to consider “does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?” The DEIR properly asks this question, but summarily concludes “the physical impacts of the construction of new parks within the City are assumed as part of the proposed General Plan and analyzed in the technical sections of this EIR at a program level.” DEIR 3.11-9.

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The technical section most directly related to the effects of parkland development is the section on Parks and Recreation, which does not consider any physical impacts associated with new recreational facilities. Nor do any other technical sections discuss the possible ramifications of constructing new parks. The DEIR does not identify the potential or planned locations for new local parks to be constructed, much less discuss the potential impacts of such new parks.

The City may not blithely ignore the potential physical impacts of constructing 90.4 acres of new local parkland. DEIR 3.11-8. This is particularly true where, as here, the City anticipates interactions between new parkland and “travel routes, infrastructure improvement needs and barriers.” DEIR 3.11-9. These are interactions and impacts that CEQA requires a lead agency to consider.

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2. The DEIR Improperly Defers Mitigation.

The City also improperly defers mitigation by calling for an amorphous “parks master plan” at some unspecified time to guide future development of parks. 3.11-9-10. “Mitigation measures calling for a mitigation plan to be devised based on future studies are legally inadequate if they do not describe the nature of the actions expected to be incorporated in the plan.” Kostka & Zische, *supra*, (2d Ed. 2011) §14.12, (citing *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 95). Here, the DEIR calls for just such a plan to formulate the City’s vision for new parks.

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3. The DEIR Uses The Wrong Geographic Context For Cumulative Impacts on Parks and Recreation.

CEQA requires that a DEIR must view the project’s impacts “in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” Guideline 15065(a)(3); 15355(b); *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61; *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 409. In any event, cumulative impacts analyses often require the lead agency to consider projects outside of its control. Guideline 15130(b)(1)(A).

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The DEIR states that the “geographic context for the analysis of cumulative impacts associated with parks and recreational facilities is the City of Richmond.” By artificially limiting the geographical context, the DEIR understates cumulative impacts. The irregular geographic shape of the City means that the City’s residents cross into other jurisdictions, even when simply traveling from one part of the City to another. This creates a unique fluidity which in turn requires a larger geographic context in order to accurately and adequately analyze cumulative impacts.

The City’s analysis discusses “joint use” facilities, like those that are shared with the West Contra Costa Unified School District (“WCCUSD”). DEIR 3.11-3, -10. Certainly the impacts of other projects within the WCCUSD must be considered in the cumulative impacts analysis, as must other projects within the East Bay Regional Parks District jurisdiction (3.11-4, -10). The proximity of nearby jurisdictions like El Cerrito, San Pablo, Pinole, Hercules, and Contra Costa County (including the unincorporated areas of Bayview-Montalvin Manor, East Richmond Heights, El Sobrante, Kensington, North Richmond, and Tara Hills) means that they, too, must be considered part of the geographic context in order to have an adequate cumulative impacts analysis of park land

impacts. At a minimum, the DEIR should include the neighboring jurisdictions, and all of the jurisdictions that participate in the joint-use agreements referenced in General Plan action PR1.F (upon which the DEIR relies to find a less-than-significant impact). DEIR 3.11-10.

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I. The DEIR’s Analysis of Effects on Public Services Is Not Supported By Substantial Evidence

1. The DEIR’s Analysis Ignores Impacts Of New Public Services.

As with parkland, the DEIR fails to analyze whether additional public services necessitated by the General Plan will have an environmental impact. The key question is whether the project, through increasing demand for public services, would require new or different facilities, the construction of which could cause environmental effects. CEQA Appendix G, requires the lead agency to consider whether the proposed project would:

28-35

...result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services.

Appendix G requires the lead agency to analyze this question with regard to fire protection, police protection, schools, parks, and other public facilities. Although the DEIR purports to analyze fire, police, schools, and libraries, it misstates the standard, erroneously focusing on response times rather than physical impacts, and improperly concludes without evidence or analysis that there is no significant impact.

a. Fire Protection. The DEIR summarily concludes without evidence or analysis that since the General Plan anticipates development in already-developed neighborhoods, the new development would not impact fire protection resources. DEIR 3.12-5. Even in its cursory review of fire protection impacts, the DEIR fails to focus on relevant physical impacts of an increased demand – namely whether new fire facilities will be required, and if so, where will those facilities be located; and will that result in potential environmental impacts? There is no discussion of the capacity of existing fire fighting facilities to accommodate new fire fighters or new equipment. The DEIR simply assumes without evidence that it can be done. DEIR 3.12-5.

28-36

To the extent that development under the General Plan would require new firefighters and the construction of new facilities, the DEIR simply states “fire staffing and facilities would be expanded commensurately to serve the needs of new development to maintain the current response time.” DEIR 3.12-6. DEIR fails to consider the physical impacts that would be caused by expanding fire staffing and facilities. 3.12-6. And yet, this is the key question to be answered via environmental analysis. There is simply no

analysis of the matter, despite CEQA's dictates that the lead agency analyze such potential physical impacts. Yet again, the DEIR improperly defers any analysis to some unspecified future date. 3.12-7.

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Finally, the fire protection analysis ignores the DEIR's conclusion elsewhere that the General Plan may cause a significant and unavoidable impact on primary emergency response routes. DEIR 3.14-51, -52. Such an impact on traffic would affect response times.

b. Police Services. As with fire protection, the DEIR summarily concludes that since the General Plan anticipates development in already-developed neighborhoods, the new development would not affect police services. DEIR 3.12-9. The DEIR states that "RPD's ability to support the needs of future growth is dependent upon its ability to hire and train police personnel and redefine district and patrol beats to maintain a manageable call load." DEIR 3.12-9. This assumes without analysis that additional police officers can be squeezed into existing facilities, which crowding will not cause a physical impact on the environment. The DEIR ignores any impacts that additional equipment (like police cars) would have on the physical environment, even though such vehicles have known air quality, greenhouse gas, traffic, and noise impacts.

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Again mirroring the fire protection section, to the extent that the General Plan would require new police officers and stations, the DEIR simply states "police staffing and facilities would be expanded commensurately to serve the needs of new development to maintain the current response time." DEIR 3.12-10. This fails to consider the physical impacts caused by expanding staffing and facilities, much less the feasibility of such expansion.

Finally, the police protection analysis ignores the DEIR's conclusion elsewhere that the General Plan may cause a significant and unavoidable impact on primary emergency response routes. DEIR 3.14-51, -52. Such an impact on traffic would affect response times.

c. Schools. The DEIR concludes with insufficient analysis that growth under the General Plan will generate up to 10,448 students by 2030. This estimate is apparently based on out-dated district-wide data from 2007-08 as well as projected housing data, but the projected housing data are not included in Table 3.12-14, so it is impossible to know. DEIR 3.12-14. There is no discussion as to why outdated numbers, from before the real estate crash and mortgage lending crisis, would still apply. There is no discussion of why district-wide numbers provide an accurate count for Richmond, when Richmond's demographics are not necessarily representative of the rest of the district. Nor is there any rational basis for assuming that the ratio of students per housing unit will remain the same until 2030, particularly given the many new policies embodied in the General Plan.

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To the extent that the General Plan would require new teachers and schools, the DEIR concludes “school staffing and facilities would be expanded to serve the needs of new development to maintain adequate service levels.” DEIR 3.12-15. This is not enough. The DEIR must evaluate the extent of needed facilities, anticipate the location of those facilities, analyze the potential impacts associated with their construction and use and propose mitigation of those impacts to the extent feasible. It entirely fails to do so.

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d. Libraries. The DEIR summarily concludes that because the City has no standards for providing library service, increased development would not equate to a need to increase the number of books or square footage of libraries. Therefore, the effect of the General Plan on the City’s libraries would be less than significant. This entirely ignores the large population growth anticipated and facilitated by the General Plan. There is no discussion of whether the existing square footage, volumes, and library programs can accommodate large population growth. Without any such analysis, it is improper for the DEIR to conclude that there would be less-than-significant impacts on libraries.

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2. The DEIR Improperly Defers Mitigation.

For fire protection, schools, and library – the DEIR improperly defers mitigation by assuming that development fees will be collected, and such fees will offset the costs of any new public services, the provision of which will then be analyzed for environmental impacts. DEIR 3.12-5, -6 (fire); DEIR 3.12-15 (schools), DEIR 3.12-18, -19 (library).

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The analysis for police protection even more egregiously defers mitigation—it does not even provide for the collection of development fees to pay for additional staffing and facilities. It simply assumes that such staffing and facilities will occur, without any provision for funding them. DEIR 3.12-9, -10.

Finally, the DEIR also improperly defers mitigation by relying on the future creation of a “Library Strategic Plan.” DEIR 3.12-19.

3. The DEIR Uses The Wrong Geographic Context For Cumulative Impacts on Public Services.

The City systematically understates the geographic context for cumulative impact analyses with regard to public services. For each public service, the DEIR acknowledges that the City coordinates and cooperates with affiliated jurisdictions to provide service, and then ignores those affiliated jurisdictions to find less-than-significant cumulative impacts. However, such a limited view inaccurately understates real effects.

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a. Fire Protection. The cumulative impacts analysis considers only the service area for the Richmond Fire Department, even though the General Plan provides for collaboration with neighboring jurisdictions, partner agencies, and regional agencies. DEIR 3.12-5 to 3.12-6. Such collaboration bears the risk that should the needs

of the other jurisdictions increase due to projects in those other jurisdictions, it could significantly impact the performance measures in Richmond and potentially facilitate the construction of new facilities – particularly along the City’s less urban edges. Failing to include those jurisdictions in the cumulative impacts analysis understates the environmental effect of the General Plan.

28-41
(cont.)

b. Police Protection. The cumulative impacts analysis only considers the City limits, even though the General Plan, incorporated into the DEIR, provides for collaboration with neighboring jurisdictions and regional agencies. DEIR 3.12-10, -11. As above, such collaboration carries the risk of affecting performance measures and potentially a need to construct new police facilities, and thus this impact must be addressed in the DEIR’s cumulative impacts analysis.

28-42

c. Schools. The WCCUSD provides schools to the residents of Richmond, along with the residents of El Cerrito, San Pablo, Pinole, Hercules, and Contra Costa County (including the unincorporated areas of Bayview-Montalvin Manor, East Richmond Heights, El Sobrante, Kensington, North Richmond, and Tara Hills). Although the DEIR properly defines the geographical context to include these jurisdictions, it dismisses their effect summarily, stating without any evidence that “students in other areas of the district would be distributed throughout the district instead of being focused on Richmond.” DEIR 3.12-16. This ignores the real consequences of the combined effect of WCCUSD district wide growth, including the potential need for additional school facilities within the City limits or alternatively, increased vehicle miles travelled for students who may experience longer commutes to attend a school with capacity. Again, the DEIR fails to analyze and understates the project’s potential cumulative impacts.

28-43

d. Libraries. The cumulative impacts analysis only considers the City limits (DEIR 3.12-20), even though any California resident can get a library card to any jurisdiction. Where, as here, the failure to provide adequate new facilities would have the likely impact of pushing Richmond’s population to neighboring libraries with adequate space and volumes, the cumulative impacts analysis must include those neighboring jurisdictions to determine whether there would be a cumulative impact.

28-44

J. The DEIR’s Analysis of Effects on Public Utilities Is Inadequate.

1. The DEIR’s Analysis of Water Supply and Infrastructure Is Not Supported By Substantial Evidence.

CEQA requires that a local agency consider whether a project would “require or result in the construction of new water... facilities or expansion of existing facilities, the construction of which would cause significant environmental effects.” Appendix G. It also requires a consideration of whether “sufficient water supplies [are] available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?” Appendix G. The DEIR falls short of these standards.

28-45

The DEIR contains no water supply assessment, as is required by Water Code sections 10910 and 10912. *See also* Guideline 15155. Before a lead agency may approve a large project it must have the public water system that will be supplying water to the project conduct a water supply assessment. This assessment must be included in the EIR. Water Code §10911(b). *See California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1480-81; *O.W.L. Foundation v. City of Rohnert Park* (2008) 168 Cal.App.4th 568, 576. Conducting water supply assessments prior to project approval ensures that “local land use authorities will thoroughly consider the availability of water supplies before approving major new developments,” thereby avoiding “putting the cart before the horse.” *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 887.

Here, the General Plan far exceeds the thresholds for a “large project” in that it proposes more than 500 dwelling units, more than 500,000 square feet of shopping centers and business establishments, more than 650,000 square feet of proposed industrial, manufacturing, and processing, and will demand water in excess of that which would be required by a 500-dwelling unit project. Water Code §10912; Guideline 15155(a)(1). And yet, the DEIR does not include a water supply assessment. DEIR admits that water supply assessments are necessary (DEIR 3.13-7), but improperly pushes them off until future projects are proposed (DEIR 3.13-8, -11). Water supply planning is a critical part of state-wide land use planning and must be done at this critical juncture when the growth of the City for the next 20 years is being charted.

The DEIR also admits that East Bay Municipal Utilities District (“EBMUD”) “would be unable to meet water demands” in severe droughts. 3.13-4. Even with the Freeport Regional Water Project, which according to the DEIR is not yet functioning, EBMUD will not be able to meet its supply standards unless there is “aggressive conservation.” DEIR 3.13-5. There is no description of what “aggressive conservation” is, or whether it is even possible. The DEIR mentions other projects that are in the “feasibility phase,” but that may not ever be constructed. DEIR 3.13-5. In this analysis, the DEIR never quantifies the precise level of water shortfall, which means that neither the public nor the decision makers have the information to which they are entitled under CEQA. Guidelines 15002(a)(1); 15151.

Nonetheless, despite this clear water shortfall and the uncertainty of future water supply, the DEIR concludes that General Plan growth would have a less than significant impact. To do so, the DEIR improperly relies on future projects that may never even be built. 3.13.-18, -19. It says, “EBMUD’s WSMP 2040 policies are designed to provide sufficient water supplies to serve future development out to 2040, including development associated with the proposed General Plan, so the proposed General Plan would not require new or expanded water entitlements.” DEIR 3.13-10. This ignores the fact that some of EBMUD’s projects may not even happen. If they do not, then the General Plan growth will require the construction of new infrastructure, which the DEIR does not consider. CEQA does not permit the reliance on speculative or “paper” water supplies.

28-45
 (cont.)

Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova (2007) 40 Cal.4th 412, 432.

The DEIR blithely asserts that if new development under the General Plan did require additional water infrastructure, developers would provide it. General Plan policy CF1.4 reads “Require new development to provide proportionate facilities and infrastructure improvements as it occurs. New developments must mitigate impacts or contribute adequate infrastructure to meet additional demand...” DEIR 3.13-9. The DEIR ignores the physical impacts that such water infrastructure would have. As more fully described above, CEQA does not permit such deferred mitigation.

28-45
(cont.)

The cumulative impacts analysis is similarly flawed, in that it relies on the implementation of EBMUD infrastructure that is merely in feasibility planning stages now. 3.13-11. This understates the cumulative impact and results in an improper finding of a less-than-significant impact.

The DEIR also relies on compliance with vague and unenforceable policies as mitigation for anticipated water shortages. 3.13-9, -10. For example, the City will “support efforts” to recycle water, “work with water providers and water conservation agencies to create an incentives program,” “encourage use of drought-tolerant and native vegetation,” and “promote water conservation.” 3.13-9. Such unenforceable plans to plan do not satisfy CEQA’s mitigation requirements.

2. The DEIR’s Mitigation of Impacts on Wastewater Treatment Is Inadequate.

As with many other sections of the DEIR, and as stated in the discussion of Hydrology impacts, the discussion of wastewater treatment improperly defers mitigation by asserting vague, unenforceable General Plan policies to mitigate wastewater treatment effects. To avoid a finding of a significant impact due to violation of wastewater discharge requirements (“WDR”s), the General Plan states the City will continue to comply with discharge requirements. DEIR 3.13-17, -19, -20. There is no discussion of the challenges to doing so (let alone an acknowledgement that City has failed to comply with its WDRs), or what affirmative steps the City will take to ensure that it can do so. The DEIR states that “any request for service resulting from new development would be subject to a site-specific evaluation of the existing wastewater system’s capacity to service the development. If improvements to the existing wastewater system are required or additional facilities are needed, the property developer would be required to pay its fair share of the cost of needed improvements.” DEIR 3.13-20. The City does not explain what will happen if fair share contributions are insufficient to cover infrastructure costs, but development proceeds without the needed improvements. DEIR 3.13-20. This is inadequate.

28-46

The DEIR admits that the Richmond Municipal Sewer District experiences peak wet weather flows that exceed its treatment capacity by more than 16 million gallons per

day. DEIR 3.13-12. The DEIR ignores this problem, asserting instead that the City’s “sewer system has the adequate capacity to carry its wastewater flows from its existing customers during the normal rainfall event.” DEIR 3.13-13. The DEIR should have addressed the 2, 10, and 100 year rain events. The DEIR also mentions that the City upgraded the Richmond wastewater treatment plant more than 20 years ago, in 1988. DEIR 3.13-13. Since that time, Richmond has had one of the highest sewage spill rates in the state, dumping millions of gallons of sewage into tributaries to the San Francisco Bay. Notwithstanding this torrid history, the City’s DEIR asks the public to trust that it will “maintain municipal infrastructure” (GP Action CN3.A, DEIR 3.13-17) and there will be no significant impacts going forward.

28-46
(cont.)

The DEIR does not account for the existing system deficiencies at the Richmond Municipal Sewer District. The DEIR fails to specify the peak flows that run through EBMUD’s Wastewater Treatment Plant. DEIR 3.13-14. It omits the wet weather capacities of RMSD, WCWD and EBMUD, and neglects to explain where each of the EBMUD regional flows are directed between the various facilities. As with the hydrology section of the DEIR, the public utilities section fails to address the infrastructure, planning, funding, and impacts of new infrastructure projects, choosing instead to put this off to the future. As such, the findings of no significant impact with regard to 3.13-2 and 3.13-4 were understated and not supported by analysis or the evidence.

Mitigation Measure 3.13-4 explains that “future projects shall incorporate project-specific mitigation measures to reduce impacts,” without specifying what those measures will be, or even providing a menu of possible measures. This violates CEQA’s mandate to identify all feasible mitigation measures and to conduct analyses at the earliest possible time. Guideline 15126.4(a)(1).

3. There Is No Substantial Evidence To Support the DEIR’s Analysis of Solid Waste.

CEQA requires that a lead agency determine that the project will be “served by a landfill with sufficient permitted capacity to accommodate the project’s solid waste disposal needs” and comply with all laws regarding solid waste. Appendix G. The DEIR’s analysis inadequately considers these issues.

28-47

There is no evidence to conclude that there is enough capacity to accommodate the growth in solid waste caused by the General Plan. Five of the 14 solid waste disposal facilities listed in Table 3.13-2 are expected to close within the General Plan timeframe. 3.13-23. Moreover, the DEIR relies on landfills outside of the jurisdiction, without any consideration of what other localities those landfills serve. There is no discussion of whether the landfill space has been otherwise committed to different localities. 3.13-25, -26. This failure to consider other obligations is likely to lead to double, triple, or quadruple counting landfill space. Furthermore, the analysis switches between units,

discussing both tons and cubic yards without articulating their relationship. DEIR 3.13-25.

The full buildout analysis fails to analyze or quantify what constitutes “substantial increase” at buildout. DEIR 3.13-26. Therefore, there is no way to determine if capacity exists.

The cumulative impacts analysis finds a “considerable” impact, but that analysis is insufficient to make such a determination. It relies on sweeping generalizations -- “because future development will contribute to the finite capacity of area landfills [sic], which could require new or expanded landfills, development associated with cumulative projects within and around the city would be significant.” DEIR 3.13-28. This lacks the careful factual analysis required by CEQA.

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(cont.)

4. The DEIR’s Analysis of Energy Is Inadequate.

As with other impacts, the DEIR acknowledges the existing shortage of energy, and proceeds to incongruously find that increased demand for energy will have a less-than-significant impact on energy. The DEIR states “the state has experienced constraints related to energy supply and delivery.” DEIR 3.13-31. It continues, “the construction of new electric facilities could be required to serve new development within the City. The physical impacts from the construction of these facilities are assumed as part of the General Plan development and are analyzed in this EIR.” DEIR 3.13-33. However, the DEIR does not in fact consider any physical impacts of new electric facilities. Moreover, this statement conflicts with the very next page, which says, “the General Plan would not require or result in the construction of new energy production or transmission facilities, the construction of which could cause a significant environmental impact.” DEIR 3.13-34. There is no consideration of where the facilities would be located, how they would generate electricity, or the physical impacts that would result. It is improper to conclude, without conducting any such analysis, that the impacts related to electricity supply would be less than significant. DEIR 3.13-33.

28-48

The analysis of natural gas is similarly lacking. The DEIR concludes that because PG&E promises to deliver the natural gas needed by the City, there will be no significant impact. DEIR 3.13-34. There is no discussion of where PG&E might obtain that natural gas, whether sufficient natural gas will be available, or what the physical impacts of obtaining and delivering that natural gas might be. DEIR 3.13-34.

The cumulative impacts analysis of energy use also ignores the physical impacts of providing additional electricity and natural gas. DEIR 3.13-36. It simply assumes that such power will be provided by PG&E. This is an inadequate analysis. The cumulative impacts is thus narrowly focused on transmission facilities, and comes to the illogical and surprising conclusion that PG&E will probably need to build new transmission facilities, but such construction will not have significant impacts. DEIR 3.13-36. There is no basis for such a conclusion. It is also internally inconsistent, concluding both that there will be

no significant impact, and that the impact would be less than significant. DEIR 3.13-36. They cannot both be true.

↑ 28-48
| (cont.)

Conclusion

JHS and RDC are fully committed to protecting their property interest. It is our deep and sincere hope that in light of the information presented in this letter, the City reconsiders its proposed downzoning of the Property and maintains the Property's current Industrial Office Flex designation, as it has for the past half century. Ultimately, JHS and RDC remain optimistic about the development opportunities at the Property, and in the City of Richmond as a whole, and hope to work cooperatively and productively with the City in bringing these expanded uses to fruition. Development of the Property will bring important local serving jobs and revenues to the City and will further the primary goals outlined in the 2030 General Plan, Northern Richmond Shoreline Specific Plan and other guiding documents to create a viable and desirable North Richmond community. Again, we urge the City to abandon any downzoning effort, correct the maps, and get on the right path to encouraging development at the Property.

28-49

In addition, the City must revisit its DEIR analysis of the impacts associated with 2030 General Plan. This DEIR does not meet the minimum threshold of CEQA compliance. This revised analysis must account for the full build out potential under the General Plan and contain a substantive discussion of the various impact categories, identify well defined and enforceable mitigation measures and generally inform decision makers and the public of the environmental consequences of the proposed General Plan. After such revisions, the city must recirculate the DEIR for comment on the new information.

Respectfully submitted,

SSL Law Firm LLP



Diane K. Hanna

Enclosures

- cc Planning Commission
- City Council
- City Attorney

Index of Enclosures

- EXHIBIT A** **Comment Letter from Cox, Castle & Nicholson on behalf of Murray Parkway Properties, LLC (“MPP”) and Bay Area Wetlands, LLC (“BAW”) dated March 31, 2011**

- EXHIBIT B** **Subdivision Map 5754 dated June 18, 1982**

- EXHIBIT C** **Engineer’s Cost Estimates, Kister, Savio, & Rei**

- EXHIBIT D** **Email from Citizens for East Shore Parks**

- EXHIBIT E** **Letter from City Manager on Richmond Parkway Research Campus LBNL Second Campus Proposal**

- EXHIBIT F** **2007 Biological Survey, LSA Associates**

- EXHIBIT G** **Wetland Jurisdictional Delineation, Army Corps of Engineers**

- EXHIBIT H** **BCDC Letter dated August 15, 1977**

- EXHIBIT I** **Redevelopment Resolution No. 05-31; City Council Resolution No. 124-05**

EXHIBIT A



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March 31, 2011

VIA HAND DELIVERY, E-MAIL AND U.S. MAIL

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Re: Comments on the Richmond General Plan Update DEIR

Dear Mr. Rojas:

On behalf of Richmond landowners Murray Parkway Properties, LLC ("MPP") and Bay Area Wetlands, LLC ("BAW"), we submit the following comments with respect to the Draft Environmental Impact Report ("DEIR") for the Richmond 2030 General Plan Update ("2030 General Plan"). Moreover, by this reference, this letter incorporates all of the comments on the proposed 2030 General Plan, its proposed redesignation of the so-called "Change Area 12" planning area, and the DEIR set forth in that certain letter to you, dated March 31, 2011, from the SSL Law Firm, LLP, on behalf of JHS Properties and Richmond Development Company LLC, attached as Exhibit A, as if such comments were fully set forth herein.

BAW and MPP collectively own approximately 100 acres of real property located in the northwest industrial area of the City (APN Nos. 408-100-025, 408-100-027, 408-100-028, 408-100-029, 408-100-030, 408-100-033) (collectively, the "Property"). Approximately 80 acres of the Property are owned by MPP and approximately 20 acres are owned by BAW. The Property is located within the boundaries of the current North Richmond Shoreline Specific Plan (the "Specific Plan") and within the Hensley Addition portion of Redevelopment Area 8A, established in 1979/80.

The 2030 General Plan proposes to downzone the Property from its current Industrial/Office Flex land use designation and underlying M-1 Light Industrial zoning to an open space/parks and recreation land use designation. The 2030 General Plan also proposes to rescind the Specific Plan. This proposed action would destroy all economically viable use of the Property and substantially interfere with MPP's and BAW's investment backed expectations, thus causing a severe adverse economic impact and exposing the City to significant damages under a takings claim pursuant to the doctrine of inverse condemnation. For the reasons set forth below, the DEIR does not provide adequate analysis of this significant land use change and violates the California Environmental Quality Act (Pub. Res. Code § 21000 *et seq.*) ("CEQA").

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I. History of the Property

The 20-acre portion of the Property owned by BAW's was originally part of a larger 238-acre parcel purchased by Don Carr in 1999 (the "Carr Property "). Prior to purchase of the Carr Property, Don Carr and/or Stan Davis (then, the Carr Property manager), doing business as BAW, met with the Planning Director to evaluate the City's views with respect to the potential development of the Carr Property. At that time, the Planning Director indicated that portions of the Carr Property could be developed with industrial uses and the balance could be used for mitigation banking. With this in mind, BAW pursued City approval of the Edgewater Industrial Park project on 40 acres of the Carr Property, while simultaneously working to establish a mitigation bank on the balance of the Carr Property. A final environmental impact report for the Edgewater Industrial Park project was withdrawn in 2002 when it became clear that the project was not going to be supported by the City. In 2005, BAW applied to the City for approvals to develop a 2,000 residential-unit on the Carr Property known as Parkway Transit Village.

In September 2005, the City issued a notice of preparation for the Parkway Transit Village Environmental Impact Report. Around the same time, the East Bay Regional Park District acted to condemn all but a 20-acre portion of the Carr Property for open space uses. The City requested that these 20 acres be spared from condemnation because they were part Redevelopment Area A8 and the Park District agreed. The Park District did, however, include Rheem Creek as part of the condemnation to frustrate BAW's attempt to widen it to convey 100-year flood in conformance with the Contra Costa County Flood Control District's requirements. By taking Rheem Creek, development of the 20-acre parcel would require raising the site one to two feet above the 100-year flood level. Nevertheless, the Park District did grant BAW a 60' wide floating roadway easement to facilitate future urban use of the 20-acre parcel.

The MPP land has a long history of industrial development. Mass Chemical Company purchased the land in 1956 and began manufacturing phosphoric acid in 1958. The facility was subsequently owned by Victor Chemical Company through early 1960s, and then by Stauffer Chemical Company in 1963. In 1988, Rhone-Poulenc purchased the facility from Stauffer and subsequently transferred ownership to Rhodia. The manufacturing facility ceased operations in 1988 and was dismantled between 1988 and 1989. During the facility's operative years, the land contained a phosphoric acid production unit, a chlorinated trisodium phosphate production unit, and a polyphosphoric acid production unit. In the 1990's, the property was subdivided to accommodate the Richmond Parkway. In the late 1990's, a purchase and sale agreement was entered into by MPP and Rhodia. By 2004, all 80 acres had been transferred into MPP's ownership. Over the past few years, MPP worked with the City to aid the completion of the Bay Trail by accommodating the widening of Goodrick Avenue into MPP's property.

II. The 2030 General Plan Mischaracterizes the Property as Wetlands and Suitable Habitat

The 2030 General Plan inaccurately describes and maps some or all of the Property as marsh-lands that are important habitat for endangered plant and wildlife species. This inaccurate mapping started with "conceptual" mapping that appeared in the 1993 Specific Plan, which document acknowledged that its maps were imprecise and called for "precise delineations" to be

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conducted to cure the inaccuracies. Rather than correct the inaccurate Specific Plan maps, however, the City has carried them over to the 1994 General Plan and, now, the 2030 General Plan. This inaccuracy persists despite the fact that the City has repeatedly been provided with substantial evidence in the form of Army Corps of Engineers wetland delineations confirming that the vast majority of those portions of Change Area 12 designated for industrial use is not wetlands. As explained below, a substantial majority of the Property is not wetlands and it is not suitable habitat for special status species. It would appear that many assumptions of the composition of the subject properties are derived from these inaccurate maps. BAW and MPP hereby demand that the City revise the 2030 General Plan and DEIR to accurately reflect the Property's true environmental condition.

On November 29, 2009, the Army Corps of Engineers, San Francisco District ("ACOE"), issued a jurisdictional delineation for MPP's portion of the Property, attached hereto as Exhibit B. As demonstrated by the delineation, only 4.02 acres of 55.6 acres of MPP's property located north of Richmond Parkway qualify as jurisdictional wetlands. No wetlands occur on MPP's property located south of Richmond Parkway. As demonstrated by the attached letter, the ACOE's determination is based on the current conditions on the site as verified during a site inspection performed by ACOE staff on March 12, 2009. Approximately 2 acres of BAW's portion of the Property contain jurisdictional wetlands, but the remaining 94.6-acres (or 69.6 acres north of Richmond Parkway) of our client's property in "Change Area 12" is developable land. This fact must be reflected in the 2030 General Plan and DEIR.

Similarly, the 2030 General Plan and DEIR must be revised to reflect the fact that the Property is not suitable habitat for special status species. In December 2010, Olberding Environmental, Inc. conducted a pre-construction survey of MPP's portion of the Property, as reported in the attached Exhibit C (the "Survey Report"). This survey was conducted to determine the presence or absence of special status plants and animals, including, but not limited to, California red-legged frog, salt marsh harvest mouse, Alameda whipsnake, burrowing owl, northern harrier, short eared owl, California black rail, California clapper rail, pallid Manzanita, soft bird's beak, Loma Preita hoita, and Santa Cruz tarplant.

As explained in the attached Survey Report, based on the habitat assessment of the MPP portion of the Property, the following conclusions were made:

- California red legged frog is presumed absent from the Property based on the lack of suitable habitat and lack of recent occurrences;
- No deep pools occur on the site and the Property lacks suitable refuge habitat in the form of small mammal burrows, precluding suitable habitat for burrowing owl;
- No pickleweed, suitable habitat for the salt marsh harvest mouse, occurs on the Property;

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- Habitat does not occur on the Property for the Alameda whipsnake and existing development and highways to the east of the Property acts as obstacles to migration for this species;
- Habitat does not occur on the Property for the California black rail and California clapper rail;
- Regular grazing of the site precludes the use of the Property for northern harrier and short-eared owl;
- None of the special status plant species are expected to occur on the site based on the lack of suitable habitat, soil conditions, and regular grazing disturbance;
- No special status species currently occur on the Property; and
- No tidal marsh occurs on the Property.

In short, the Survey Report confirms that the Property is not suitable habitat for any special status species and is not appropriately designated for wildlife conservation purposes. Accordingly, BAW and MPP hereby demand that the City revise the DEIR and 2030 General Plan to reflect the fact that the Property is disturbed land that does not provide any habitat value and is more suitable for urban use than open space use.

The 2030 General Plan also inaccurately states that the Property lacks infrastructure. This is an outright fabrication. A sewer line runs through the Property, power extends to the Property via PG&E, water lines extend to nearby Goodrick Avenue, which road also provides convenient access to the Property. Accordingly, the 2030 General Plan and DEIR must be revised to reflect these facts.

Finally, the 2030 General Plan's maps of Change Area 12 and its written description of Change Area 12 are inconsistent. For example, the text of the 2030 General Plan (as well as the DEIR) describes Change Area 12 as being located "south of Point Pinole Regional Park, west of Parchester Village and between San Pablo Bay and the Richmond Parkway." DEIR at p. 2-25; *see also* 2030 General Plan at p. 3.37 and figure 3.10. According to this written description (as well as figure 3.10 of the 2030 General Plan), 55.6 acres of the MPP property is located within Change Area 12. Map 3.14 of the 2030 General Plan and DEIR Figure 2-15, however, show that 80 acres of the MPP property is located within Change Area 12. Moreover, it appears that the City has changed the zoning of that portion of the MPP property located south of Richmond Parkway from M-3 Heavy Industrial to Business/Light Industrial, even though this portion of the MPP has been excluded from the DEIR's and 2030 General Plan's written description of Change Area 12. All of these inconsistencies between the proposed 2030 General Plan, the DEIR and the zoning map must be clarified.

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III. Comments on the DEIR

In order to comply with CEQA, the DEIR must provide a good faith, reasoned analysis of the 2030 General Plan proposal, including identifying the significant, adverse impacts of the 2030 General Plan and the measures required to avoid or mitigate those impacts. The DEIR must do the following: clearly describe the project, consider all relevant data, analyze the full range of potential impacts, support its analysis with substantial evidence, present that evidence in an accurate and transparent manner, and consider a reasonable range of project alternatives. The analysis must be comprehensive and accessible, so that decision-makers and the public are provided a meaningful opportunity to understand and comment on the impacts of the 2030 General Plan and the feasible means to avoid or mitigate those impacts.

Identification of the significant environmental effects of a proposed project is one of the primary purposes of CEQA and is necessary to implement CEQA's stated public policy that an agency should not approve a project if there are feasible mitigation measures or project alternatives available to reduce or avoid significant environmental impacts. Pub. Res. Code §§ 21002, 21002.1(a). An EIR must include a sufficient degree of analysis to provide decision-makers with the information needed to make an intelligent judgment concerning a project's environmental impacts. CEQA Guidelines § 15151; *Napa Citizens for Honest Gov't v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 256.

Instead of providing the good faith analysis required by CEQA, the DEIR engages in a result-oriented approach, designing its assumptions, methodologies and analysis in a way that avoids the identification of the full scope of the project's potentially significant impacts. This manipulation of data and analysis misleads readers and conceals impacts, as is evident throughout the document, as explained below.

As a result of the misleading or absent assumptions and analysis contained in the DEIR, decision-makers and the public are denied a meaningful opportunity to understand and comment on the true impacts of the 2030 General Plan and feasible means of avoiding or mitigating those impacts. Ultimately, the City of Richmond will suffer significant adverse environmental impacts, and no one will benefit from the concealment of those impacts in the DEIR.

While we are cognizant of the importance of the 2030 General Plan to Richmond, the City must comply with CEQA. We submit the following comments on the DEIR, and hereby request that the DEIR be revised to address the inadequacies detailed herein, and recirculated for meaningful public comment. The revised DEIR must adequately identify the significant environmental effects of the 2030 General Plan and identify feasible measures to avoid or mitigate those impacts.

- A. The DEIR violates CEQA because it does not analyze the environmental effects of "full buildout" of the 2030 General Plan.

When an environmental impact report considers the effects of a general plan update or amendment, the EIR's analysis "must necessarily include a consideration of the larger project, i.e., the future development permitted by the amendment." *City of Redlands v. County of San Bernardino*

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(2002) 96 Cal.App.4th 398, 409. "Not only does CEQA apply to revisions or amendments to an agency's general plan, but CEQA reaches beyond the mere changes in the language in the agency's policy to the ultimate consequences of such changes to the physical environment." *Id.* CEQA requires the DEIR to disclose and consider the full extent of growth permitted by the 2030 General Plan, and to fully quantify and analyze the potential significant effects of that growth. *See* CEQA Guidelines §§ 15126, 15358(a)(1), (a)(2).

The DEIR is fundamentally flawed because it fails to fully disclose and evaluate the environmental effects of the buildout scenario permitted under the 2030 General Plan. Instead, the DEIR expressly limits its analysis to a development scenario based on estimated population and job growth rates far lower than could otherwise be accommodated by full buildout. DEIR at p. 2.-40. Although the DEIR never discloses the exact development capacity of the 2030 General Plan, it acknowledges (without any meaningful analysis) that full buildout "would be substantially more intense" than the development scenario assumed by the DEIR, and that resulting impacts "would be substantially greater than analyzed" in the DEIR. *See, e.g.*, DEIR at p. 3.6-29. As a result, *all* of the DEIR's conclusions are fatally flawed and unsupported by substantial evidence. To permit the meaningful opportunity for public comment that CEQA requires, the DEIR's entire analysis must be supplemented to account for the full level of development permitted under the 2030 General Plan and must disclose all related environmental effects. Once revised, the DEIR must be recirculated for additional public review and comment, as discussed below.

B. The DEIR fails to provide a meaningful analysis of the 2030 General Plan's potentially significant air quality impacts.

For the following reasons, the DEIR's analysis of the project's potentially significant air quality impacts does not comply with the requirements of CEQA:

1. The DEIR's conclusion that the project would have significant and unavoidable air quality impacts because it would conflict with or obstruct implementation of a clean air plan is not supported by substantial evidence.

According to the Bay Area Air Quality Management District's ("BAAQMD") California Environmental Quality Act Air Quality Guidelines (the "BAAQMD Guidelines"), in order for the project to be considered less than significant with respect to the emission of criteria and precursor air pollutants, the DEIR must determine whether the project is consistent with BAAQMD's 2010 Bay Area Clean Air Plan (the "BAAQMD CAP"). The BAAQMD Guidelines further require the DEIR to determine whether the 2030 General Plan's total projected vehicle miles traveled ("VMT") is less than or equal to its projected population increase. The DEIR may conclude that the project's impacts related to criteria and precursor pollutants is less than significant only if both thresholds of significance are satisfied. The DEIR concludes that that project will have significant and unavoidable impacts related to criteria and precursor pollutants on the basis that the project will both conflict with the BAAQMD CAP and will create VMT in excess of projected population increase. Neither determination, however, is supported by substantial evidence, as required by CEQA.

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Per the BAAQMD Guidelines, to determine whether the project is consistent with the BAAQMD CAP, the DEIR must ascertain whether (a) the project supports the primary goals of the BAAQMD CAP, (b) the project includes applicable control measures from the BAAQMD CAP, and (c) whether the project would disrupt or hinder implementation of any such control measures. The DEIR completely fails to follow this required methodology. First, rather than evaluate the project's consistency with the 2010 BAAQMD CAP, the DEIR compares the project to BAAQMD's outdated 2009 clean air plan. DEIR at p. 3.3-17. Second, the DEIR does not evaluate whether the project supports the primary goals of the BAAQMD CAP, which are (i) the attainment of air quality standards, (ii) the reduction of population exposure and protecting health in the Bay Area, and (iii) the reduction of greenhouse gas emissions. BAAQMD Guidelines at p. 9-2. Third, the DEIR does not evaluate whether the project includes applicable control measures from the BAAQMD CAP or whether the project will disrupt or hinder implementation of such measures, as required by the BAAQMD Guidelines. *Id.* Accordingly, the DEIR's conclusion that the project will conflict with BAAQMD's 2009 clean air plan fails to disclose the project's full potential to conflict with the current BAAQMD CAP and its finding of a significant and unavoidable impact is thus unsupported by substantial evidence.

Similarly, there is no substantial evidence to support the DEIR's conclusion that the project's criteria and precursor air pollution impacts are significant and unavoidable on the basis that the projected VMT will exceed projected population growth. Rather than analyze the population growth rate that can be accommodated by buildout of the 2030 General Plan, as required by CEQA, the DEIR instead assumes a lower annual growth rate of 13 percent. Although the DEIR concludes that its assumed growth rate would exceed projected VMT, this conclusion is not based on project buildout. As a result, the DEIR understates the full extent of this purported significant and unavoidable effect and deprives the public a meaningful opportunity to comment thereon. Under CEQA, a lead agency cannot simply conclude that there are overriding considerations to justify a significant and unavoidable effect without fully analyzing such effect. *See Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371. Thus, the DEIR's incomplete analysis of this significant and unavoidable effect does not comply with the requirements of CEQA.

2. The DEIR's conclusion that the project would result in a significant and unavoidable air quality impact because it would contribute substantially to an existing or projected air quality violation is conclusory and is not supported by substantial evidence.

According to the DEIR, the project will result in a significant and unavoidable environmental effect because it contributes substantially to an existing or projected air quality violation. DEIR at p. 3.3-21. Yet, in making this determination, the DEIR fails to describe which applicable air quality standards will be violated by the project, fails to identify the offending pollutant(s), and does not quantify the extent to which the project will cause the offending pollutant(s) to exceed applicable standards. Indeed, the DEIR completely fails to quantify and disclose existing and projected levels of citywide emissions of PM₁₀, PM_{2.5}, NO_x, and ROG, leaving the public and decision-makers in the dark with respect to the project's potential to create

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significant impacts related to these air pollutants. This lack of relevant information deprives the public a meaningful opportunity to comment on the full scope of the project's environmental effects and deprives decision-makers the ability to make an intelligent and informed judgment concerning the project's air quality impacts. It also demonstrates that the DEIR's determination that the project's operational air quality impacts are significant and avoidable is unsupported by substantial evidence. As noted above, CEQA does not permit the City to determine that a project impact is significant and unavoidable without first fully analyzing such effect.

3. The DEIR analysis of toxic air contaminants fails to apply the applicable threshold of significance, is conclusory and is not supported by substantial evidence.

BAAQMD's Community Air Risk Evaluation ("CARE") program was initiated in 2004 to evaluate and reduce cancer and non-cancer health risks associated with exposures to outdoor toxic air contaminants ("TACs") in the Bay Area. Per this program, BAAQMD has identified the City as one of the Bay Area's six priority communities, defined by BAAQMD as those regional communities that have a combination of highest exposure of sensitive populations to toxic air contaminants, have significant TAC emitting sources, are nearby low income populations and are bounded by major roadways. Despite the City's status as a CARE priority community, the DEIR concludes that the project will have a less than significant impact related to TAC emissions, a determination that is not supported by substantial evidence.

The DEIR's discussion of the project's potential TAC impacts is notable for its complete lack of analysis. The DEIR does not establish a baseline of existing TAC emissions against which to measure project impacts and it does not disclose the amount of TAC emissions that the project will generate. DEIR at pp. 3.3-25 through 3.3-26. The DEIR also fails to identify the location of TAC hot spots within the project planning area. The DEIR simply determines, without any analysis, that the project will not have a significant TAC impact because it will comply with BAAQMD's applicable threshold of significance for plan-level TAC impacts. *Id.* This conclusory determination is not only unsupported by substantial evidence, it is in error.

The applicable BAAQMD threshold of significance for plan-level TAC impacts provides that a general plan will not result in a significant effect related to TAC emissions if the general plan includes (i) overlay zones around existing and planned sources of TACs, and (ii) overlay zones of at least 500 feet from all freeways and high volume roads (defined by the BAAQMD Guidelines as roadways that exceed 10,000 trips per day). BAAQMD Guidelines at p. 2-7. Development within such overlay zones are presumed to have significant TAC impacts that expose sensitive receptors to cancer and other health risks. The BAAQMD Guidelines are clear that the required overlay zones must be included in the proposed general plan policies, land use maps and implementing ordinance in order to avoid a significant TAC impact finding. BAAQMD Guidelines at p. 9-6. The project's proposed 2030 General Plan policies do not refer to the required overlay zones, however, and none are depicted on its land use maps. Thus, the DEIR does not comply with the applicable TAC threshold, and its conclusion that project TAC impacts are less than significant is not supported by substantial evidence.

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Rather than include the required overlay zones in the 2030 General Plan and analyze related TAC impacts prior project approval, the DEIR merely imposes a mitigation requirement that TAC overlay zones be incorporated into the general plan at some unspecified future date. DEIR at p. 9-7. By deferring analysis of TAC impacts in this manner, the DEIR fails to disclose the location of the City's significant TAC emitters and those areas of the City where children, the elderly and other sensitive receptors will be exposed to cancer and other health risks. The DEIR also fails to analyze the impact such overlay zones may have on future land use patterns by discouraging development in high TAC neighborhoods. Finally, the DEIR's deferred TAC analysis deprives the public a meaningful opportunity to evaluate and comment on this potentially significant project impact, in violation of CEQA.

4. The DEIR analysis of the project's odor impacts fails to apply the applicable threshold of significance, is conclusory and unsupported by substantial evidence.

The DEIR determines that project impacts related to the creation of objectionable odors would be less than significant, yet is completely fails to conduct any analysis to support this claim. DEIR at p. 3.3-28. Moreover, the DEIR mischaracterizes the BAAQMD threshold of significance applicable to plan-level odor impacts. *Id.* According to the DEIR, in order for plan-level odor impacts to be considered less than significant, BAAQMD requires that special overlay zones be established around existing and proposed land uses that emit odors. *Id.* In fact, the BAAQMD Guidelines state that, to be considered less than significant with respect to odor impacts, the general plan must identify the location of existing and planned odor sources and include policies to reduce potential odor impacts in the planning area. BAAQMD Guidelines at p. 2-7. The proposed 2030 General Plan, however, fails to identify the location of existing and planned odor sources and it does not include policies to reduce potential odor impacts. It doesn't even include the overlay zones that the DEIR claims are required. Thus, the DEIR's conclusion that the project will have less than significant odor impacts is not supported by substantial evidence. Moreover, the DEIR cannot rely on City's Resources Management Overlay District ordinance to reduce odor impacts because that statute is completely silent with respect to odor impacts and odor-emitting land uses. Thus, the DEIR's reliance on such statute to reduce odor impacts is arbitrary and lacks evidentiary support.

5. The City's proposed measures for mitigating the project's significant air quality impacts are unenforceable and thus violate CEQA.

CEQA provides that a lead agency should not approve a project as proposed if there are additional feasible mitigation measures that would substantially lessen a project's significant environmental effects. Pub. Res. Code § 21002. Moreover, in order to ensure that mitigation measures are actually implemented, they must be "fully enforceable through permit conditions, agreements, or other measures." Pub. Res. Code § 21081.6(b); *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261. The DEIR refers to various 2030 General Plan policies and other proposed mitigation measures that purport to reduce the project's operational air quality impacts. DEIR at pp. 3.3-18 through 3.3-28. They include, for example, measures "promoting" higher density and mixed-use development, "promoting" a new

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ferry terminal, “promoting” walking and bicycling to reduce vehicle trips, “promoting” reduced transit fares on city buses, and “supporting” regional air quality protection measures. None of the measures are enforceable, however, and thus do not comply with CEQA. Moreover, the DEIR fails to qualitatively or quantitatively analyze the efficacy of such measures, in violation of CEQA. See Pub. Res. Code §§ 21002, 21100; *see also, Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1116 [a reviewing court will not defer to the agency’s determination that mitigation measures will work when their efficacy is not apparent and there is no evidence in the record showing they will be effective]. The DEIR should require implementation of all of its proposed measures to reduce project air quality impacts or explain why they are infeasible.

C. The DEIR fails to provide a meaningful analysis of the 2030 General Plan’s potentially significant greenhouse gas impacts.

The Legislature has determined that global warming is an environmental effect subject to CEQA review, and that an individual project’s incremental contribution to global warming can be cumulatively considerable and therefore significant. Pub. Res. Code § 21083.05(a); *see also* CEQA Guidelines 15126.4(c), 15183.5(a)-(c). For the reasons set forth below, the DEIR’s analysis of the project’s significant greenhouse gas (“GHG”) effects are legally inadequate and violate CEQA.

1. The DEIR does not adequately quantify the project’s GHG emissions.

The DEIR fails to properly quantify the project’s potential GHG emissions and thus denies the public a meaningful opportunity to evaluate and comment on this environmental effect. According to the BAAQMD Guidelines, to quantify a general plan’s potential GHG impacts, the lead agency must first prepare a community-wide GHG emission inventory for a base-year at or below the current year of the general plan. BAAQMD Guidelines at p. 9-4. Using this inventory, the lead agency must then project the expected levels of GHG emissions for year 2020 (i.e., the AB 32 benchmark year), and the projected year of plan buildout (i.e., 2030, in this case). *Id.* Two different projections should be prepared for each year: (i) a business-as-usual projection reflecting existing conditions (the “BAU Projection”), and (ii) a projection that accounts for proposed policies, programs, and plans included within the general plan that would reduce GHG from buildout of the plan (the “Reduced Projection”). *Id.* The DEIR purports to establish BAU Projections and Reduced Projections for 2020 and 2030, but its analysis is significantly flawed.

To calculate the required base-year GHG emissions inventory and the 2020 BAU Projection, the DEIR purports to rely on the *City of Richmond 2005 Greenhouse Gas Emission Inventory* prepared in 2009 by ICLEI (the “GHG Inventory”). DEIR at p. 3.6-12. The DEIR only cites the GHG Inventory study in a footnote and does not explain its methodology. While the DEIR’s Appendix C cites a 2005 base-year GHG emissions inventory total, this information is not disclosed in the DEIR itself and there is no explanation how it was derived. CEQA requires that data in the DEIR be presented in a manner calculated to adequately inform the public and decision-makers, who may not be previously familiar with the details of the project. CEQA Guidelines § 15147; *see also Vineyard Area Citizens v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 728. “Information scattered here and there in the EIR appendices or a report buried in an appendix is not a substitute for a good faith reasoned analysis.” *Id.* at p. 729. Since the DEIR text fails to adequately

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disclose its assumed base-year GHG emission inventory total, and provides no information regarding the methodology used to calculate such total, the document fails to provide the good faith reasoned analysis that CEQA requires.

Although the DEIR's GHG analysis purports to rely on GHG Inventory data, it actually misrepresents such data. According to DEIR Appendix C, the City's 2005 base-year GHG emissions inventory was 2,399,414 million metric tons of carbon dioxide equivalent per year ("MMT CO₂e/yr"). The GHG Inventory, however, indicates the 2005 base-year emissions inventory is much larger than the DEIR reports—*i.e.*, 5,853,020 MMT CO₂e/yr. Moreover, the GHG Inventory demonstrates that the DEIR's base-year emissions inventory does not include an additional 149,816 MMT CO₂e/yr of GHG emissions generated by municipal operations (*i.e.*, city-owned buildings, the city vehicle fleet, city streetlights, etc). Thus, the DEIR underreports the 2005 base-year emissions inventory by at least 3,603,422 MMT CO₂e/yr. Given the substantial discrepancies between the DEIR's GHG analysis and the GHG Inventory data on which it relies, it is apparent that the DEIR's GHG analysis is unsupported by substantial evidence and thus violates CEQA.

The DEIR also relies on the GHG Inventory to calculate the DEIR's required 2020 BAU Projection. DEIR at p. 3.6-12. According to the DEIR, the 2020 BAU Projection is 3,128,836 MMT CO₂e/yr. DEIR at p. 3.6-17, Table 3.6-1. According to Table 19 of the GHG Inventory, however, the true 2020 BAU Projection is 7,632,423 MMT CO₂e/yr (not including emissions from municipal operations). Thus, the DEIR underreports the 2020 BAU Projection by at least 4,503,587 MMT CO₂e/yr. With respect to the required 2030 BAU Projection, the DEIR forecasts this figure "based on the anticipated increase in population and commercial development" and concludes that it equals 3,647,355 MMT CO₂e/yr. DEIR at p. 3.6-12. Since the 2030 BAU Projection is based only on the DEIR's assumed population growth rate and related commercial development, it does not account for 2030 emissions caused by full buildout of the 2030 General Plan and it ignores GHG emissions generated by the City's industrial, waste and municipal sectors. Moreover, it is unclear whether the 2030 BAU Projection fully accounts for the City's residential and transportation sectors because the DEIR fails to explain its forecasting methodology.

CEQA requires that the DEIR fully quantify and consider all project GHG emissions. The DEIR fails this requirement because it inaccurately reports data from studies on which it relies, it fails to consider all potential GHG emission sources, and it fails to describe the methodology used to calculate the GHG emissions that it does disclose. As such, the DEIR fails to provide a good faith reasoned analysis of the 2030 General Plan's potential GHG impacts and its conclusions are not supported by substantial evidence, in violation of CEQA.

2. The DEIR does not impose all feasible measures to mitigate the project's operational GHG emissions.

The DEIR refers to various 2030 General Plan policies that purport to reduce the project's operational GHG emissions. DEIR at pp. 3.6-14 through 3.6-16, 3.6-17 through 3.6-28. They include, for example, measures "encouraging" the use of energy efficient vehicles and equipment, "supporting" the use of more efficient fuels, "promoting" the use of energy efficient construction

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materials, and “encouraging” the use green and sustainable development standards. *Id.* While these policies are commendable, they are general and unenforceable and thus do not comply with CEQA. Moreover, the DEIR fails to qualitatively or quantitatively analyze the efficacy of such GHG reduction measures, in violation of CEQA.

The DEIR also fails to impose all feasible mitigation for GHG-related impacts. For example, the DEIR indicates that the City is in the process of developing a Climate Action Plan (“CAP”) that will provide GHG reduction strategies for the City to attain, at a minimum, the AB 32 goal of 29 percent below business-as-usual. To help mitigate GHG impacts, the DEIR could feasibly require that the CAP (i) be adopted by a date certain, (ii) include defined reduction targets for all emission sources and enforceable measures to meet those targets, and (iii) include defined monitoring and reporting requirements. Similarly, the DEIR could impose mitigation requiring the City to adopt policies by a date certain to ensure that any projects considered before completion of the CAP will not undermine the objectives of the CAP. There are good examples of other potential mitigation measures contained in the BAAQMD Guidelines, the California Air Pollution Control Officer’s Model Policies for Greenhouse Gases in General Plans (June 2009), the Caltrans Smart Mobility Handbook (Feb. 2010), and the California Energy Commission’s Energy Aware Planning Guide (Dec. 2009). In order to comply with CEQA, these measures should be imposed under the DEIR, or the DEIR should explain why they are not feasible.

3. The DEIR cannot legally conclude that impacts related to the project’s operational GHG emissions are significant and unavoidable without fully analyzing such effects.

The DEIR concludes that project GHG emissions will be significant and unavoidable. DEIR at p. 3.6-14. This conclusion, however, contravenes CEQA and is not supported by substantial evidence because the DEIR fails to (i) fully quantify and disclose all of the project’s GHG emissions, (ii) impose enforceable mitigation measures, (iii) qualitatively or quantitatively analyze the efficacy of such mitigation measures, and (iv) to adopt all feasible mitigation. *See Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371 [lead agency cannot simply conclude that there are overriding considerations that justify a significant and unavoidable effect without fully analyzing such effect].

- D. The DEIR analysis of traffic impacts is thin and severely underestimates traffic impacts.

For the following reasons, the DEIR’s traffic analysis does not comply with CEQA:

1. The DEIR takes a flawed and inconsistent approach to the “no project” baseline.

As a preliminary matter, the DEIR significantly underestimates traffic impacts because it does not analyze the development of the entire 2030 General Plan. Instead, the traffic impact analysis constrains the project to development associated with a 13 percent population growth, over which the City has no control. DEIR at p. 3.14-30. CEQA requires that the EIR analyze the entire

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proposed project, not an artificially constrained lesser version of the project in order to understate the project's impacts.

The traffic study's assumptions regarding the "no project" baseline are similarly flawed. The DEIR defines the 2030 No Project case baseline, to which General Plan 2030's impacts are compared, in a manner that violates CEQA. The Alternatives section of the DEIR correctly defines the "no project" alternative as development guided by continued implementation of the existing General Plan. DEIR at p. 5-3. Alternative 1 assumes a lower intensity of development in the City with 8.39 percent of the population growth in Contra Costa County. DEIR at pp. 5-3 through 5-4. However, the Transportation and Circulation combines the "no project" alternative (in name only) with Alternative 1 to create a new "no project" alternative for this section only. DEIR at p. 3.14-30. The traffic chapter's "no project" baseline impermissibly constrains development under the existing general plan in accordance with an assumed 8.39 percent growth rate, thus underreporting baseline traffic conditions. DEIR at p. 3.14-30. The DEIR also presumes, without support, that the artificially constrained population growth in the no project alternative will be "distributed to underutilized parcels in the areas most likely to develop (the change areas)." DEIR at pp. 3.14-30. Using these assumption as the baseline to assess the project traffic impacts makes meaningful analysis of such impacts impossible.

The DEIR's traffic analysis fails to provide a basis to substantiate its other assumptions. For instance, it assumes that interstate 580 will have an additional high occupancy vehicle lane in both directions throughout the City, that 23rd Street was narrowed to a two-lane bidirectional facility, and that Barrett Avenue was narrowed to a four-lane facility. DEIR at p. 3.14-30. The DEIR does not provide any analysis as to whether these planned roadway projects are funded or even likely to occur, and to what degree they affect the analysis. Accordingly, these assumptions are not supported by substantial evidence.

2. The traffic impact analysis is inadequate and incomplete.

The analysis of traffic impacts resulting from the Project is thin at best. The analysis is limited to only six impacts, and focuses only on a few intersections. While the DEIR identifies 57 road segments, it focuses on only three segments based on level of service ("LOS"). DEIR at p. 3.14-38 through 3.14-40. Then it states that General Plan 2030 "does not include a vehicle-based LOS standards" and therefore "mitigation of the vehicle LOS impacts relative to the current criteria of Richmond and other regional jurisdictions . . . cannot be assured" thereby undermining the very criteria used to justify its narrow focus on only three road segments. DEIR at p. 3.14-40. The DEIR should contain a more thorough description of the impacts to all of the potentially affected road segments.

Next, the DEIR claims that the 2030 General Plan's "Planned Roadway Improvements would improve mobility and safety for all modes," but fails to analyze how this would occur. DEIR at p. 3.14-45. The DEIR does not define what "all modes" encompasses, nor does it address the scope of these unfunded Planned Roadway Improvements and how they will improve mobility and safety. Instead, the DEIR just draws unsupported conclusions in violation of CEQA. The DEIR

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similarly concludes that “[i]mplementation of the proposed General Plan would produce higher demand for transit service” but fails to analyze this demand. DEIR at p. 3.14-46.

The DEIR improperly defers analysis of traffic impacts associated with development contemplated by the 2030 General Plan indefinitely by stating that “the extent of additional growth and the exact nature of future effects from this growth are unknown, and it would be speculative to attempt a more detailed analysis at this time” DEIR at p. 3.14-48. Moreover, “[a]ny future development would be subject to review to determine impacts on traffic in accordance with CEQA.” *Id.* Such deferral of analysis is not permitted under CEQA.

Furthermore, emergency response time has been a historical problem for the City due to congestion on primary emergency response routes. Instead of addressing this problem, analyzing it with specificity, and identifying the affected neighborhoods, the DEIR summarily concludes that the this impact will be significant and unavoidable. DEIR at p. 3.14-51 through 3.14-52. This analysis is incomplete and warrants further scrutiny as it directly impacts public safety.

Moreover, as discussed above, the “full buildout analysis” throughout the DEIR is inadequate and faulty. Given that many roadways “would exceed capacity with or without implementation of the proposed General Plan,” the DEIR should discuss the impacts with greater specificity and evaluate all of the critical intersections and roadways. DEIR at p. 3.14-40. That the DEIR states that the 2030 General Plan results in traffic congestion that exceeds the previous general plan, and concludes that the impacts are significant and unavoidable does not preclude the City from conducting a full analysis as required by CEQA. DEIR at p. 3.14-40.

3. The mitigation measures are unenforceable and inadequate.

The mitigation measures provided in the DEIR do not satisfy CEQA’s requirements. Pub. Res. Code §§ 21002.1(a), 21061. An EIR must describe feasible mitigation measures that can minimize the project’s significant environmental effects. 14 Cal. Code of Regs. §§15121(a), 15126.4(a). “A gloomy forecast of environmental degradation is of little or no value without pragmatic, concrete means to minimize the impacts and restore ecological equilibrium.” *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1039. Although the DEIR can incorporate mitigation measures into the 2030 Richmond General Plan, the City must take steps to make sure that the mitigation measures will actually be implemented as a condition of later development approved under the plan, “not merely adopted and then later neglected or disregarded.” *Federation of Hillside & Canyon Ass’ns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1361. The DEIR has made no attempt to even address the enforceability of the traffic mitigation measures it has proposed. Moreover, it does not provide tangible, effective mitigation measures. Instead, it uses flimsy, noncommittal language to claim it “[e]ncourage[s] multiple circulation options” (Policy CR1.1), “[s]upport[s] enhanced and expanded public transit” (Policy CR1.4), and “[p]romote[s] walking and bicycling” (Policy CR1.5). DEIR at pp. 3.14-40 through 3.14-41.

Furthermore, the DEIR improperly defers mitigation to future projects without setting out any standards or other specific requirements. A vague statement that “[f]uture projects shall

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incorporate project-specific mitigation measures to reduce traffic impacts” simply does not suffice. DEIR at p. 3.14-45 (Mitigation Measure 3.14-1). In addition, the DEIR contends that the 2030 General Plan’s Planned Roadway Improvements will improve congestion and provide a “multi-modal circulation system.” DEIR at p. 3.14-45. The DEIR concedes, however, that “[w]ithout adequate funding, some of the improvements identified in the proposed General Plan may not be implemented, which could result in inadequate transportation infrastructure to serve the proposed General Plan.” DEIR at p. 3.14-45. It then relies on this unfunded mitigation measure to conclude that Impact 3.14-2 will be less-than-significant. *Id.* The City must either secure funding for the traffic improvements, or propose alternative mitigation measures.

4. The DEIR omits meaningful discussion of cumulative impacts.

The DEIR’s analysis of cumulative traffic impacts is simply inadequate. DEIR at p. 3.14-52. It is once sentence long, conclusory, and without evidentiary support.

E. The DEIR’s discussion of visual resources impacts and mitigation does not satisfy CEQA.

As with traffic, the DEIR fails to explain and describe how the policies and actions from General Plan 2030 will mitigate the impacts of the project. Instead, the DEIR provides a laundry list of potentially applicable policies and expects the public to discern how these policies will ultimately lessen the impacts to visual resources. Furthermore, the proposed mitigation measure with respect to directing and shielding light spill is vague and does not include any enforcement mechanism. DEIR at p. 3.15-19. For instance, it does not provide enough detail to draft an implementing ordinance nor does it contain information sufficient for a future project applicant to understand its lighting requirements when proposing a new project. *Id.* This lack of analysis deprives the public a meaningful opportunity to comment on the DEIR.

F. The DEIR’s noise analysis is incomplete.

As with all other DEIR impacts, the noise impacts have been significantly understated, as they do not analyze full buildout of the 2030 General Plan. As in the traffic analysis, the DEIR improperly defers mitigation measures to future projects. DEIR at p. 3.10-24 through 3.10-25. The DEIR requires that “[f]uture projects shall incorporate project-specific mitigation measures to reduce the impact of construction noise” and “construction related groundbourne vibration.” *Id.* The DEIR should instead list mitigation measures that future projects will be required to implement, and analyze the efficacy of such measures.

The DEIR’s treatment of noise also suffers from some logical gaps. For instance, Impact 3.10-3 states, without any supporting analysis, that “[i]mplementation of the proposed General Plan could expose sensitive receptors to noise levels in excess of the existing noise standards established by the City. There are no known feasible measures to reduce train noise below a level of significance.” DEIR at p. 3.10-25. Further confusing the issue, it is unclear why the impact discussion only addresses train noise, when the preceding analysis also focuses on rooftop HVAC systems and delivery trucks. DEIR at pp. 3.10-26 through 3.10-27. Moreover, the DEIR fails to identify which

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receptors will be exposed to excess noise and fails to quantify the anticipated levels of such excess noise, thus depriving the public an meaningful opportunity to understand and comment on this impact.

G. The DEIR's analysis of project impacts related to hazardous materials, geology and cultural resources is not supported by substantial evidence.

Like the other sections of the DEIR, the hazardous materials, geology, and cultural resources sections all underestimate related project impacts by not analyzing full buildout under the 2030 General Plan and fail to provide enforceable mitigation measures by simply incorporating unenforceable General Plan policies. Accordingly, all of the DEIR's related conclusions are not supported by substantial evidence.

Furthermore, the hazardous materials section in the DEIR should describe and evaluate impacts related to the potential for accidental ammonia release from the Chevron refinery, as described in the Chevron Refinery Risk Management Plan, Offsite Consequences Analysis, on file with the Contra Costa County Department of Health.

H. The DEIR's alternatives analysis violates the requirements of CEQA.

The DEIR describes two alternatives to the 2030 General Plan, in addition to the required "no project" alternative. DEIR at pp. 5-3, 5-4. Alternative 1 proposes that the City adopt a general plan that is identical to the 2030 General Plan, but it assumes that the City will maintain a 8.39 percent annual population growth rate, rather than the 13 percent growth rate assumed by the project. *Id.* Similarly, Alternative 2 proposes that the City adopt a general plan identical to the 2030 General Plan, but it assumes that the City will maintain a 10.19 percent annual population growth rate. *Id.* at p. 5-4. Thus, the project and both alternatives propose the same density and intensity of development. They only differ with respect to the rate which such development is assumed to occur, based on varying population growth rate assumptions.

To comply with CEQA, the DEIR must discuss a reasonable range of alternatives that permits decision-makers a "reasoned choice" among such alternatives. CEQA Guidelines § 15126.6(f). As noted, the only difference between the DEIR's proposed alternatives and the project is the assumed rate at which the City's population will grow. Both alternatives propose adoption of the same general plan proposed by the project, and neither propose policies to cap or otherwise limit the City's population growth rate. Thus market forces beyond the City's control will ultimately determine the City's population growth rate. Since decision-makers cannot, in fact, choose the City's growth rate, the DEIR's alternatives analysis permits only a false choice, rather than the "reasoned choice" required by CEQA Guidelines § 15126.6(f).

CEQA also requires that the DEIR identify alternatives to the 2030 General Plan that avoid or substantially lessen the 2030 General Plan's significant environmental effects. Pub. Res. Code §§ 21002, 21002.1(a), 21100(b)(4), 21150. Since Alternatives 1 and 2 both propose adoption of a general plan identical to the project, neither alternative can avoid or lessen the project's significant effects. At best, the two alternatives slow the rate at which the project's significant effects would

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otherwise occur (assuming growth rate projections hold true), but they don't avoid or lessen significant project effects in the long term. This observation is implicit in the DEIR's unsupported conclusion that the project is the environmentally superior alternative. Since the project and both alternatives propose adoption of the same general plan, however, no one proposal is environmentally superior to the others.

"Since the purpose of an alternatives analysis is to allow the decision maker to determine whether there is an environmentally superior alternative that will meet most of the project's objectives, the key to the selection of the range of alternatives is to identify alternatives that meet most of the project objectives but have a reduced level of environmental impacts." *Watsonville Pilots Ass'n. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1089. Here, the environmental impacts of the project are primarily due to the impacts of future development. To comply with CEQA, the DEIR must be revised to include analysis of an alternative land use plan that avoids or reduces the environmental impacts of the 2030 General Plan's land use plan. *See id.* at p. 1090. One such alternative should propose the use of Change Area 12 in accordance with its existing Industrial/Office Flex land use designation and M-1 Light Industrial zoning. By accommodating new employment opportunities within the City, Change Area 12 development would reduce the City's overall number of vehicle miles traveled and related air and traffic impacts and thus reduce the project's significant environmental effects.

IV. Conclusion

Based on the foregoing inadequacies, the DEIR must be revised and recirculated to provide decision-makers and the public a meaningful opportunity to comment. Pursuant to CEQA Guidelines § 15088.5, the City is required to recirculate the DEIR when significant new information is added to the DEIR after public notice is given of the availability of the DEIR for public review but before certification. Per CEQA Guidelines § 15088.5(a)(1-4), "significant new information" requiring recirculation includes, but is not limited to, the following:

- A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented; or
- A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance; or
- A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it; or
- The DEIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

As described above, the DEIR fails to provide a reasonable range of project alternatives and its analysis is so fundamentally and basically inadequate and conclusory in nature that meaningful

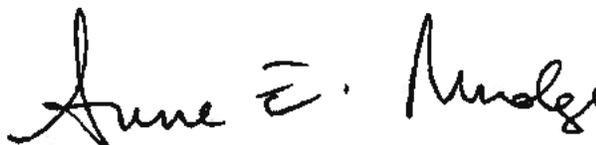
Hector Rojas, Associate Planner
March 31, 2011
Page 18

public review and comment have been precluded in this case. Specifically, the DEIR must be revised to set forth adequate project alternatives and to disclose all of the significant impacts associated with full buildout of the 2030 General Plan, identify feasible measures to avoid or mitigate those impacts, and correct errors and omissions identified herein, and be recirculated, so that decision-makers and the public are afforded a meaningful opportunity to comment.

We appreciate the opportunity to comment on the DEIR and look forward to reviewing a revised and recirculated DEIR that adequately addresses the issues identified herein. In the meantime, please note that our clients reserve their right to submit supplementary comments as additional relevant information becomes available.

Respectfully submitted,

COX, CASTLE & NICHOLSON, LLP

A handwritten signature in black ink that reads "Anne E. Mudge". The signature is written in a cursive style with a large initial "A" and a distinct "E".

Anne E. Mudge

AEM/HDL

Exhibit B



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94103-1398

NOV 24 2009

Regulatory Division

SUBJECT: File Number 28051S

Murray Parkway Properties
c/o Mr. Jeff Olberding
Olberding Environmental, Inc
193 Blue Ravine Road, Suite 165
Folsom, California 95630

Dear Mr. Olberding:

This letter is written in response to your submittal of behalf of Murray Parkway Properties requesting confirmation of the extent of Corps of Engineers jurisdiction at their Goodrick Avenue Properties, located northeast of the intersection of Goodrick Avenue and Richmond Parkway in the City of Richmond, Contra Costa County, California.

Enclosed is a map labeled "Goodrick Avenue Property, City of Richmond, Contra Costa County, California", dated 03/20/09, showing the extent and location of Corps of Engineers jurisdiction. We have based this jurisdictional delineation on the current conditions on the site as verified during a site visit performed by our staff on March 12, 2009. A change in those conditions may also change the extent of our jurisdiction. This jurisdictional delineation will expire in five years from the date of this letter. However, if there has been a change in circumstances that affects the extent of Corps jurisdiction, a revision may be completed before that date.

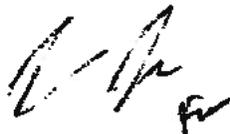
All proposed discharges of dredged or fill material into waters of the United States must be authorized by the Corps of Engineers pursuant to Section 404 of the Clean Water Act (CWA) (33 U.S.C. Section 1344). Waters of the United States generally include tidal waters, lakes, ponds, rivers, streams (including intermittent streams), and wetlands.

Your proposed activity may be within our jurisdiction and a permit may be required for your project. Application for Corps authorization should be made to this office. To avoid delays it is essential that you enter the file number at the top of this letter into Item No. 1 of the application. The application must include plans showing the location, extent and character of the proposed activity, prepared in accordance with the requirements contained in this pamphlet. You should note, in planning your project, that upon receipt of a properly completed application and plans, it may be necessary to advertise the proposed work by issuing a Public Notice for a period of 30 days.

You are advised that the Corps has established an Administrative Appeal Process, as described in 33 C.F.R. Part 331 (65 Fed. Reg. 16,486; March 28, 2000), and outlined in the enclosed flowchart and "Notification of Administrative Appeal Options, Process, and Request for Appeal" form (NAO-RFA). If you do not intend to accept the approved jurisdictional determination, you may elect to provide new information to the District Engineer for reconsideration or submit a completed NAO-RFA form to the Division Engineer to initiate the appeal process. You will relinquish all rights to appeal, unless the Corps receives new information or a completed NAO-RFA form within sixty (60) days of the date of the NAO-RFA.

Should you have any questions regarding this matter, please call Bob Smith of our Regulatory Division at (415) 503-6792. Please address all correspondence to the Regulatory Division and refer to the File Number at the head of this letter. If you would like to provide comments on our permit review process, please complete the Customer Survey Form available online at <http://per2.nwp.usace.army.mil/survey.html>.

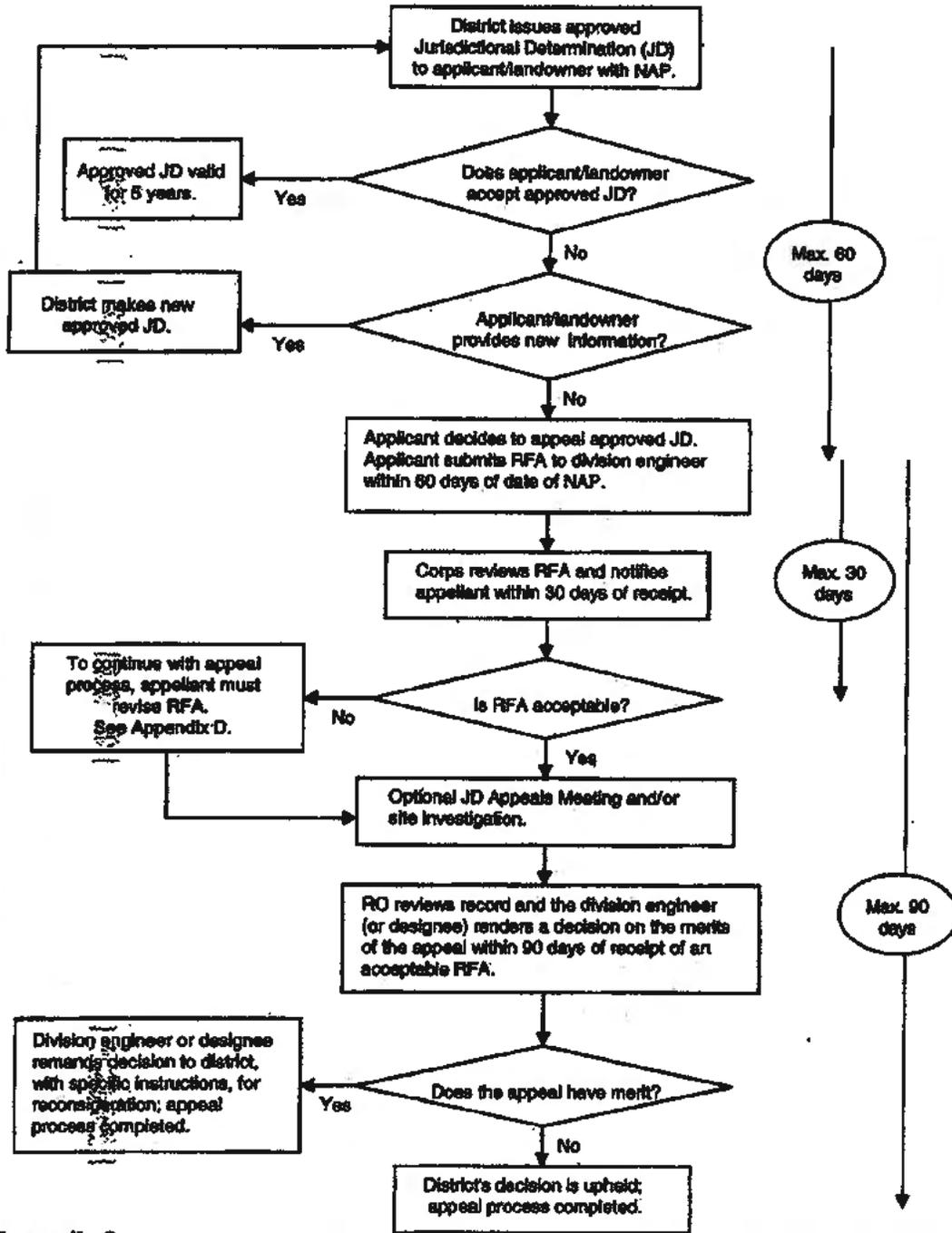
Sincerely,



Jane M. Hicks
Chief, Regulatory Division

Enclosures

Administrative Appeal Process for Approved Jurisdictional Determinations



Appendix C

Exhibit C

OLBERDING ENVIRONMENTAL, INC.
Wetland Regulation and Permitting

December 2, 2010

Mr. Dan Murray
228 Beach Road
Belvedere, CA 94920

SUBJECT: Pre-Construction Survey for California Red-Legged Frog, Salt-Marsh Harvest Mouse, and Other Special-Status Plants and Wildlife at the Goodrick Avenue Property, Richmond, Contra Costa County, California.

Dear Mr. Murray:

Olberding Environmental, Inc. (Olberding Environmental) has conducted a pre-construction survey to detect the presence or absence of the federally threatened California red-legged frog (CRLF) (*Rana draytonii*), the state and federally endangered salt-marsh harvest mouse (SMHM) (*Reithrodontomys raviventris*), and the state and federally threatened Alameda whipsnake (*Masticophis lateralis euryxanthus*) at the Goodrick Avenue Property (Property), located in Richmond, Contra Costa County, California.

In addition, surveys were also conducted to assess the on-site habitat for the potential of occurrence of special-status ground-nesting raptor species that may be in the area such as the burrowing owl (*Athene cunicularia*), northern harrier (*Circus cyaneus*), and short-eared owl (*Asio flammeus*). The survey also included the assessment of potential habitat for the state threatened California black rail (*Laterallus jamaicensis coturniculus*) and the state and federally endangered California clapper rail (*Rallus longirostris obsoletus*). Finally, habitats were assessed for their potential suitability to contain special-status plant species, namely the federally threatened and state endangered pallid manzanita (*Arctostaphylos pallida*), federally endangered soft bird's-beak (*Cordylanthus mollis* ssp. *mollis*), CNPS List 1B species Loma Prieta hoita (*Hoita strobilina*), and the federally threatened and state endangered Santa Cruz tarplant (*Holocarpha macradenia*).

On December 1, 2010, Olberding Environmental conducted a presence/absence survey and habitat assessment for the special-status species mentioned above within the boundaries of the Property (Figure 1). In addition, a California Natural Diversity Database (CNDDDB) search and review was conducted for the Property within the Richmond 7.5 minute quadrangle and eight surrounding quadrangles. During the survey, the biologist from Olberding Environmental conducted transect surveys spaced 50 feet apart throughout the entire length of the Property. A visual survey was performed on the properties surrounding the Property. Visual signs of these special-status species were noted, as well as secondary signs of the presence of burrowing owls and other raptors around small mammal burrows and any possible perch locations in the area. In addition, the amount of burrows and any other cracks in the soil was noted in order to determine the amount of potential refuge areas for CRLF. Finally, the on-site and adjacent habitats were assessed in order to determine the potential for any of these special-status species to occur on the Property. These survey methods, along with the CNDDDB search and review, were employed in order to obtain a final conclusion as to the potential presence or absence of each of these special-status species to occur on the site.

PROPERTY DESCRIPTION

The Property is located approximately 800 feet southeast of the eastern shoreline of San Pablo Bay, northwest of Richmond Parkway, west of the Union Pacific Railroad tracks, north of Rheem Creek and south of Point Pinole Regional Park, in the City of Richmond, Contra Costa County, California. Access to the Property is attained by taking the Richmond Parkway exit west from Interstate-80. From Richmond Parkway, turn north onto Goodrick Avenue. The Property is situated at the north end of Goodrick Avenue.

The Property consists primarily of upland grassland habitats. The Property is contained between Goodrick Avenue to the west and Richmond Parkway to the east. Rheem Creek, a constructed flood control channel is located approximately 100 feet north of the northern Property boundary, while San Pablo is located several hundred feet to the east and is separated from the Property by Goodrick Avenue and the Breuner Property. The Richmond Rod and Gun Club is adjacent to the west of the site and is located along San Pablo Bay. The entire site is on a low-lying alluvial plain. Most of the area is level, although localized shallow depressions occur throughout the site.

Along the western edge of the Property, there is an extension of Goodrick Avenue, which separates the tidal wetlands from the site. Although signs of recent disturbance on the Property are mainly limited to disking for fire protection, it is assumed that all or most of the Property has been subject to intensive disturbance in the past. The majority of the site has been historically used a pasture for cattle and horses. Overall, the vegetative cover on the site has been highly disturbed from past grazing. Dominant vegetation on the site includes wild oat (*Avena fatua*), black mustard (*brassica nigra*), curly dock (*rumex crispus*), and coyote brush (*Baccharis pilularis*).

SPECIAL-STATUS SPECIES HABITATS

The CRLF is found in lowlands, foothill woodland and grasslands, near marshes, lakes, ponds or other water sources. These amphibians require dense shrubby or emergent vegetation closely associated with deep still or slow moving water. Generally these frogs favor intermittent streams with water at least two and a half feet deep and where the shoreline has relatively intact emergent or shoreline vegetation. CRLF are known to take refuge upland in small mammal burrows during periods of high water flow.

The SMHM resides only in the saline emergent wetlands of the greater San Francisco Bay and its tributaries. The primary habitat for this mouse is pickleweed. These small mice build loosely organized nests in vegetation above ground and do not burrow. SMHM also require higher areas within their range where they may escape from high water. Some movement of individuals from pickleweed marsh to higher grassland occurs in the spring and summer, or otherwise as plant cover affords escape from predators.

The Alameda whipsnake is typically found in chaparral, northern coastal sage scrub, and coastal sage habitats, usually with rock outcrops; however annual grasslands, oak woodlands, and oak savannah serve as habitat during the breeding season. Egg-laying occurs near scrub habitat on ungrazed grasslands with scattered shrub cover.

California black rails inhabit saltwater, brackish, and freshwater marshes at very low elevations. They prefer coastal areas for tidal salt marshes bordering larger bays dominated by dense pickleweed with an open structure below. A dense canopy that provides optimal cover is essential for survival. The California clapper rail occurs in the San Francisco Bay Area where saltwater and brackish marshes are present that are traversed by tidal sloughs and dominated by pickleweed and cordgrass.

Burrowing owls generally require open annual grassland habitats in which to nest, but can be found on abandoned lots, roads, airports, and other urban areas. In addition to being open, habitats must meet three other requirements to be suitable for the burrowing owl. First, existing burrows must be present (or suitable substitutes). Next, elevated perches or low vegetation, generally free of visual obstruction, must be relatively close. Finally, there must be a high percentage of bare ground or ground covered with very low vegetation. Northern harriers require open annual grassland habitats and prefer dense ground vegetation or grasses in which to build nests. The short-eared owl forages in grasslands, tundra, and marshes with an abundant small mammal population. Nests are constructed on the ground, usually in a dry depression with concealing vegetation.

The pallid manzanita can be found in broadleafed upland forest, closed-cone coniferous forest, chaparral, cismontane woodland, uplifted marine terraces, and coastal scrub from 656 to 1,460 feet in elevation in siliceous shale, thin chert, sandy, or gravelly soils. It blooms from December to March. Soft bird's-beak is a saprophyte upon host plants such as salt grass and pickleweed. The blooming period for this plant is between April and July. This plant unusually is found where the high to highest flood water occurs. The Loma Prieta hoita can be found in openings in chaparral or oak woodland, cismontane or riparian woodland, serpentine, or related Franciscan-formation substrata, and descending in gravelly creekbeds draining from the mountains into the Santa Clara Valley. This legume blooms from May to October. The Santa Cruz tarplant is found in coastal prairie and valley and foothill grassland habitats in sandy clay soils, often amongst non-native plants. Yellow flowers bloom between June and October.

RESULTS

CNDDDB maps of the special-status species listed in this report are included as Figures 2 and 3. The species displayed on these maps have occurred within a five mile radius of the site within the last ten years. Figure 4 has been included to display the USFWS designated critical habitat for the Alameda whipsnake occurring within five miles of the site. Below is a list of the most recent occurrences of these species within the vicinity of the site:

- CRLF was last observed in 2000 (Occurrence #407), roughly 5.8 miles northeast of the Property.
- SMHM was last observed in 2001 (Occurrence #73), roughly 0.7 miles northeast of the Property.
- Several occurrences of the Alameda whipsnake have been made within the last ten years within the vicinity of the site. Due to the sensitive nature of this species, its location information has been suppressed. Critical habitat for this species occurs less than five miles to the southeast of the Property (Figure 4).
- The California black rail was last observed in 2008 (Occurrence #33), roughly 0.7 miles northeast of the Property.
- The California clapper rail was last observed in 2000 (Occurrence #83), roughly 2.2 miles northeast of the Property.
- The burrowing owl was last observed in 2004 (Occurrence #1160), roughly 5.0 miles southeast of the Property.
- No recent occurrences of the northern harrier or short-eared owl have been made within the vicinity of the Property.
- The pallid manzanita was last observed in 2004 (Occurrence #1), roughly 5.3 miles east of the Property.
- The soft bird's-beak was last observed in 2006 (Occurrence #1), roughly 1.9 miles northeast of the Property.
- The Loma Prieta hoita was last observed in 2004 (Occurrence #15), roughly 3.5 miles southeast of the Property.

- The Santa Cruz tarplant was last observed in 2009 (Occurrence #28), roughly 4.3 miles southeast of the Property.

Observations made during the initial survey conducted on December 1, 2010, indicate that none of the special-status species occur on the Property. Based on the habitat assessment of the Property, the following conclusions were made: CRLF is presumed absent from the site based on the lack of suitable habitat and lack of recent occurrences. No deep pools occur on the site and the Property lacks suitable refuge habitat in the form of small mammal burrows. No pickleweed occurs on the Property for the SMHM, but does occur within 350 feet of the Property to the west. Habitat does not occur on the Property for the Alameda whipsnake. In addition, development and highways to the east of the Property act as obstacles to migration for this species. Habitat for the California black rail and California clapper rail occur within the shoreline vegetation to the west of the Property. However, both of these species are unlikely to occur within the Property boundaries due to lack of suitable habitats. The lack of small mammal burrows and lack of recent occurrences precludes the use of the Property to the burrowing owl. Regular maintenance and grazing of the site precludes the use of the Property for the northern harrier and short-eared owl. None of the special-status plant species are expected to occur on the site based on the lack of suitable habitat, soil conditions, and regular grazing disturbance.

No special status species currently occur on the Property. In summary, while several special-status species have the potential to occur adjacent to the Property along the shoreline to the west, the majority of these species are unlikely to occur on the Property based on lack of suitable habitats (tidal marsh and pickleweed), lack of recent occurrences, grazing disturbance, and migratory obstacles (Goodrick Avenue and Rheem Creek). Primary habitat for SMHM is absent on the Property. Grasslands act as refuge habitat for SMHM during high tide events, usually during the spring and summer seasons. However, the Property is located over 350 feet from pickleweed known to support this species and is separated from this habitat type by Goodrick Avenue. It is highly unlikely that SMHM would venture this distance from the cover of the shoreline band of pickleweed. Therefore, SMHM are assumed to be absent from the Property.

If you have any questions, please feel free to contact me at (925) 866-2111.

Sincerely,



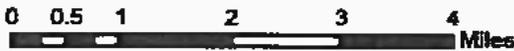
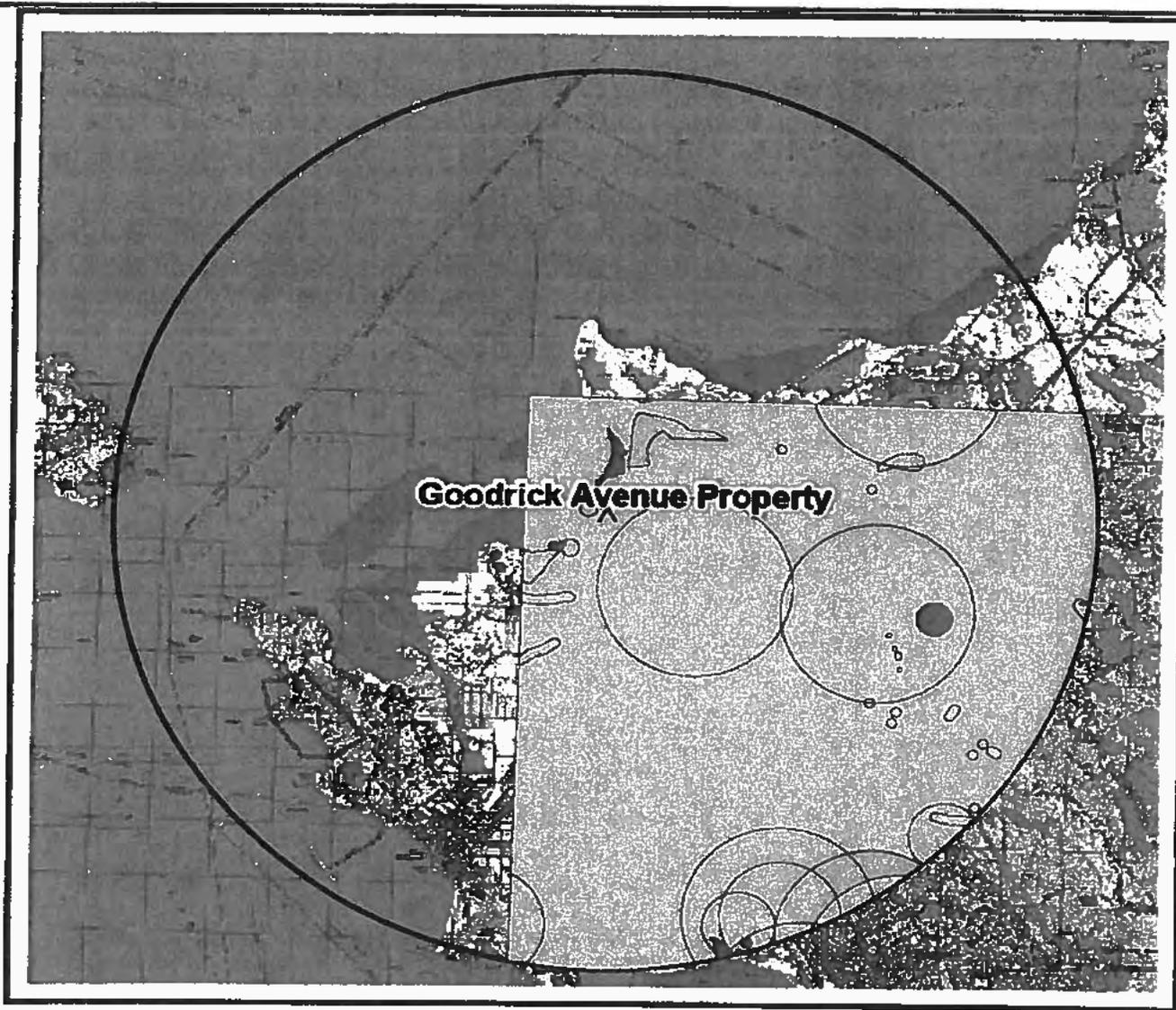
Jeff Olberding
Wetland Regulatory Scientist



Figure 1
Aerial Photograph of the Goodrick Avenue Survey Area
Contra Costa County, California

Oilberding Environmental, Inc.
3170 Crow Canyon Place, Suite 260
San Ramon, California 94583
Phone: (925) 866-2111

This document is not intended for detail design work.

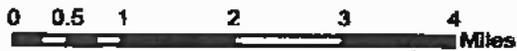
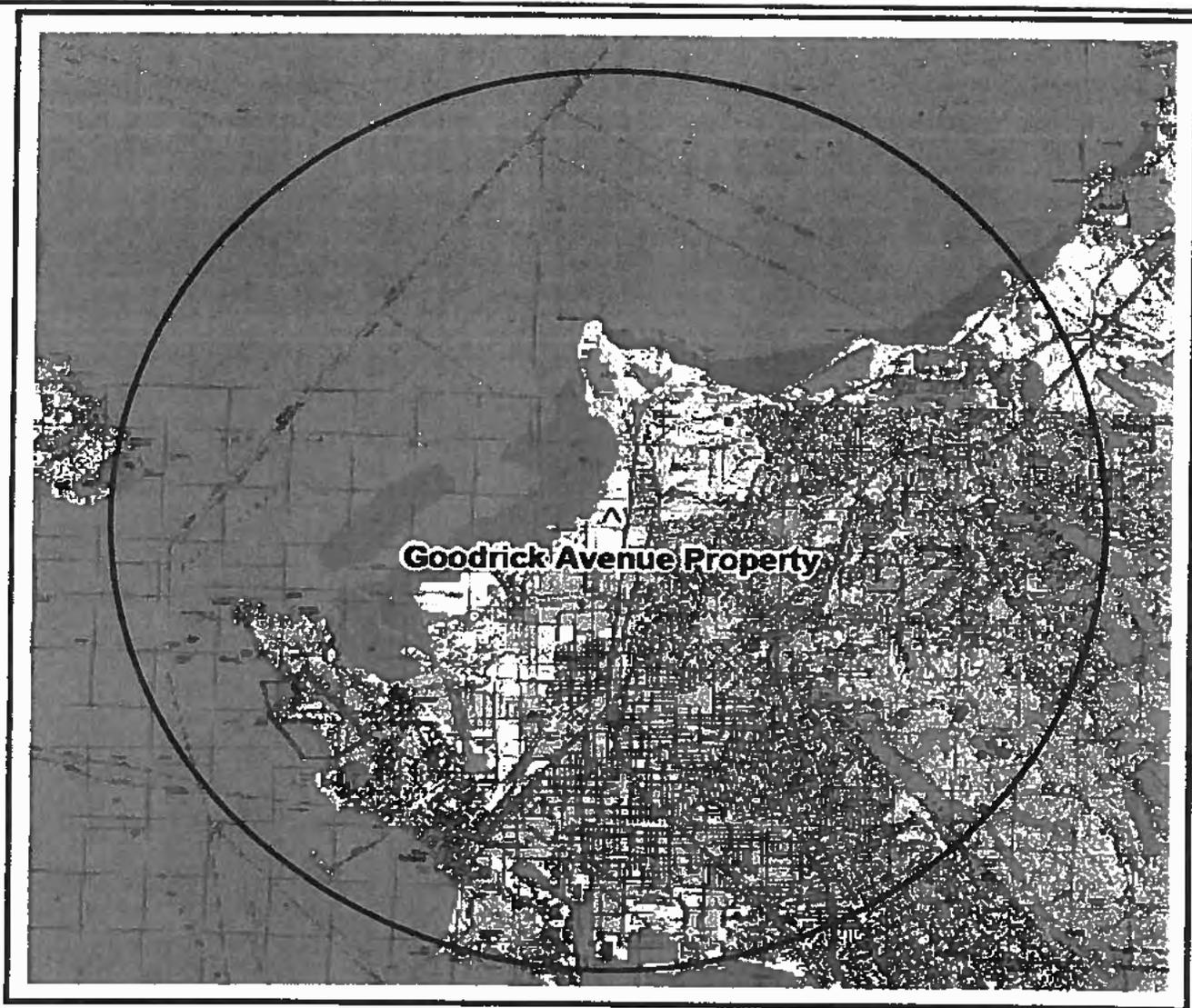


Special-Status Animals	
 Alameda whipsnake	 California clapper rail
 Bridges' coast range shoulderband	 burrowing owl
 California black rail	 salt-marsh harvest mouse

Olberding Environmental, Inc.
3170 Crow Canyon Place, Suite 260
San Ramon, California 94583
Phone: (925) 866-2111

Figure 2
CNDDDB Map of Special-Status Animals Near the
Goodrick Avenue Property Within a 5-Mile Radius
and Within the Last 10 Years
Contra Costa County, California

This document is not intended for detail design work.



Special-Status Plant Species

-  Loma Prieta hoita
-  Santa Cruz tarplant
-  pallid manzanita
-  soft bird's-beak

Olberding Environmental, Inc.
3170 Crow Canyon Place, Suite 260
San Ramon, California 94583
Phone: (925) 866-2111

Figure 3
CNDDB Map of Special-Status Plants Near the
Goodrick Avenue Property Within a 5-Mile Radius
and Within the Last 10 Years
Contra Costa County, California

This document is not intended for detail design work.

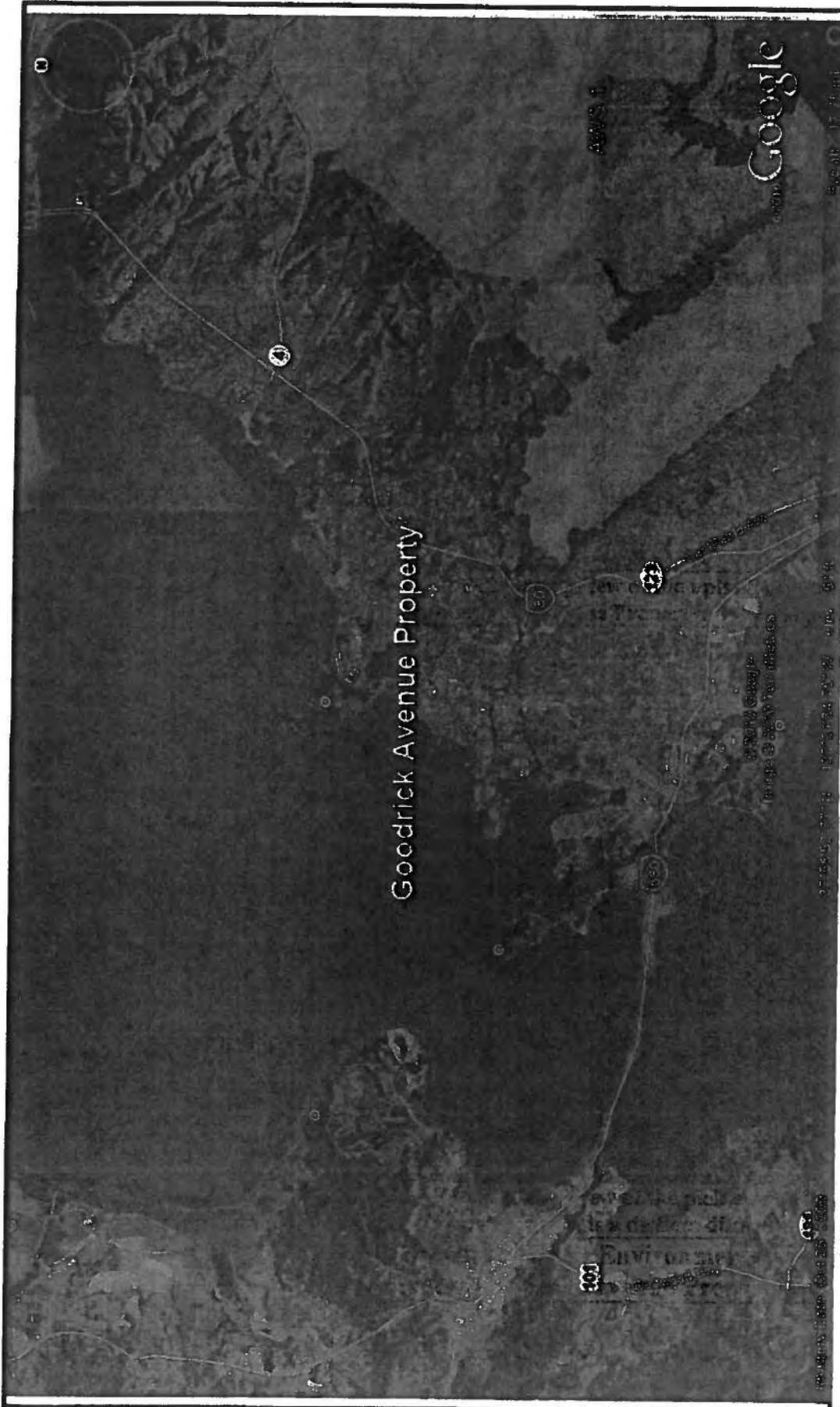


Figure 4
USFWS Designated Critical Habitat Map for the Alameda
Whiptail Near the Goodrick Avenue Property
Contra Costa County, California

Oldberding Environmental, Inc.
3170 Crow Canyon Place, Suite 260
San Ramon, California 94583
Phone: (925) 866-2111

This document is not intended for detail design work.



Photo 1. View of the upland grassland habitat on the site looking east from the northwest corner of the Property.

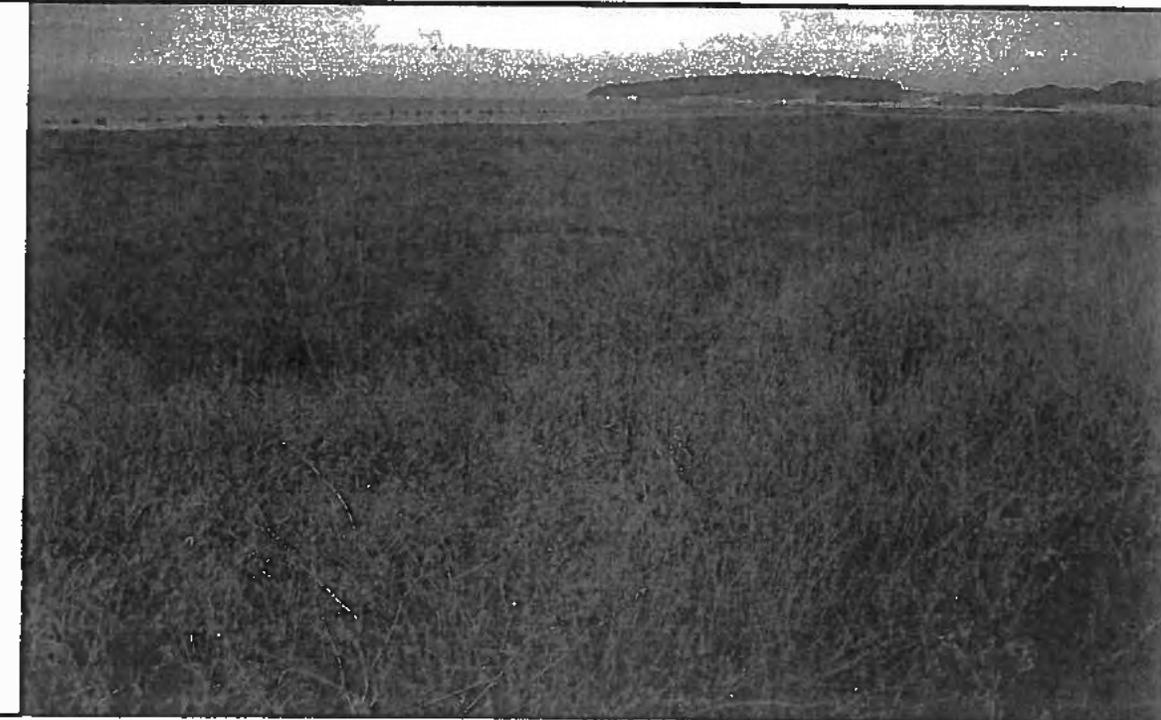


Photo 2. View of the pickleweed dominated habitat along the eastern shoreline of San Pablo Bay. There is a distinct difference from the habitat found on the Goodrick Avenue Property.

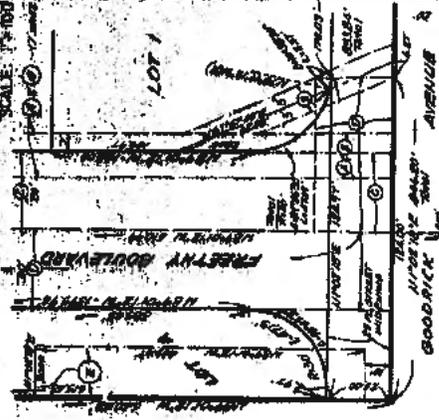
**Olberding Environmental, Inc.
Goodrick Avenue Property – December 2010**

EXHIBIT B

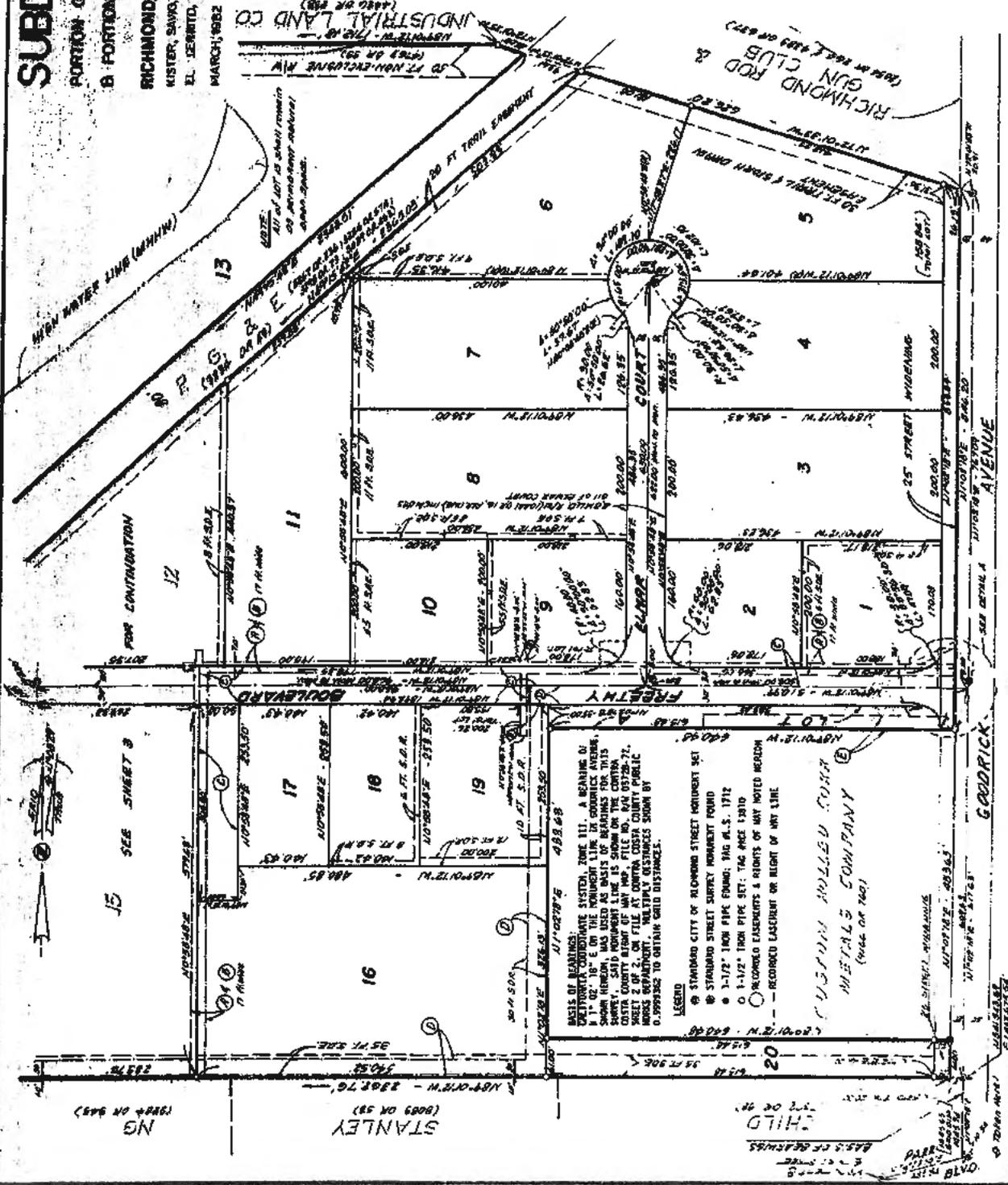
SUBDIVISION 5754

PORTION OF LOT 201 MAP OF SAN MARINO TOWNSHIP
FILES MARCH 1, 1964
A PORTION OF SECTIONS 35 & 36 12N, 35W 40M

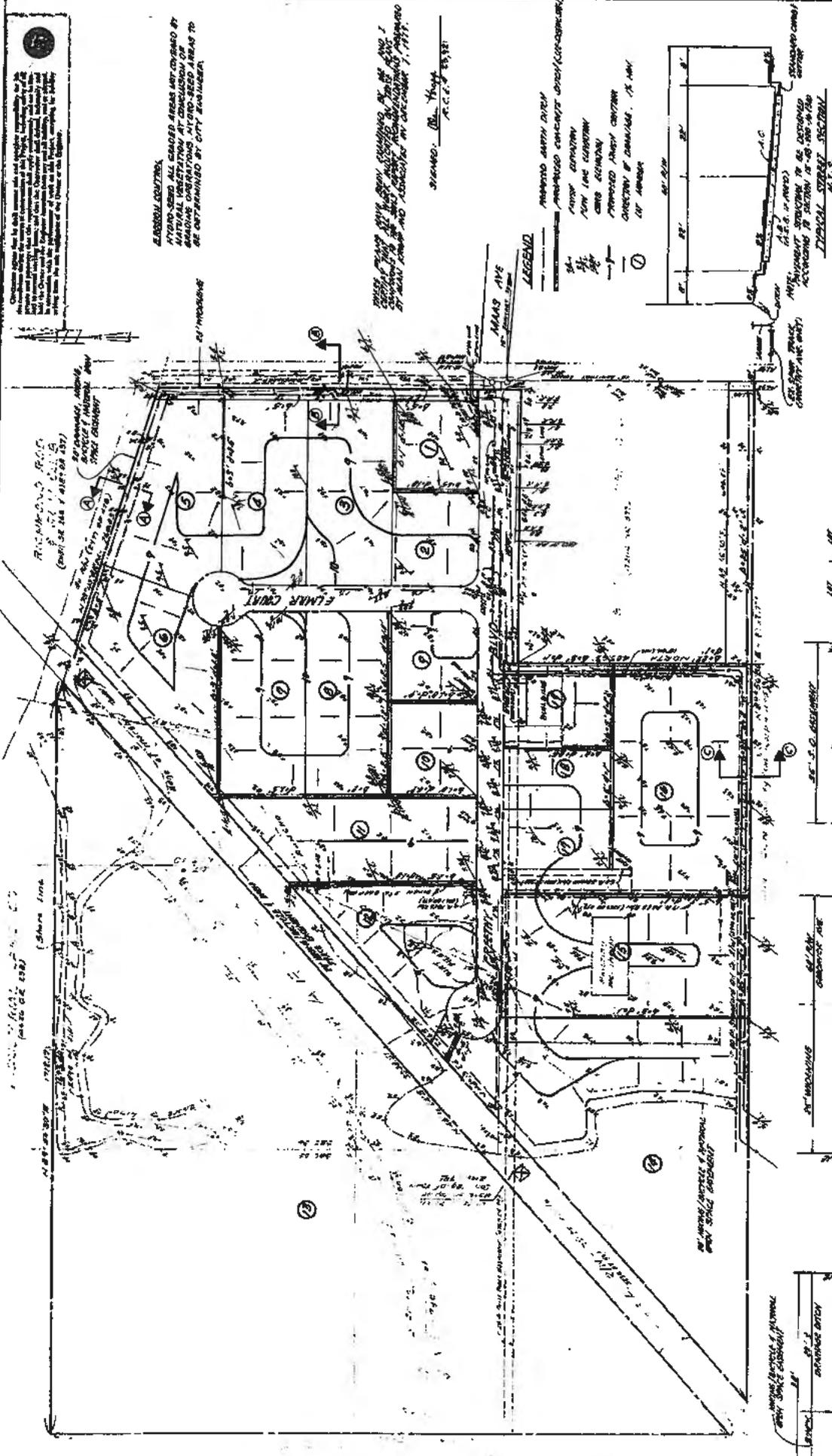
RICHMOND, CONTRA COSTA COUNTY, CALIFORNIA
WISTER, SAWS & MEI, INC. LAND SURVEYORS & CIVIL ENGINEERS
EL. 328107D
MARCH, 1962



RECORDED EASEMENTS AND DEBITS OF ANY ENGINE
17 FT. EASEMENT FOR GAS LINES TO S. & E. RECORDED
DECEMBER 19, 1966, WORK S207, OFFICIAL RECORDS, PAGE
437.
11 FT. AND 10 FT. EASEMENTS FOR WREWOLD ELECTRIC,
12.5 FT. AND 10 FT. EASEMENTS FOR S. & E. AND P.T. &
T. RECORDED DECEMBER 19, 1966, WORK S207, OFFICIAL
RECORDS, PAGE 437.
20 FT. AND 90 FT. EASEMENT AND RIGHT OF WAY FOR WATER
LINES AND APPURTENANCES TO E.J. CALO, RECORDED
FEBRUARY 10, 1966, WORK S207, OFFICIAL RECORDS, PAGE
288.
30 FT. RIGHT OF WAY FOR EASEMENTS AND APPURTENANCES
TO STANDARD OIL COMPANY OF CALIFORNIA AND STANDARD
OIL COMPANY, RECORDED FEBRUARY 2, 1966, WORK
S207, OFFICIAL RECORDS, PAGE 288.
25 FT. EASEMENT FOR RAILROAD AND TRANSPORTATION
PURPOSES TO SOUTHERN PACIFIC TRANSPORTATION COMPANY,
RECORDED DECEMBER 21, 1956, WORK S207, OFFICIAL
RECORDS, PAGE 711.



STANLEY (8089 OR 58) 2382.76'
NG (8089 OR 58) 2382.76'
SEE SHEET 9
FOR CONTINUATION
15
16
17
18
19
20
BASIS OF BEARINGS: A BEARING OF
CALIFORNIA COORDINATE SYSTEM, ZONE 111. A BEARING OF
1° 02' 10" E ON THE MONUMENT LINE TO GOODRICK AVENUE.
SHOWN HEREIN, WAS USED AS BASIS OF BEARINGS FOR THIS
SURVEY. THE MONUMENT LINE IS SHOWN ON THE
COUNTY COUNTY MAP OF SAN MARINO TOWNSHIP, FILE NO. 140, DISTRICT 27,
SHEET 2 OF 2, ON FILE AT CONTRA COSTA COUNTY PUBLIC
WORKS DEPARTMENT. MULTIPLY DISTANCES SHOWN BY
0.999988 TO OBTAIN GRID DISTANCES.
LEGEND
⊙ STANDARD CITY OF RICHMOND STREET MONUMENT SET
⊙ STANDARD STREET SURVEY MONUMENT FOUND
⊙ 3-1/2" IRON PIPE FOUND; TAG M.S. 1712
⊙ 1-1/2" IRON PIPE SET; TAG AGE 13810
⊙ RECORDED EASEMENTS & RIGHTS OF WAY NOTED HEREON
— RECORDED EASEMENT OR RIGHT OF WAY LINE
CUSTIN MULLEN COAST
METSAL'S COMPANY
(PAGE OF 140)

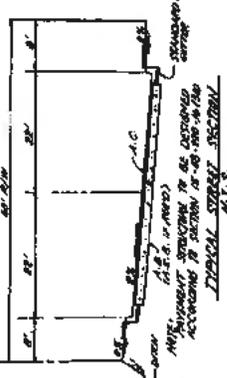


General Notes: This plan is to be used in connection with the proposed subdivision map for San Pablo Bay Industrial Park Subdivision No. 3755. It is to be used for the purpose of showing the location of the proposed buildings, parking lots, and other improvements. It is to be used in connection with the proposed subdivision map and the proposed subdivision map. It is to be used in connection with the proposed subdivision map and the proposed subdivision map. It is to be used in connection with the proposed subdivision map and the proposed subdivision map.

GENERAL NOTES:
 1. ALL GRADED AREAS ARE COVERED BY
 2. THE CITY ENGINEER'S OFFICE AT THE
 3. CITY ENGINEER'S OFFICE AT THE
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 5. CITY ENGINEER'S OFFICE AT THE

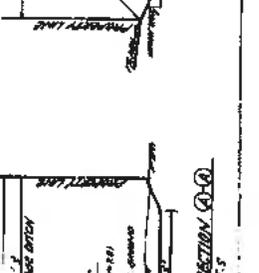
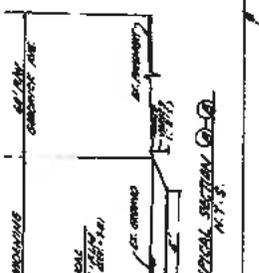
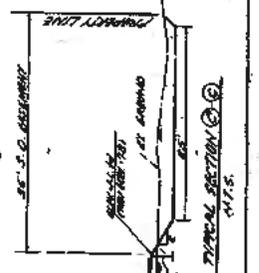
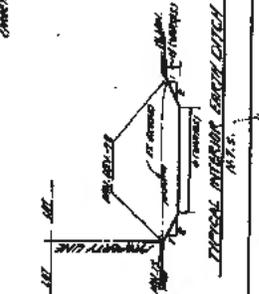
DESIGNED BY: [Name]
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 DATE: [Date]

LEGEND:
 1. PROPOSED BUILDING
 2. PROPOSED PARKING LOT
 3. PROPOSED DRIVEWAY
 4. PROPOSED SIDEWALK
 5. PROPOSED CURB



**SAN PABLO BAY INDUSTRIAL PARK
 SUBDIVISION NO. 3755**

DATE: 11/15/55	BY: [Name]
CHECKED: [Name]	DATE: 11/15/55
APPROVED: [Name]	DATE: 11/15/55



187

EXHIBIT C

KISTER, SAVIO & REI INC.

LAND SURVEYORS & CIVIL ENGINEERS

DONALD E. KISTER (1905-1969)

CHARLES J. SAVIO
LICENSED LAND SURVEYOR

MICHAEL P. REI
REGISTERED CIVIL ENGINEER

11818 SAN PABLO AVENUE
EL CERRITO, CALIF. 94530
TELEPHONE 254-7660

January 28, 1980

Job No. 9642

PRELIMINARY ESTIMATE FREETHY INDUSTRIAL PARK

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>TOTAL</u>
1.	Grading: Import	28,500	C.Y.	5.00	142,500.00
2.	Regrading Lots	16,000	C.Y.	1.50	24,000.00
3.	Finish Grading Street	140,850	S.F.	0.15	21,127.50
4.	Drainage Ditches (Earth)	3,000	L.F.	10.00	30,000.00
5.	Concrete Valley Gutters	4	Ea.	600.00	2,400.00
6.	8" Sanitary Sewer	2,150	L.F.	20.00	43,000.00
7.	4" Sanitary Sewer	540	L.F.	10.00	5,400.00
8.	Manholes	8	Ea.	1,300.00	10,400.00
9.	Sanitary Sewer Pump Station	1	Ea.	6,000.00	6,000.00
10.	Tie Into Existing Manhole	1	Ea.	500.00	500.00
11.	Underground Trenching/Structures	3,640	L.F.	7.00	25,480.00
12.	Electroliers	10	Ea.	1,800.00	18,000.00
13.	Water Main Extension - 8"	990	L.F.	22.00	21,780.00
14.	Fire Hydrants	4	Ea.	1,800.00	7,200.00
15.	Water Services (3/4)	17	Ea.	575.00	9,775.00
16.	E.B.M.U.D. Standard Participation Charge	17	Ea.	100.00	1,700.00
17.	Concrete Curb & Gutter (Incl. Cushion)	4,280	L.F.	6.00	25,680.00
18.	Concrete Sidewalk	17,120	S.F.	1.75	29,960.00
19.	Paving - 2" A.C., 6" A.B., 12" A.S.B.	102,000	S.F.	1.50	153,000.00
20.	Street Name Signs	8	Ea.	100.00	800.00
21.	Street Monuments	4	Ea.	100.00	400.00
22.	Street Trees	30	Ea.	50.00	1,500.00
					<u>\$580,602.50</u>
	10% Contingencies				<u>58,060.25</u>
					<u>\$638,662.75</u>
	Sanitary District Annexation Fees				
	3.6 acres @ \$785.00 per acre				2,826.00
	Annexation Cost (Minimum)				200.00
	Sanitary District Inspection Fees 3% of \$65,300.00				1,959.00
	City Inspection Fees - 4% of \$211,340.00				8,454.00
	Civil Engineering & Land Surveying				20,000.00
	Soils Engineering				5,000.00
	P.G. & E. Refundable Advance (3640 L.F. @ \$12.00)				<u>43,680.00</u>
					<u>\$720,781.75</u>

NOTE: E.B.M.U.D. water meters are minimum size,
since actual customer requirements are not known.

KISTER, SAVIO & REI INC.

LAND SURVEYORS & CIVIL ENGINEERS



MATTHEW L. REI, PRES.
R.C.E. 39863 - L.S. 7115

PATRICK M. REI, V.P.
L.S. 8178

DONALD E. KISTER (1905-1989)

CHARLES J. SAVIO (1921-2008)

MICHAEL P. REI (Retired)

825 SAN PABLO AVENUE
PINDLE, CA 94564
PHONE (510) 222 - 4020
FAX (510) 222 - 3718
E-MAIL info@ksrinc.net

January 28, 1980

March 24, 2011

Revised

Preliminary Estimate
Freethy Industrial Park

Item	Description	1980		1980		2011	
		Quantity	Unit	Unit Cost	Total	Unit Cost	Total
1	Grading: Import	28,500	C.Y.	5.00	142,500.00	10.00	285,000.00
2	Regrading Lots	16,000	C.Y.	1.50	24,000.00	7.50	120,000.00
3	Finish Grading Street	140,850	S.F.	0.15	21,127.50	0.30	42,255.00
4	Drainage Ditches	3,000	L.F.	10.00	30,000.00	70.00	210,000.00
5	Concrete Valley Gutters	4	Ea.	600.00	2,400.00	3,500.00	14,000.00
6	8" Sanitary Sewer	2,150	L.F.	20.00	43,000.00	80.00	172,000.00
7	4" Sanitary Sewer	540	L.F.	10.00	5,400.00	60.00	32,400.00
8	Manholes	8	Ea.	1,300.00	10,400.00	4,000.00	32,000.00
9	Sanitary Sewer Pump Station	1	Ea.	6,000.00	6,000.00	25,000.00	25,000.00
10	Tie Into Existing Manhole	1	Ea.	500.00	500.00	1,500.00	1,500.00
11	Underground Trenching/Structures	3,640	L.F.	7.00	25,480.00	25.00	91,000.00
12	Electroliers	10	Ea.	1,800.00	18,000.00	15,000.00	150,000.00
13	Water Main Extensions - 8"	990	L.F.	22.00	21,780.00	135.00	133,650.00
14	Fire Hydrants	4	Ea.	1,800.00	7,200.00	7,832.00	31,328.00
15	Water Services - 3/4"	17	Ea.	575.00	9,775.00	948.00	16,116.00
16a	Standard Participation Charge	17	Ea.	100.00	1,700.00		
16b	System Capacity Charge	17	Ea.			21,720.00	389,240.00
17	Concrete Curb & Gutter	4,280	L.F.	6.00	25,680.00	30.00	128,400.00
18	Concrete Sidewalk	17,120	S.F.	1.75	29,960.00	15.00	256,680.00
19a	Paving - 2"AC, 6"AB, 12"ASB	102,000	S.F.	1.50	153,000.00		
19b	Paving Base - 6"AB, 12" ASB	11,100	Tons			40.00	444,000.00
19c	Paving - 2"AC	1,275	Tons			75.00	95,625.00
20	Street Name Signs	8	Ea.	100.00	800.00	500.00	4,000.00
21	Street Monuments	4	Ea.	100.00	400.00	1,000.00	4,000.00
22	Street Trees	30	Ea.	50.00	1,500.00	500.00	15,000.00
				Total	\$580,602.50		\$2,673,194.00
				10% Contingency	58,060.25		267,319.40
					\$638,662.75		\$2,940,513.40
	Sanitary District Annexation Fee	3.6	Acre	785.00	2,826.00	2,271.00	8,175.60
	Annexation Cost (LAFCO & State Filing, Min.)				200.00		5,000.00
	Sanitary District Inspection Fee	3%	of	\$ 65,300.00	1,959.00		
	Sanitary District Inspection Fee	5%	of			\$262,900.00	13,145.00
	City Inspection Fees	4%	of	\$211,340.00	8,454.00		
	City Inspection Fees	3%	of			\$ 847,705.00	\$ 28,431.15
	Civil Engineering & Land Surveying				20,000.00	Est.	100,000.00
	Soils Engineering				5,000.00	Est.	30,000.00
	P.G.& E. Refundable Advance	3,640	L.F.	12.00	43,680.00	60.00	218,400.00
					\$720,781.75		\$ 3,343,665.15

Note: 2011 unit costs per Contra Costa County Public Works Department Guide; EBMUD rates & fees; West County Wastewater rates & fees; and PG&E rates & fees

EXHIBIT D



Dear Jeff,

**Please comment on the
Richmond General Plan & Draft Environmental
Impact Report (DEIR)**

6:30 pm, Thursday, March 17

CESP is pleased to see improved shoreline protections in the General Plan & DEIR. CESP urges you to attend the March 17 Planning Commission meeting and support the following shoreline protections/suggested improvements:

- **North Richmond:** The area between the Park District's new acquisition at Breuner Marsh and the landfill to the South should be designated in the General Plan as open space and be zoned to the lowest zoning designation to protect the city from a taking claim. This shoreline area is far too precious a resource to be developed and needs as much protection as you can provide it under the law.
- **Hoffman Marsh:** This area should be handled the same way as the North Richmond shoreline. Hoffman Marsh is too precious a resource to be squandered on development.
- **Zeneca Site:** This area should not be designated for housing. Additionally, development here should have a sufficiently wide set back, at least 500 feet, from the shoreline to protect shorebirds and the shoreline.
- **UC Field Station:** Any expansion of this development should protect the coastal prairie and allow for a substantial set-back from the shoreline.
- **Sea Level Rise:** Rising sea levels caused by global warming threaten the natural habitat of many endangered flora and fauna along the shoreline. CESP urges the City to commit itself to adopting and implementing a plan that would mitigate the loss of shoreline habitat by protecting adjacent upland areas.

Comments can be submitted in writing or in person to the Richmond Planning Division in City Hall. Written comments must cite the official project name and number: Richmond General Plan 2030; PLN09-137.

Come out to voice your opinions in order to preserve the environment and wildlife along the Richmond shoreline.

DEIR comments will be heard at **6:30 pm, Thursday, March 17.**
450 Civic Center Plaza, Richmond, CA 94804

Citizens for East Shore Parks
P.O. Box 6087
Albany, CA 94706
(510) 524 - 5000 (office)
(510) 524 - 5008 (fax)

EXHIBIT E

CITY MANAGER'S OFFICE



March 2, 2011

Ms. Laura B. Crosby
University of California
Lawrence Berkeley National Laboratory
1 Cyclotron Road
Berkeley, CA 94720-8280

Dear Ms. Crosby:

This letter serves to express the City of Richmond's strong support for the Richmond Parkway Research Campus as a candidate site for Lawrence Berkeley National Laboratory's (LBNL) Second Campus.

The respondents have worked alongside the City of Richmond and civic minded groups for years. The City of Richmond is especially appreciative for their cooperation with the City, County, and community groups in recent years. They were instrumental in aiding the extension of the Bay Trail along its property.

Should the Richmond Parkway Research Campus be selected for LBNL's second campus location, City staff would seek to work closely with LBNL and the Richmond Parkway Research Campus' ownership to accommodate LBNL's needs.

Please do not hesitate to contact me at (510) 620-6512 or at bill_lindsay@ci.richmond.ca.us if you have further questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "William A. Lindsay".

William A. Lindsay
City Manager

EXHIBIT F

**BIOLOGICAL RESOURCES
BAYSIDE VILLAGE**

Submitted to:

JHS Properties
2165A Francisco Boulevard East
San Rafael, California 94901

Prepared by:

LSA Associates, Inc.
157 Park Place
Point Richmond, California 94801
(510) 236-6810

LSA Project No. JHT530

LSA

November 29, 2007

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FIGURES

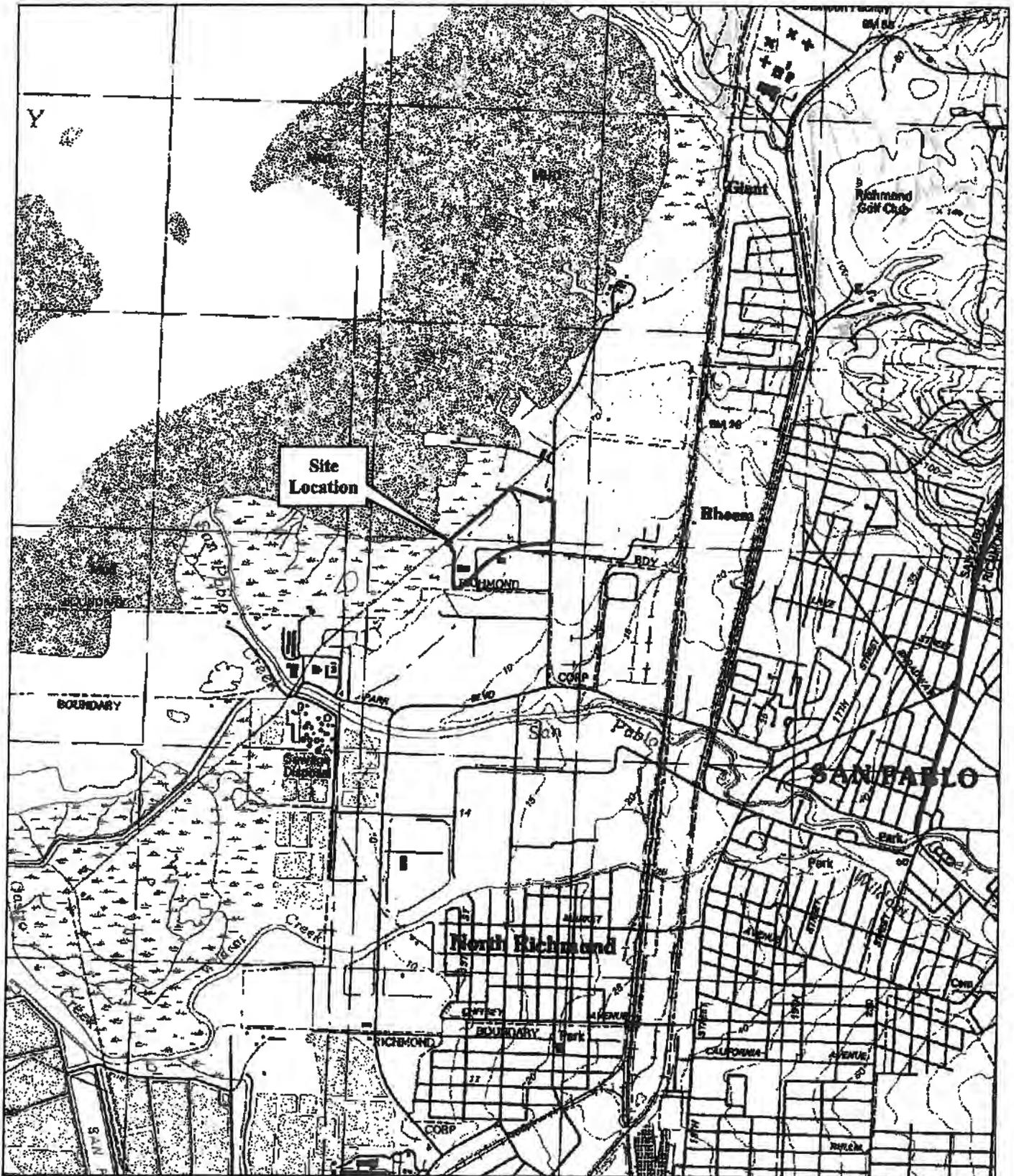
Figure 1: Regional Location.....	2
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INTRODUCTION

This report presents the results of reconnaissance level biological surveys conducted on the Bayside Village project site in the City of Richmond. The project site was visited on October 25, November 10, and December 13, 2005 and May 8, 2007.

Site Description

The project site is a roughly rectangular property of approximately 28 acres (Assessors Parcels 408-220-003, 408-220-006, 408-220-007, 408-220-023 through 026, 408-220-032 through 039, and 408-220-041 through 043) located on the north side of the Richmond Parkway, west of Goodrick Avenue in the City of Richmond. The site is in unsectioned lands within T2N, R5W, on the Richmond, California 7.5 minute USGS quad map (Figures 1 and 2). The site is bordered by San Pablo Bay marshlands to the west, the Richmond Rod and Gun Club to the north, Goodrick Avenue and vacant land to the east, and the Richmond Parkway and light industry to the south. The site contains a paved street, multiple concrete-lined drainage ditches, and a concrete foundation slab from a demolished building. A tidal drainage channel runs along the northern edge and part of the east edge of the site. The remainder of the site is disturbed fill. A paved segment of the bay trail runs along the site's southwestern boundary. The trail was built with an 80-foot setback from the edge of salt marsh and a 3-foot high chain link fence at the edge of the setback to discourage people and dogs from getting closer to or entering the marsh.

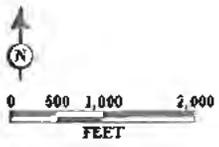


LSA

FIGURE 2

Bayside Village

Site Location



SOURCE: USGS 7.5' Quads: RICHMOND and SAN QUENTEN
L:\HT53\RGIS\Map\Figure2-ProjectLocation.mxd (01/04/06)

The site is generally level, but slopes gently northwestward. The site drains to the northern boundary tidal ditch, to a roadside ditch along the Richmond Parkway that drains westward to a tidal ditch, and through concrete ditches that flow westward and northward into the San Pablo Bay marshland. San Pablo Bay is a navigable water of the United States. The tidal ditch along the northern and eastern edges of the site is a linear trapezoidal channel that parallels property lines.

The entire site was disc'd for weed and vector control during the summer of 2005, which buried most of the existing vegetation, making plant species identification difficult. Discing had not occurred prior to the May 2007 site visit and herbaceous plants were identifiable at that time. Plant species present are mostly non-native ruderal forbs and grasses. The tidal ditch had been cleaned out, with the spoils and ditch-bottom vegetation remains spread beyond the top of the bank. The north and northwest edges of the property contain the remains of eucalyptus trees that were removed within the last few years.

The majority of the site is graded and disturbed fill that contains plentiful debris. These areas have been graded relatively flat with linear furrows remaining from cultivation. The soil in these areas is highly disturbed and shows no evidence of horizons. The amount of vegetation cover after discing ranges from zero to ten percent and consists of plant debris from the last growing season remaining after the discing plus some seedlings from the current growing season. Prior to discing, such as in May 2007, the amount of vegetative cover approaches 90 percent. The vegetation on the majority of the site consists of non-hydrophytic species such as wild oats (*Avena* spp.), ripgut (*Bromus diandrus*), hare barley (*Hordeum murinum*), soft chess (*Bromus hordeaceus*), mustards (*Brassica kaber* and *Brassica nigra*), wild radish (*Raphanus sativus*), Italian thistle (*Carduus pycnocephalus*), burr clover (*Medicago polymorpha*), fennel (*Foeniculum vulgare*), vetch (*Vicia* spp.), sweet clover (*Melilotus officinalis*), and yellow starthistle (*Centaurea solstitialis*), along with some facultative species such as Italian rye (*Lolium multiflorum*), harding grass (*Phalaris aquatica*), and bristly ox-tongue (*Picris echioides*).

The western edge of the project site is primarily adjacent to undisturbed tidal salt marsh on the border of San Pablo Bay. A portion of this salt marsh adjacent to the southwestern corner of the site is a mitigation area created as part of the Richmond Parkway project. This area is dominantly vegetated with pickleweed (*Salicornia virginica*) and salt grass (*Distichlis spicata*). The landward edge of this salt marsh wetland coincides with the edge of fill that has been placed on the project site in the past. The vegetation upslope from the base of the fill abruptly changes to upland ruderal species that include coyote brush (*Baccharis pilularis*). The edge of the fill is the approximate property boundary. A small area of this salt marsh may be present on the project site depending on the exact location of the western property line.

The southwestern portion of the project site contains four small seasonally ponded areas. These areas appear to be depressions in the fill that shallowly pond water for a short period of time after storms. They range in size from 95 square feet to 2,050 square feet. Plant species found here and the sparse cover they form reflect these seasonally ponded conditions. They include Mediterranean barley (*Hordeum marinum*), hyssop loose-strife (*Lythrum hyssopifolium*), rabbit's-foot grass (*Polypogon monspeliensis*) and prostrate knotweed (*Polygonum aviculare*).

A trapezoidal ditch extends from the salt marsh eastward along the northern site boundary, and then southward along the west shoulder of Goodrick Avenue. The ditch receives drainage from the east

side of Goodrick Avenue through a culvert, from a roadside ditch along the north shoulder of the Richmond Parkway, and from a short concrete-lined ditch on the site. The lower reaches of this channel appear to have regular tidal action. The banks support pickleweed and salt-grass, along with patches of cord grass (*Spartina* spp.). Upstream of the salt marsh plants brackish, freshwater conditions appear. Remains of cattails (*Typha* spp.) that had been cleaned out of the ditch were observed along the banks of the channel. A culvert beneath Goodrick that drains the area east of Goodrick Avenue connects to the ditch. The continuation of the ditch south of the Goodrick culvert does not display wetland characteristics and does not show evidence of scour or a bed and bank.

Five concrete-lined ditches on the site drain to the salt marsh. These ditches typically do not contain any vegetation.

The U.S. Army Corps of Engineers has verified a jurisdictional delineation (August 8, 2007) for the site. The Corps exerted jurisdiction over the drainage ditch along the northern and eastern property boundaries up to and including the culvert beneath Goodrick and a small patch of salt marsh (340 square feet) along the western property boundary. The Corps did not take jurisdiction over the four small seasonally ponded features in the southwestern corner of the property. These four areas will be subject to the jurisdiction of the Regional Water Quality Control Board.

Wildlife

The project site has been extensively disturbed by past fill, previous development activity and the current practice of discing the fill to control weed growth. This has resulted in disturbed habitat conditions on the entire project site. A small number of wildlife species are able to occupy the site as a result. This includes small rodents (mice, rats, gophers), songbirds which move in to feed from the edges of the site where remnant vegetation which provides cover is present, and hawks (white-tailed kite, red-tailed hawk, American kestrel) which hunt over this open area. It is also likely that urban adapted small carnivores including opossum, raccoon, and striped skunk forage on the site.

The project site is adjacent to tidal salt marsh which is part of the marshlands at the mouth of San Pablo creek. Tidal salt marsh provides habitat for three federal and/or state listed species. These are California clapper rail, black rail and salt marsh harvest mouse.

California Clapper Rail and California Black Rail. The California clapper rail is federally and state-listed as endangered, and the California black rail is state-listed as threatened. Both of these species typically occur in tidal marshes, and both have been observed in Giant Marsh, which is located to the north of the project site (CDFG 2003) and in the salt marsh adjacent to the project site to the west (LSA 2003). They both likely move onto upland portions of the site during high tide events.

Clapper rails occur primarily in the salt marshes of San Francisco Bay which are subject to direct tidal action and have a network of tidal channels. Areas within the marsh with sparse vegetative cover and tidal channels and adjacent mudflats exposed at low tide are used for foraging. Areas of dense vegetation are used for nesting and protection from predators. They also rely on adjacent upland areas for cover during extreme high tides.

Black rails in San Francisco Bay prefer pickleweed dominated salt marsh which receives full tidal action. Nesting occurs in dense pickleweed stands with an open structure below the vegetation canopy. Like clapper rails, an area of dense vegetation above the high tide line is important for black rails as protective cover when the salt marsh is completely underwater during extreme high tides.

Salt Marsh Harvest Mouse. The salt marsh harvest mouse (SMHM) is federally and state-listed as endangered. The species has been recorded as recently as 1986 in East Bay Regional Park District's Giant Marsh, which is adjacent to the northern boundary of the Bruener property (CDFG 2003) and in 2001 from the Bruener property (Live Oak Associates 2001). The salt marsh adjacent to the western property line is suitable SMHM habitat and based on their presence in contiguous habitat to the north are likely to be present in the salt marshes adjacent to the site. They also will move onto the site during high tide events.

According to Shellhammer (2000), "SMHM are dependent on the thick, perennial cover of salt marshes and seasonally move into adjacent grasslands in the spring and summer when the grasslands provide maximum cover." Shellhammer (2000) also noted that their preferred habitats are the pickleweed and peripheral halophyte zones (which are occupied by salt-tolerant plant species) and "similar vegetation in diked wetlands adjacent to the Bay." Discing of the site in the spring has likely greatly minimized this kind of seasonal movement.

The project site, as noted previously, contains a very small amount of salt marsh habitat which is part of a larger salt marsh associated with the mouth of San Pablo Creek. The on-site salt marsh includes a patch along the western boundary approximately 340 square feet in size and the sides of the northern tidal drainage ditch. These areas could be used by the rails and the harvest mouse during high tides. Upland portions of the site adjacent to the salt marsh that contain sufficient cover are likely used as escape cover during periods of extremely high tides. The remainder of the site contains no suitable habitat for them.

The salt marshes found at the mouth of San Pablo Creek and Wildcat Creek and extending along the adjacent shoreline including adjacent to the project site have been identified as essential habitat in the SMHM/Clapper Rail Recovery Plan.

Buffer Proposal

The Bayside Village project proposes to buffer the adjacent salt marsh habitat by establishing a minimum 80-foot setback from the marsh edge. This setback is consistent with the 80-foot setback which was used when the Bay Trail segment adjacent to the project sites southwestern boundary was built. The project proposes to create several berms within the southern portion of the setback and to install a level swale for the discharge of stormwater runoff in its northern portion. Clumps of woody vegetation, primarily shrubs, are proposed for planting within the buffer. The Bay Trail would be extended along the landward edge of the buffer and the existing 3-foot high fence present along the portion of the Bay Trail adjacent to the southwestern property line will be extended along the entire length of the trail on the site.

The project proposes no buffer or setback from the drainage channel along its northern and eastern boundaries.

IMPACTS AND MITIGATION MEASURES

The primary natural resource issue at this site is the presence of the adjacent tidal salt marsh and the federal and state listed species (clapper rail, black rail, salt marsh harvest mouse) which are present in it. The project will not directly impact this habitat (no salt marsh fill) but will affect areas adjacent to the marsh. This is an issue because all three of these species use adjacent uplands for escape cover during periods of high tides which completely inundate the salt marsh. During these periods they move into the adjacent uplands and are vulnerable to predation from a variety predator. Sufficient vegetative cover (height and density) is necessary to provide places for them to hide and escape this predation. This requires preserving a band (or buffer) of habitat adjacent to the marsh. Maintaining a setback from the marsh is also necessary to buffer these species activity and use of the marsh from potential impacts from the development. These impacts include night lighting, human activity, and harassment or predation by domestic pets (cats and dogs).

Impacts

1. The proposed project restricts the amount of upland refugia habitat that will be adjacent to tidal salt marsh to an 80-foot buffer. The existing habitat adjacent to the marsh is filled upland that is disc'd for fire control. The discing limits its current value as upland refugia for the rails and harvest mouse. The existing transition between salt marsh and upland is rock riprap which serves as a refuge for predators such as Norway rats of these species.

The construction of a residential community and associated improvements at this location would result in the introduction or increase in several human created disturbances. These include night lighting, human activity adjacent to the marsh, harassment or predation by pets and predation by rats or other predators whose numbers have increased due to the new residences. These new impacts could result in a decrease in numbers or homerange abandonment by clapper rail, black rail, and salt marsh harvest mouse and would be a significant project impact. The proposed 3-foot high chain link fence along the edge of the buffer will not be sufficient to mitigate these impacts.

Mitigation Measures

- I. Erect a minimum 6-foot high fence along the entire edge of the Bay Trail/buffer (including the existing segment). The fence will need to end at the northern drainage ditch. The fence design shall prevent people and pets (cats/dogs) from entering the buffer area. This will include extending the fence material a minimum of 18 inches below ground to prevent burrowing. It will also need to include an overhang to prevent people or animals from climbing over it.

The preliminary landscape plan indicates that shrubs and/or trees will be planted in the buffer. To prevent the introduction of perch sites which can be used by raptors to prey on rails and the harvest mouse, woody plant material will be limited to native shrubs which do not exceed four to five feet in height when mature.

3. Street lights along Bayside Dr. will be screened/shielded to prevent the spill of light into the buffer or adjacent salt marsh. This restriction will apply to all light fixtures along Bayside Dr. that are mounted at a height of six feet or greater.
4. The pore spaces in the existing riprap along the edge of the salt marsh will be filled with a material which prevents their use by Norway rats.
5. The project will create an endowment that will fund an amount equivalent to 10% of an animal control specialist's salary. This individual will spend 10% of their time controlling introduced predators (red fox, feral cats, rats) in and adjacent to the San Pablo Creek salt marsh. This area extends from the West Contra Costa Sanitary District landfill at its southern end northward to Giant Marsh. The control area could be extended southward to the Wildcat Creek marshes and northward to Point Pinole if sufficient time is available.

EXHIBIT G



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
 1455 MARKET STREET
 SAN FRANCISCO, CALIFORNIA 94103-1398

AUG 8 2007

Regulatory Branch

SUBJECT: File Number 30360S

Mr. Chip Bouril
 LSA Associates, Inc.
 157 Park Place
 Pt. Richmond, California 94801

Dear Mr. Bouril:

This letter is written in response to your submittal of May 21, 2007 requesting confirmation of the extent of Corps of Engineers jurisdiction at the Bayside Village project site located on the north side of the Richmond Parkway, west of Goodrick Avenue in the City of Richmond, Contra Costa County, California (APNs 408-220-003, 408-220-006, 408-220-007, 408-220-023, 408-220-024, 408-220-025, 408-220-026, 408-220-032, 408-220-033, 408-220-034, 408-220-035, 408-220-036, 408-220-037, 408-220-038, 408-220-039, 408-220-041, 408-220-042, and 408-220-043).

Enclosed is a map dated August 8, 2007, showing the extent and location of Corps of Engineers jurisdiction. We have based this jurisdictional delineation on the current conditions on the site as verified during site visits performed by our staff on November 13, 2006, and June 20, 2007. A change in those conditions may also change the extent of our jurisdiction. This jurisdictional delineation will expire in five years from the date of this letter. However, if there has been a change in circumstances that affects the extent of Corps jurisdiction, a revision may be completed before that date. Since your delineation information was received before June 5, 2007, the effective date of the official interagency guidance interpreting the Supreme Court decision, *Rapanos v. United States*, 126 S. Ct. 2208 (2006), the Corps did not apply this guidance to the delineation in rendering this jurisdictional determination.

All proposed work and/or structures extending bayward or seaward of the line on shore reached by: (1) mean high water (MHW) in tidal waters, or (2) ordinary high water in non-tidal waters designated as navigable waters of the United States, must be authorized by the Corps of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 403). Additionally, all work and structures proposed in unfilled portions of the interior of diked areas below former MHW must also be authorized under Section 10 of the same statute.

All proposed discharges of dredged or fill material into waters of the United States must be authorized by the Corps of Engineers pursuant to Section 404 of the Clean Water Act (CWA) (33 U.S.C. Section 1344). Waters of the United States generally include tidal waters, lakes, ponds, rivers, streams (including intermittent streams), and wetlands.

-2-

You are advised that the Corps has established an Administrative Appeal Process, as described in 33 C.F.R. Part 331 (65 Fed. Reg. 16,486; March 28, 2000), and outlined in the enclosed flowchart and "Notification of Administrative Appeal Options, Process, and Request for Appeal" form (NAO-RFA). If you do not intend to accept the approved jurisdictional determination, you may elect to provide new information to the District Engineer for reconsideration or submit a completed NAO-RFA form to the Division Engineer to initiate the appeal process. You will relinquish all rights to appeal, unless the Corps receives new information or a completed NAO-RFA form within sixty (60) days of the date of the NAO-RFA.

Should you have any questions regarding this matter, please call Katerina Galacatos of our Regulatory Branch at 415-503-6778. Please address all correspondence to the Regulatory Branch and refer to the File Number at the head of this letter. If you would like to provide comments on our permit review process, please complete the Customer Survey Form available online at <http://per2.nwp.usace.army.mil/survey.html>.

Sincerely,



Jane M. Hicks
Chief, Regulatory Branch

Enclosures

Copy Furnished w/map only:

CA RWQCB, Oakland, CA

Copy Furnished w/out map only:

CA SWRCB, Sacramento, CA

FIGURE 3
Fig. 3-11-11
Potential Waters of the United States
(Revised 8 May 2003)

North arrow pointing up. Scale bar showing 0, 100, 200, 300, 400, 500 feet.

POTENTIAL JURISDICTIONAL FEATURES

- Boundary: Thick, Dotted Line
- Channel: Dashed Line
- Stream: Thin, Dotted Line
- Wetland: Stippled Area
- Shaded Wetland: Shaded Area
- Shaded Wetland: Stippled Area

LEGEND

- Boundary: Thick, Dotted Line
- Channel: Dashed Line
- Stream: Thin, Dotted Line
- Wetland: Stippled Area
- Shaded Wetland: Shaded Area
- Shaded Wetland: Stippled Area

LEGEND

- Boundary: Thick, Dotted Line
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LEGEND

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LEGEND

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LEGEND

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LSA

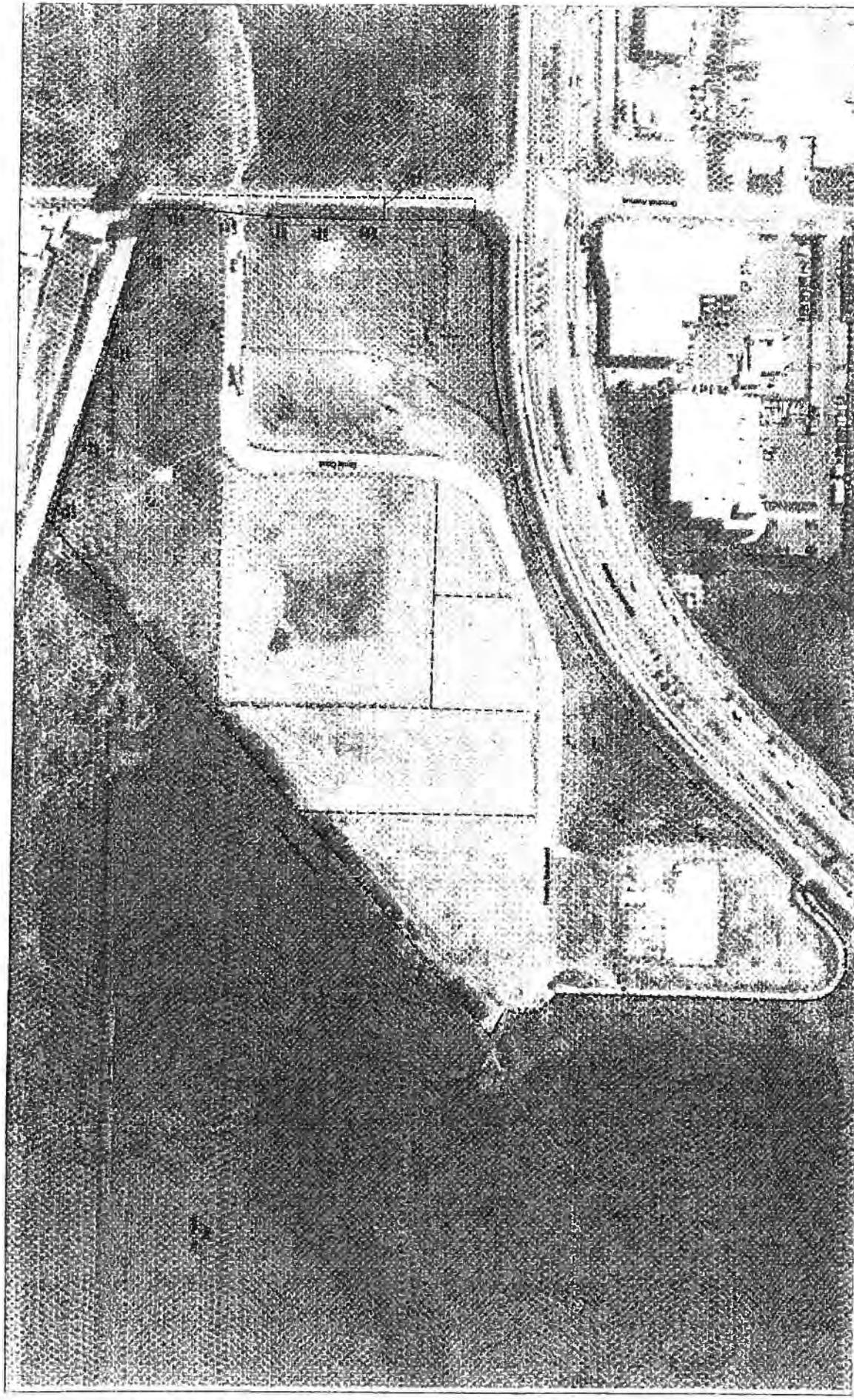


EXHIBIT H

STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

30 YAN NESS AVENUE
SAN FRANCISCO, CALIFORNIA 94102
PHONE: 337-3686



August 15, 1977

Mr. Elmer J. Freethy
1432 Kearney
El Cerrito, California 94530

Dear Mr. Freethy:

Enclosed is a copy of the Commission's determination of your claim of exemption. We would appreciate your acknowledgment of receipt of the determination so that our file can be brought up to date on this matter. Of course, acknowledgment of receipt does not mean that you agree or disagree with the determination itself.

Thank you for your cooperation.

Very truly yours,

ALAN R. PENDLETON
Staff Counsel

Enclosure

ARP/lb

cc: Mr. Arthur M. Shelton

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STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

30 VAN NESS AVENUE
 SAN FRANCISCO, CALIFORNIA 94102
 PHONE: 557-3684



CLAIM OF EXEMPTION NO. CE 74-5

August 15, 1977

Mr. Elmer J. Freethy
 1432 Kearney
 El Cerrito, California 94530

Dear Mr. Freethy:

On May 5, 1977, the San Francisco Bay Conservation and Development Commission, by a vote of 19 affirmative, 0 negative, and 2 abstentions, approved the following resolution:

I. Determination

The claim of exemption is granted for the industrial development and uses on approximately 84.34 acres within Assessor's Parcels 408-100-019, 408-100-018, and 408-120-016, as shown on a drawing entitled "Land Development Plan for Freethy Land and Investment, Richmond, California" dated December, 1964, including future work involving (1) completion of a road system that was under construction since 1963, including placing fill on tidal areas running from the easterly line of the property to the westerly line; (2) placing fill behind the completed roadway system to bring all of the approximately 84.34 acres of land to grade according to the plan finalized in 1964; and (3) using the 84.34-acre area for light industrial facilities and purposes.

The claim of exemption is denied for any work or uses on approximately 5 acres (known as Parcel 4) within Assessor's Parcel 408-090-018 included in the claim.

II. Findings and Declarations

This determination is made on the basis of the Commission's findings and declarations that the work and uses claimed to be exempt from the Commission's normal permit requirements satisfy the requirements of Section 66632.1, 66655, or 66656 of the McAteer-Petris Act for the following reasons:

A. Exempt Portions of the Claim

1. There is a "Project" at Claimant's Development Site Within the Meaning of Sections 66632.1 and 66656 of the McAteer-Petris Act. Under Sections 66632.1 and 66656

Mr. Elmer J. Freathy
 CLAIM OF EXEMPTION NO. CE 74-3
 Page 2

of the BCDC law, a claimant must meet three tests in order to have an exempt "project": (a) there must have been a "project" as of September 17, 1965; (b) prior to September 17, 1965, the claimant must have obtained all necessary permits to allow commencement of the diking or filling for that "project"; and (c) the claimant must have actually commenced the diking and filling process prior to September 17, 1965.

- a. A "Detailed and Specific Plan" Exists. In BCDC v. Emeryville, 69 Cal. 2d 533 (1968), the California Supreme Court defined "project" for the purpose of the "grandfather" clause contained in Government Code Section 66632.1 (substantially re-enacted in 1969 as Section 66656), as follows:

"In view of the manifest intent of the Legislature 'to protect the present shoreline and body of the San Francisco Bay to the maximum extent possible'...we are convinced the Legislature used the term 'project' as a term of limitation.

"The dominant theme underlying all generally accepted definitions of the word 'project' is that of a detailed and specific plan prepared in furtherance of a determination to accomplish a certain objective." (Emphasis added.)

The Commission finds that, as of September 17, 1965, the claimant had prepared and adopted a detailed and specific plan for the development of a light industrial park. This specific and detailed plan is shown and described on Exhibits 3 through 10 (CT, pp. 7 through 10) and consists of drawings showing an industrial park layout with sufficient utilities, road and rail services to accommodate full development of the property then controlled by the claimant. The first, preliminary plan was prepared in April of 1962 and revised on March 15, 1963. Further modifications were made in December of 1964. The 1964 development plan (Exhibit 5, CT p. 8) covers approximately 84.34 acres of land consisting of three parcels then owned by Freathy which are Contra Costa County Assessor's Parcels 408-100-019, 408-100-018,

Mr. Elmer J. Freethy
 CLAIM OF EXEMPTION NO. CE 74-3
 Page 3

and 408-120-016. Since the claimant acquired Parcel 4 after September 17, 1965, the 1964 development plan does not establish a specific and detailed plan for that parcel. Evidence also indicates that utility services had been designed and located to serve the three parcels (CT, p. 24). The drawings, letters and description of the industrial project indicate that the claimant had prepared a plan for an industrial park development on approximately 84.34 acres (Parcels 1, 2 and 3) and that this plan was sufficiently detailed to satisfy that aspect of a "project" as defined by the Supreme Court in the Emeryville case.

- b. A "Determination to Accomplish a Certain Objective" Exists. Besides requiring a "specific" and "concrete plan," Emeryville sets forth an additional requirement for determining whether or not a "project" exists:

"...A determination without a concrete plan is not a 'project' because the means of achieving the ultimate objective are not delineated sufficiently to permit prudent commencement of the enterprise. A plan without a determination is not a 'project' because the objective has not been made. (Emphasis added.) Only when that decision has been made and a plan has been conceived in the detail necessary for the prudent commencement of physical efforts to achieve the objective does a 'project' come into being." Id. pp. 545-6.

The Commission finds that, as of September 17, 1965, the claimant had the necessary determination to commence construction of the project pursuant to its specific plan. The claimant's intent in this regard (see Staff Summary dated February 4, 1977, Exhibits 3 through 10, and CT pp. 7 through 10 and pp. 12, 24, 27, 30, 31, 34, and 35) is evidenced by:

- (1) An agreement in February, 1963, between claimant and Southern Pacific Company regarding the construction of the drill track on the property, and a letter dated February 14, 1963 from the

Mr. Elmer J. Freethy
 CLAIM OF EXEMPTION NO. CE 74-3
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- Southern Pacific Company showing the commencement of the first stage of construction in April, 1963;
- (2) An agreement between claimant and Pacific Gas and Electric Company in November, 1964, to secure the right to fill and use the surface land under Pacific Gas and Electric's transmission line which traverses the property from southwest to northeast;
 - (3) City of Richmond Permit No. 60352 issued to claimant on March 11, 1963 for the construction of the Bustin Steel Products industrial building on the property;
 - (4) Hugh M. O'Neil Company plans dated September 10, 1964 for the construction of the Freethy buildings shown on the development plan;
 - (5) Utility improvements consisting of the drill track extension with Southern Pacific Railway in 1963, and the installation of sewer, electrical, and gas systems in 1963;
 - (6) Road work construction commencing in 1963;
 - (7) Completed construction of Bustin Steel Products building in 1963, and Freethy Company warehouse building in 1964;
 - (8) As of September 17, 1964, the placement of several hundred thousand cubic yards of fill on the property at a cost of \$45,000; and
 - (9) As of September 17, 1965, expenditures in excess of 50,000 incurred for the development.

The Commission thus finds that the claimant had the requisite "concrete plan" and the "determination" for the industrial development and thus had a "project" under Sections 66632.1 and 66656 of the McAteer-Petris Act, as amplified by the Enerlyville case.

Mr. Elmer J. Freethy
 CLAIM OF EXEMPTION NO. CE 74-3
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2. As of September 17, 1965, the Claimant did not Need Local or Corps Approvals to Allow Commencement of the Filling Process

- a. Local Approval by the City of Richmond not Required for Filling. The Commission finds that on September 17, 1965 the claimant did not need a City permit to commence filling operations on the site pursuant to Section 12.44.060 of the City of Richmond Zoning Ordinance (CT, pp. 32 and 33). At that time, the subject property was zoned "M-3 Heavy Industrial District." Section 12.44.080 of the Richmond Zoning Code exempts industrial areas and marshland areas where industrial use is permitted from a City permit requirement for fill operations. Accordingly, the claimant was advised by the City of Richmond that no permit was required by the City to commence the fill work. With respect to building construction, the claimant applied for and was issued building permits by the City of Richmond on March 3, 1963, February 9, 1966, and on July 11, 1966 for three industrial buildings on the property (CT, p. 33).
- b. As of September 17, 1965, an Army Corps of Engineers Permit was not Required. The Commission finds that, as of September 17, 1965, no Corps of Engineers permit was required to commence filling and diking on claimant's property. At that time, the Corps did not require persons doing work in marshland areas to obtain Corps permits (letter dated August 1, 1972 from Col. Lammie of the Corps of Engineers to Alan Pendleton at BCDC). While a Corps permit is now required to place fill below the plane of Mean Higher High Water (MHHW), the claimant was not required to obtain a permit from the Corps as of September 17, 1965, by which time filling and diking had been well begun.

On June 11, 1971, the San Francisco office of the Army Corps of Engineers issued Public Notice No. 71-22 which extended the Corps' permit jurisdiction to the line of the shore reached by the plane of Mean Higher High Water. In September, 1972, the Army Corps of Engineers promulgated a regulation which specified for the first time that the plane of MHHW would be the shoreward limit of jurisdiction (33 C.F.R. Section 209.260).

Mr. Elmer J. Freethy
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The westerly portion of claimant's property, approximately 23 acres, consists of marshlands and mudflats, and the claimant had filled portions of those areas pursuant to his development plan. On August 10, 1971, the Corps issued a "cease and desist" order prohibiting the claimant from placing future fill without a permit over the marshland and mudflat areas that fell within the Corps' jurisdiction following its issuance of Public Notice No. 71-22. After apparent non-compliance by claimant, a lawsuit was filed in U. S. District Court in August, 1973 at the request of the Army Corps of Engineers, asking for a Court order requiring the claimant to remove all existing fill in those areas over which the Corps had jurisdiction, and to enjoin him from placing further fill without the required Corps permit. A court decision was rendered on February 24, 1975. It held, basically, that the claimant was not required to remove existing fill since he had justifiably relied on the Corps' pre-1971 policy and expended substantial funds on the development and that the Corps was equitably estopped now from demanding fill removal based on a distinct change of policy. The court also held that any future filling would require the necessary Corps permit, and the claimant was enjoined from future filling on portions of his property bayward of the plane of MHHW, as shown on the Corps topographical survey made after placement of the fill, without prior Corps of Engineers approval.

3. No Substantial Changes. The evidence shows that there were minor changes made to the development plan after September 17, 1965. One was the construction of an additional industrial building. Another was the acquisition of a fourth parcel of land in 1968 consisting of 5 acres to the south of the development. The exemption determination does not apply to Parcel 4 and the change in locations and design of the industrial building does not significantly change the nature or extent of the project as originally envisioned.

B. Non-Exempt Portions of the Claim

1. Filling on Assessor's Parcel 408-090-018. The Commission concludes that any fill on Assessor's Parcel 408-090-018 which is not included within the Industrial Development Plan of 1964 is not exempt from BCDC permit requirements.

park in 1962, the state gave BCDC the right to require permits for shoreline fill.

Along with about 30 others, Freethy filed for an exemption to the requirement under a "grandfather" clause which allows fill without permits if the developer already has begun the project and has detailed plans.

Most of the claims have been denied, a handful are waiting on title disputes, and only Freethy's and two others have been accepted.

BCDC's exemption was introduced by a U.S. District Court decision handed down in a suit between the Freethy Land and Investment Co.

action) in a 25-acre marsh area on the site. Freethy has not filled on that area since the Corps began its action in 1971.

This means that even though the developer does not need any BCDC permits, he does need a Corps permit for that 23 acres, part of the 30 acres in dispute.

When BCDC granted the exemption it noted: "The commission advises the claimant that it intends to comment on any public notice received from the Corps for such filling and to indicate whether the proposed project is consistent or inconsistent

with plans, the commission said. Freethy claims that BCDC is not involved with the five acre site although the commission said he would need a BCDC permit for any work there within 100 feet of the highest tidal action line.

Besides Freethy's own corporation yard, there are two other companies at the site, Basco Steel Products, and Colloids of California. Freethy said he has plans for more development when he has worked out his permit application with the Corps, but he did not want to reveal what these are.

He added that his fight with government agencies over the development has cost him "half a century of lawyers."

The evidence shows that this parcel was acquired in 1968 to enlarge the development site. It is now shown on the Development Plan of 1964 which claimant has submitted to establish a specific and detailed plan for the development. As title to this 5-acre parcel was not acquired until 1968, it cannot be considered to be part of the "project" as it existed on September 17, 1965, and thus is not exempt under Sections 66632.1 and 66656 of the McAtear-Petris Act.

2. Parcel 4 is not an integral part of the "project". Claimant has stated that this parcel is an integral part of the development project. Yet he also states that Parcel 3, Assessor's Parcel 408-120-016, which was purchased on December 14, 1964, was acquired to complete the land acquisition required for completion of the central part of the project. It appears, therefore, that, as of September 17, 1965, claimant had contemplated completion of the development on only three parcels of land consisting of approximately 84.34 acres. Also, claimant has submitted no evidence of any specific plan to be carried out with respect to Parcel 4, other than placing fill on it. The Commission finds that Parcel 4 is not an integral part of the overall "project" as conceived prior to September 17, 1965 and is therefore not exempt from BCDC permit requirements.

3. Section 66655 is inapplicable. As an alternative basis for the claim, the claimant relies on Government Code Section 66655. The Commission finds that Section 66655 is inapplicable here because the subject area is within the Commission's "bay" jurisdiction as defined in Section 66610(a). Section 66655 is available only for vested rights perfected within the areas defined in subdivisions (b), (c) and (d) of Section 66610 (shoreline band, salt ponds, and managed wetlands).

III. Conclusions

The determination made herein represents a determination only that, because of Sections 66632.1 and 66656 of the McAtear-Petris Act, a permit from the Commission is not required at this time for the placement of fill on the development of light industrial uses on Parcels 1, 2, and 3, consisting of approximately 84.34 acres and including approximately 23 acres of marsh and tideland. It does not represent, and should not be construed to represent, a determination by the Commission that the proposed project is consistent or inconsistent with any other provision of the McAtear-Petris Act or the San Francisco Bay Plan.

Elmer J. Freethy
AIM OF EXEMPTION NO. CE 74-3
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The Commission has also noted herein that the federal court has decided that a Corps permit is required for filling below the plane of Mean Higher High Water within the approximately 23-acre area of marsh and tideland at the site. The Commission advises the claimant that it intends to comment on any public notice received from the Corps for such filling and to indicate whether the proposed project is consistent or inconsistent with the fill and use policies of the San Francisco Bay Plan, the McAteer-Petris Act, the California Environmental Quality Act of 1970 and the Commission's Management Program for San Francisco Bay.

The Commission has also hereby determined that work and uses on Parcel 4, approximately 5 acres, acquired after September 17, 1965, are not exempt from BCDC permit requirements. Thus any work or uses either below the line of highest tidal action or within 100 feet inland of the line of highest tidal action on Parcel 4 requires a BCDC permit. The Commission also notes that it appears that most of Parcel 4 is not within the Commission's jurisdiction because it is above the line of highest tidal action; however, no survey information has been submitted sufficient to determine the Commission's jurisdiction at Parcel 4 precisely.

The Attorney-General's Office concurs in this conclusion.

CHARLES R. ROBERTS
Executive Director

CRR/lr

cc: U. S. Army Corps of Engineers, Attn: Regulatory Functions Branch
S. F. Bay Regional Water Quality Control Board, Attn: Certification Section
Environmental Protection Agency, Attn: Chris Vais, E-4-2
San Francisco Department of City Planning
City of Richmond, Attn: City Manager

* * * * *

Receipt acknowledged, contents understood and agreed to:

Executed at _____

Applicant

On _____

By: _____

Title

EXHIBIT 1

REDEVELOPMENT RESOLUTION NO. 05-31
CITY COUNCIL RESOLUTION NO. 124-05

JOINT RESOLUTION OF THE COUNCIL OF THE CITY OF RICHMOND, CALIFORNIA AND THE RICHMOND REDEVELOPMENT AGENCY OPPOSING THE EAST BAY REGIONAL PARK DISTRICT'S PLANNED ACQUISITION OF CERTAIN REAL PROPERTY LOCATED IN THE CITY OF RICHMOND, COUNTY OF CONTRA COSTA, INCLUDING APNs 408-100-023 and 408-100-024, AS WELL AS APNs 405-010-001, -017, -019, -020 AND APNs 408-110-001 AND -004, ALL OF WHICH ARE GENERALLY KNOWN AS "THE FORMER BREUNER PROPERTY"

WHEREAS the City of Richmond, California, a Charter City and municipal corporation ("City"), has the authority to determine land uses within its city limits; and

WHEREAS the City, through a public process, including community meetings, an Environmental Impact Report ("EIR") and public hearings of the Planning Commission and the City Council, has through its General Plan, zoned a portion of the former Breuner Property ("Property") M-1 for commercial purposes (Industrial and Office Flex); and

WHEREAS the Richmond Community Redevelopment Agency (Agency"), a public body, corporate and politic under the authority of the state of California, has included the Property in the Hensley Amended Redevelopment Project Area for the purpose of redeveloping the Property and that this was accomplished through a public process that included community meetings, an EIR and public hearings of the Richmond Planning Commission, the City Council of the City of Richmond and Agency Board; and

WHEREAS the City's General Plan and the Agency's Project Plan and Implementation Plan, all of which were approved through public processes, designate portions of the Property for commercial development in order to increase economic development, provide jobs and increase tax revenue to provide public services, to fund capital improvements to City infrastructure and to help redevelop blighted neighborhoods; and

WHEREAS, based on new proposals for development of the Property, the property tax revenue could soon reach as much as \$4 million per year, which would have a present value approaching \$100 million; and

WHEREAS there are approximately 7,770 acres of parkland within or abutting and contiguous to the City, approximately 7,500 of which are owned or leased by the East Bay Regional Park District and approximately 3,020 of which are on the Richmond shoreline; and

WHEREAS Point Pinole Regional Park, which consists of 2,315 acres, is adjacent to the Property; and

WHEREAS these parklands and other open space areas are abundant for a city the size of Richmond and many parks, including Point Pinole Regional Park, are very underutilized; and



WHEREAS the loss of additional land from the tax roll would be a hardship on the people of the City because it would further reduce the City's ability to provide the services that the people of Richmond deserve; and

WHEREAS the goals of restoring wetlands fronting the bay and constructing a section of Bay Trail along the edge of the wetlands can be accomplished by the City through the entitlement process when the Property is developed; and

WHEREAS the East Bay Regional Park District has notified the owner of the Property that it intends to consider adopting a Resolution of Necessity to acquire by eminent domain certain portions of the Property on September 20, 2005; and

WHEREAS the East Bay Regional Park District has not taken into account any of the above actions or needs of the City, the Agency or the community; and

WHEREAS the East Bay Regional Park District has not contacted the City or the Agency at a staff, City Council or Agency Board level to discuss plans for park expansion within the City; and

WHEREAS the East Bay Regional Park District has not demonstrated any public interest or necessity that would require its proposed project; and

WHEREAS the East Bay Regional Park District has not to the knowledge of the City or the Agency performed any analysis of the economic impacts of its proposed project; and

WHEREAS the East Bay Regional Park District has not demonstrated that its proposed project would be compatible with the greatest public good and the least private injury, and in fact, has not conducted any public outreach or California Environmental Quality Act (CEQA) process of which the City or Agency are aware; and

WHEREAS the City has no intention of ceding its right to determine land uses within its city limits or have land taken off the tax roll without the City's concurrence; and

WHEREAS the Agency has no intention of allowing land designated under a Project Plan for redevelopment to be used for purposes contrary to the Project Plan and Implementation Plan without an appropriate public process and approval of the Agency Board; and

WHEREAS outside counsel has advised that the East Bay Regional Parks District lacks the legal authority to unilaterally proceed with its stated course of action.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Richmond and the Richmond Community Redevelopment Agency that the City and the Agency are opposed to the East Bay Regional Park Districts plan to acquire any portion of the former Breuner Property, including APNs 408-100-023 and 408-100-024, as well as APNs 405-010-001, -017, -019, -020 and APNs 408-110-001, and -004; and

BE IT FURTHER RESOLVED that the City Manager, City Attorney and Executive Director of the Agency are hereby directed to take all appropriate

I certify that the foregoing resolution was passed and adopted by the City Council of the City of Richmond and the Richmond Community Redevelopment Agency at a joint meeting thereof held September 13, 2005, by the following vote:

AYES: Councilmembers/Board Members Burt, Thurmond, Bates, Marquez, Griffin, and Chairperson/Mayor Anderson

NOES: Councilmembers/Board Members Rogers and McLaughlin

ABSTENTIONS: None

ABSENT: Councilmember/Board Member Viramontes

DIANE HOLMES

Clerk of the City of Richmond
Clerk of the Richmond Redevelopment Agency

(SEAL)

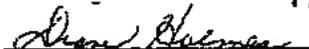
Approved:

IRMA L. ANDERSON
Mayor/Chairperson

Approved as to form:

EVERETT JENKINS, INTERIM
City Attorney

Certified as a True Copy


CLERK OF THE CITY OF RICHMOND, CA

LETTER 28: SSL Law Firm LLP, Diane Hanna

Response to Comment 28-1

The comment provides background regarding the ownership of a portion of Change Area 12: Northshore and states that the property owners strongly oppose the “Open Space” designation in that change area. This is a comment on the General Plan, not a comment on the adequacy of the EIR; therefore, it is noted without response.

Response to Comment 28-2

The comment refers, in general, to perceived inadequacies in the Draft EIR that are detailed in later comments. Please see responses to the comments that follow.

Response to Comment 28-3

The comment provides background on the development of the properties introduced in Comment 28-1 and states “downsizing” of the property would be contrary to vested development rights on the property. This is a comment on the General Plan, not a comment on the adequacy of the EIR; therefore, it is noted without response.

Response to Comment 28-4

The comment provides information regarding the physical attributes of the referenced property and claims that there are no “unique physical attributes,” in particular sensitive biological resources, and disputes the statement in Draft EIR Chapter 2, Project Description that describes Change Area 12: Northshore, as containing important habitat for endangered plant and wildlife species. The description in Chapter 2 is for Change Area 12: Northshore in general, and does not depict the subject property as containing sensitive species. However, portions of Change Area 12: Northshore are adjacent to the shoreline and contain habitat types that could support sensitive species. The comment also challenges the legality of changing the land use designation of the subject property and speculates on the potential physical effects associated with this land use change. Refer to Responses to Letters 18 and 22.

Response to Comment 28-5

The comment describes the primary function of CEQA and refers to subsequent comments regarding the adequacy of the EIR. Please refer to subsequent responses.

Response to Comment 28-6

The comment states that the Draft EIR mischaracterizes the existing conditions on the referenced property and provides information that the property has the potential for fewer sensitive resources than suggested in the Draft EIR. This information does not materially affect the analysis in the Draft EIR, because if sensitive resources are not present on the site, the potential effect of the project would be less than disclosed in the Draft EIR.

Response to Comment 28-7

The comment states the reader is deprived of critical information because the Draft EIR does not disclose that the General Plan land use designation for this area would change from “Industrial/Office Flex” to “Open Space/Recreation”. CEQA requires that an EIR disclose the *physical* environmental conditions in order to determine the potential for *physical* environmental effects. The change in land use as shown in the General Plan does not constitute a physical effect. The comment also contends that the change to a less intense land use renders the analysis incomplete and that this reduction in intensity is contrary to the General Plan’s intent to focus growth in the change areas. The General Plan does define the change areas as areas that will absorb growth in the City, but the change areas also describe those areas where land use assumptions differ from that of the 1994 General Plan. While these areas are intended to accommodate growth in the City, the City does not envision that all change areas would develop as designated within the timeframe of the General Plan. It is likely, and assumed by the City, that only some of the change areas would experience significant development within the General Plan’s timeframe.

Response to Comment 28-8

The comment states that the land use tables in Chapter 2, Project Description, “hide” changes from current land uses. The comment suggests that the Draft EIR should disclose the changes from one land use designation to another. As noted above, a change in land use designation does not constitute a physical effect of the project. Disclosure of the change in land use of every parcel in the City is beyond the scope of a program-level EIR. In addition, the focus of the EIR is on the physical changes that would occur with implementation of the project; underlying change in land use designation for undeveloped parcels does not constitute a physical impact that must be analyzed in the General Plan EIR.

Response to Comment 28-9

The comment states that changing the land use designation of the subject property would reduce the amount of industrial land available in the City, requiring development to occur elsewhere and resulting in blight, additional traffic, air quality, and other physical effects. As shown in Table 2-4 on page 2-42 of the Draft EIR, there are over 2,000 acres designated as “Industrial” and “Business/Light Industrial” in the change areas and additional acreage for these uses throughout the non-change areas of the City. The comment provides no evidence that an “Open Space/Recreation” designation in this area would cause a displacement of industrial uses within or outside the City. Similarly, there is no evidence to suggest that an “Open Space/Recreation” designation in this area would result in blight, either on the subject property or other areas of the City. The impacts assumed in the comment are speculative and the General Plan EIR cannot address speculative impacts.

Response to Comment 28-10

The comment states the Draft EIR does not analyze the removal of 100 acres of industrial/office flex land from the City’s inventory and that this change would result in physical environmental effects. As discussed above, the analysis in the Draft EIR focuses on changes to the physical environment.

Because the subject property is not currently developed with any industrial/office flex use, the change in land use would not represent a physical change in the environment. The change in General Plan land use would not result in an overall reduction in business/industrial lands uses in the City.

Response to Comment 28-11

The comment states that the Draft EIR does not address the General Plan's consistency with the North Richmond Shoreline Specific Plan. Please refer to Responses to Comments 22-5 and 28-26 for a discussion of potential inconsistencies with local plans.

Response to Comment 28-12

The comment states the General Plan would result in a physical division of North Richmond and that open space that is not developed for recreational use is an example of an adverse physical division. However, the comment provides no basis that the change in land use designation of currently undeveloped land would result in a physical environmental impact. In addition, if the subject property is not developed as open space, there would be no change from the existing condition on the site. With no change from the existing condition, there would be no environmental impact.

Response to Comment 28-13

The comment states that the Draft EIR understates the impacts of the project by assuming a growth rate that is less than "full buildout" of the General Plan. See Response to Comment 18-7 regarding "full buildout." As discussed in Response to Comment 28-14, the General Plan, and therefore the Draft EIR, assumes a fairly high rate of population growth that exceeds historic growth in the City. It should be noted that the General Plan assumes that the City would absorb up to 13 percent of the anticipated population growth that would occur in Contra Costa County – the rate of population increase is not an arbitrary buildout assumption used in the Draft EIR. Based on the projections embedded in the General Plan, the Draft EIR assumes that implementation of the proposed project will accommodate a population increase that exceeds the historic level in the City. At "buildout" of the proposed General Plan, the City's population is estimated to have increased by 30,147 residents from the estimated 2005 population provided by ABAG, bringing the City's 2030 population to 132,847 residents. This exceeds the 2007 ABAG 2030 population projections for the City by 4,847 residents. Based on the estimated 2030 population of 132,847 residents in the City (assuming absorption of 13 percent of County-wide population growth per the 2007 ABAG projections), implementation of the proposed General Plan would exceed 2009 ABAG 2030 population projections for the City by 247 residents. As such, the Draft EIR relies on more conservative assumptions than even the most recent ABAG projections.

The comment also states that the Draft EIR does not account for full buildout of the General Plan in the Draft EIR in that "full buildout" is not quantified in the Draft EIR. The Draft EIR includes, under each impact discussion in the technical sections, an assessment of the potential for "full buildout" of the General Plan. See Response to Comment 18-7 regarding full buildout.

Response to Comment 28-14

The comment states that the demographic data used in the Draft EIR was outdated and that the Draft EIR needs to be updated to reflect current statistics. It further contends that the results in the Draft EIR analysis are fundamentally flawed. Section 3.2, Demographics of the Draft EIR uses the 2007 Association of Bay Area Governments (ABAG) growth projections as estimates of growth that would occur in the City. The 2007 Projections estimate that the population of the City of Richmond would grow to 128,000 residents in 2030, an increase of 25,300 residents (24.6 percent) between 2005 and 2030. ABAG's projected population growth in the City accounts for 10.9 percent of the population growth anticipated to occur in Contra Costa County between 2005 and 2030 (refer to Table 3.2-2 of the Draft EIR).

Since the Notice of Preparation (NOP) for the proposed General Plan was published (2008), ABAG produced updated growth forecasts, released in 2009. The table below compares ABAG's 2007 and 2009 projections. The projected growth in five-year increments shows that the 2007 projections are generally within five percent of the newer 2009 projections. In the year 2030, the difference in population between the 2007 projections and 2009 projections is less than 5,000 residents. This is a 24.6 percent increase in population from the 2005 level using the 2007 projections, versus a 29.1 percent increase using the 2009 projections. Therefore, the use of the 2009 data, as requested in the comment, would not substantially change the assumptions in the Draft EIR.

2007 AND 2009 ABAG GROWTH FORECAST COMPARISON FOR YEARS 2005-2030														
ABAG Projections	2007	2009	2007	2009	2007	2009	2007	2009	2007	2009	2007	2009	2007	2009
Year	2005		2010		2015		2020		2025		2030		Change from 2005 to 2030	
City of Richmond														
Population	102,700	102,700	104,700	105,000	109,800	112,200	115,600	118,700	124,000	126,000	128,000	132,600	25,300	29,900
Households	35,710	35,710	36,850	36,940	39,140	39,440	41,530	41,930	44,650	44,490	46,460	47,320	10,750	11,610
Employment	41,050	41,050	43,730	40,660	47,860	47,170	52,420	54,000	56,660	58,990	61,220	64,120	20,170	23,070
Contra Costa County														
Population	1,023,400	1,023,400	1,061,900	1,090,300	1,107,300	1,130,700	1,157,000	1,177,400	1,208,200	1,225,500	1,255,300	1,273,700	231,900	250,300
Households	368,310	368,310	385,400	392,680	405,420	407,250	425,480	424,340	446,590	442,330	466,430	461,330	98,120	93,020
Employment	379,030	379,030	403,100	376,820	436,970	409,650	472,910	445,550	510,930	479,350	551,530	516,910	172,500	137,880
Source: ABAG Projections 2007 and 2009.														

The comment also states that failing to account for "full buildout" of the General Plan in the Draft EIR renders this demographic data fundamentally flawed. Please see Response to Comment 18-7 regarding buildout assumptions in the Draft EIR.

Response to Comment 28-15

The comment states that the Draft EIR is fundamentally flawed because the demographic data is not the most recently available. As discussed in Response to Comment 28-14, the demographic data

used in the Draft EIR and the most recent ABAG data are within five percent of one another. In addition, the jobs/housing balance information is provided for information purposes only and does not imply that environmental effects can be determined from this data.

Response to Comment 28-16

The comment states that the Draft EIR provides no evidence that the General Plan would not exert housing pressure outside the City. The Draft EIR acknowledges that the General Plan could result in growth outside of the City. The Draft EIR states the following on page 4-9:

“While growth is an intended consequence of the proposed General Plan, growth induced directly and indirectly by the proposed project could adversely affect the City of Richmond and surrounding areas within the County. Potential impacts associated with induced growth in the area could include: traffic congestion; air quality deterioration; loss of habitat and wildlife; impacts on utilities and services, such as fire and police protection, water, wastewater, solid waste, energy, and natural gas. Indirect and induced employment and population growth would further contribute to these impacts if there is additional conversion of undeveloped lands to urban uses for housing and infrastructure.”

Response to Comment 28-17

The comment states that the General Plan policies included in the Draft EIR are too vague and unenforceable to reduce impacts. The specific instances to which the comment refers are detailed in Comments 18 through 22. Please see Responses to Comments 28-18 through 28-22.

Response to Comment 28-18

The comment states that “encouraging” a ferry terminal, and “promoting” reduced transit fares are too vague and unenforceable to mitigate impacts, referring to Mitigation Measure 3.3-1. The Draft EIR does not conclude that “vague and unenforceable” measures mitigate impacts of the project to a less-than-significant level. The Draft EIR is a program-level EIR and acknowledges that, due to the programmatic nature of the mitigation measures, their efficacy would be dependent upon the conditions of specific development which are not known at this time. Lacking that development-specific information, reductions cannot be quantified. Consequently, Impact 3.3-1 was determined to be significant and unavoidable.

Response to Comment 28-19

The comment questions the effectiveness of General Plan policies referenced in the Climate Change section of the Draft EIR (section 3.6). The Draft EIR includes the referenced policies because they are part of the proposed General Plan. The Draft EIR acknowledges the general nature of the policies and their limited ability to reduce impacts, and includes additional mitigation measures to further reduce impacts. However, as discussed on Draft EIR page 3.6-28, even with implementation of the policies and mitigation measures, long-term operational impacts of the proposed General Plan would result in an increase in GHG emissions and would still exceed the BAAQMD’s threshold of 6.6

MT CO₂e per service population. Therefore, the Draft EIR does not assume that the measures would reduce the impact to less than significant and this impact was determined to be significant and unavoidable. See also Response to Comment 18-16.

Response to Comment 28-20

The comment references development of awareness programs and educating the community on hazardous materials. The Draft EIR does not rely upon the General Plan policies alone to reduce impacts related to hazardous materials. As discussed in each of the impact analyses in Section 3.8, Hazardous Materials, the extensive, existing regulatory framework related to hazardous materials substantially protects the public from significant exposure. The Draft EIR concludes that compliance with existing regulations in addition to the proposed General Plan policies and Implementing Actions would reduce the risks associated with hazardous materials to a less-than-significant level.

Response to Comment 28-21

The comment references the intent expressed in the General Plan to monitor and support the school district in providing quality education. These policies are not intended to mitigate the impacts associated with schools, as the school district would be the lead agency for any school-related development. The City will continue to require all new development to pay statutorily-required fees for the provision of school facilities. At such time that a school district determines the need for additional facilities, the district would be the lead agency for the environmental analysis for that action.

Response to Comment 28-22

The comment states that mitigation included in the Draft EIR – specifically related to stormwater facilities – would be expensive and no funding is identified in the Draft EIR. However, the commenter is not referring to mitigation measures identified in the EIR, but policies in the proposed General Plan. Where inadequate storm drain facilities exist within the City, those facilities are considered part of the existing condition and those inadequacies are not a result of implementation of the General Plan. The Draft EIR analyzes the potential for new development in areas where inadequate infrastructure exists. In those areas, the City would require new development to provide or fund necessary improvements to ensure that it is not exposed to flooding due to inadequate infrastructure or that it does not result in flooding off site. Please see General Plan page 6.26 regarding the City's use of development impact fees to mitigate new development's impact on infrastructure and services.

Response to Comment 28-23

The comment states that requiring future development to provide proportionate facilities in the categories of hydrology, public utilities, and transportation would not mitigate impacts of the General Plan. The comment continues that the Draft EIR must quantify future conditions, identify future infrastructure needs, improvement plans, mandate infrastructure plans as a condition of development, identify funding, feasibility of implementation, and the extent of impacts. As previously

discussed, the EIR prepared for the General Plan is a program-level EIR and does not propose any development projects at this time. As a program-level EIR, the analysis focuses on the overall effects of the proposed General Plan and does not examine the effects of any potential site-specific development that may occur during the lifespan of the proposed General Plan. As discussed in Response to Comment 28-22, the City will impose conditions of approval and collect impact fees for future development to ensure that adequate facilities are provided to support that development.

Response to Comment 28-24

The comment claims that the Draft EIR defers mitigation for City infrastructure. As previously discussed, this is a programmatic EIR, with no development approvals being sought or included as part of the action. As discussed in Responses to Comments 28-22 and 28-23, the City requires development to fund necessary improvements as that development occurs (See General Plan page 6.26). Specifically regarding traffic, the Draft EIR acknowledges that increasing the capacity on some roadways is not feasible or, in some cases, not desired. For this reason, the Draft EIR found traffic-related impacts to be significant and unavoidable. Consequently, the Draft EIR does not defer the development of mitigation to a future time. The Draft EIR includes programmatic mitigation, where applicable, to mitigate impacts, and where the outcome of that mitigation cannot be determined to reduce impacts to a less-than-significant level, those impacts were found to be significant and unavoidable.

Response to Comment 28-25

The commenter suggests that the EIR does not adequately address the proposed General Plan's consistency with existing land use plans and policies to the extent required by the CEQA. The commenter refers to Section 15125(d) of the CEQA Guidelines and states that CEQA mandates that the Draft EIR analyze the proposed General Plan's consistency with existing land use plans and policies, including regional plans. However, the language of Section 15125(d) of the CEQA Guidelines specifically states that an EIR shall discuss any *inconsistencies* between the proposed project and applicable general plans, specific plans, and regional plans. As such, the EIR is not required to prepare a consistency analysis of all local and regional plans, but to identify inconsistencies with applicable plans, if inconsistencies exist.

The proposed General Plan would result in changes to existing land use designations within identified change areas, and would implement policies and programs intended to achieve the stated objectives of the proposed General Plan. As described in Section 3.0, Introduction to the Analysis of the Draft EIR, under the Environmental Setting, Impact Analysis and Mitigation heading, CEQA does not treat project consequences relating solely to land use, socio-economic or population, employment or housing issues as direct physical environmental impacts. Section 15064(d)(1) of the CEQA Guidelines defines a direct physical change in the environment as a change caused by and immediately related to the project. Accordingly, Section 3.1, Land Use of the Draft EIR does not identify environmental impacts due to plan inconsistencies that would not result in physical changes to the environment. Potential inconsistencies with other land use plans that could result in physical environmental effects have been addressed in applicable technical sections in the Draft EIR.

Policies and actions of the Land Use and Urban Design Element were drafted in consideration of existing plans and policies, and would not be inconsistent with applicable regional plans and specific plans. Therefore, discussion of inconsistencies has not been provided.

Response to Comment 28-26

The comment states that the Draft EIR does not address the General Plan's compatibility with adjacent jurisdictions or describe how the General Plan would impact these jurisdictions. The proposed General Plan would result in changes to existing land use designations within identified change areas. Although changes in land use could occur, existing land uses would be allowed to remain. As discussed on page 3.22 of the draft General Plan Land Use and Urban Design Element, changes in land use and development character in the identified change areas are expected and the General Plan provides guidance to shape the anticipated changes. The proposed General Plan does not, however, address specific development projects, as there are none proposed in conjunction with Plan adoption. Therefore, the Draft EIR cannot identify land use incompatibilities between existing and future development within these change areas. To ensure land use compatibility in the future, the draft General Plan Land Use and Urban Design Element includes Policy LU5.3 (Land Use Compatibility) and supporting actions, including General Plan Land Use Actions LU5.A (Zoning Ordinance Update), LU5.B (Design Guidelines), and LU5.C (Industrial Use Buffers). Compliance with General Plan Land Use and Urban Design Policy LU5.3 and implementation of the associated supporting actions would require future development to be compatible with existing uses and avoid or mitigate to the greatest extent feasible potential negative impacts.

With regard to the comment relating to the proposed General Plan's compatibility with the surrounding jurisdictions, the impact analysis in the Draft EIR does not distinguish between impacts within the City and those in adjacent jurisdictions. As a program-level EIR, the analysis does not speculate as to physical attributes of future development, but it should be noted that the City of Richmond and the neighboring jurisdictions form part of a highly developed urban area and the General Plan includes land use designations that are typical to urban areas. Additionally, environmental assessments prepared for future development projects will assess land use compatibility and all development must be compatible with the goals and policies of the General Plan.

In consideration of the information provided above, the Draft EIR is justified in its conclusion that compliance with General Plan goals and policies will render the potential impact from inconsistent land uses less than significant.

Response to Comment 28-27

The comment states that the Draft EIR fails to mitigate known existing storm drainage infrastructure impacts. The comment continues that compliance with regulatory standards is not sufficient without a project-specific analysis of potential impacts of regulatory compliance. Regarding the mitigation of the existing storm water infrastructure, as noted by the commenter, these are existing conditions that would not be caused by the implementation of the proposed General Plan. As noted in previous responses, the EIR is program-level document; project-level analysis of every existing location within

the City where there may be insufficient infrastructure to support additional development would be speculative. See Responses to Comments 28-22 and 28-23.

Response to Comment 28-28

The comment states that the analysis and mitigation of deficiencies in the City's stormwater collection system is deferred and refers to proposed General Plan policies addressing stormwater that have been cited in the Draft EIR in support of the conclusion that development under the General Plan would not result in violation of waste discharge requirements (WDRs) under the applicable NPDES permits. The policies to which the comment refers include action items that require the City to assess stormwater systems and capacity to serve new development, recommend improvements, adopt a plan to address deficiencies, and identify funding mechanisms. The Draft EIR acknowledges the existing deficiencies in the storm drainage system. Because the deficiencies already exist, they are not caused by the General Plan and mitigation for the existing condition is not required. To the extent that future development could further affect these facilities, the City would require project-specific analysis to determine any proposed development's effect and require mitigation with physical improvements or funding of the required improvements. The Draft EIR concludes that implementation of General Plan policies and actions would render the impact on WDRs less-than-significant.

Response to Comment 28-29

The comment states the Draft EIR fails to analyze impacts on groundwater recharge. The Draft EIR considers impacts on groundwater recharge in its discussion of Impact 3.9-2 at page 3.9-20 and concludes that implementation of General Plan policies related to resource protection will render the impact less-than-significant. The comment provides no new information requiring reconsideration of the analysis.

Response to Comment 28-30

The comment states that the Draft EIR defers mitigation of erosion impacts, construction-related impacts, alteration of drainage patterns, alteration in stormwater runoff, flood hazards, and sea level rise. Chapter 3.9 of the Draft EIR summarizes the extensive regulatory requirements related to stormwater runoff. The Draft EIR does not rely solely on the proposed General Plan policies to reduce effects of future development, but also relies upon compliance with existing regulatory requirements. As future development is proposed, project applicants would be required to obtain permits, such as the National Pollutant Discharge Elimination System (NPDES) General Construction Activity Stormwater Permit and comply with requirements under the permits, such as the implementation of best management practices (BMPs). In addition, the City's Municipal Code contains requirements that control alterations to watercourses, construction in flood zones, and water quality measures to comply with the Clean Water Act. Moreover, future development will be subject to project-specific environmental review and required to comply with project-specific mitigation measures and conditions of approval. Compliance with these regulations and requirements would control discharges and protect water quality, ensuring that impacts would be reduced to a less-than-significant level.

Response to Comment 28-31

The comment repeats that the Draft EIR fails to analyze impacts associated with construction of stormwater facilities and claims that the Draft EIR should provide a more detailed analysis, including funding sources. Please see Responses to Comments 28-22, 28-23, 28-27, and 28-28.

Response to Comment 28-32

The comment states the Draft EIR ignores the impacts of creating additional parkland. The Draft EIR assumes that any land use, other than undeveloped open space, would result in construction-related ground disturbance, which could result in environmental impacts. Although the Draft EIR does not discuss impacts related to each particular land use or provide location-specific impacts, the impacts of development of any use are analyzed in the Draft EIR. Because this is a program-level EIR, many of the impacts of development cannot be precisely located or accurately quantified; therefore, verifiable mitigation measures for such impacts cannot be crafted. In the absence of adequate mitigation, the impacts of development of new uses are found to be significant and unavoidable. Such impacts include:

- Generation of regional air emissions that would conflict with or obstruct implementation of the Clean Air Plan;
- Substantial adverse change in the significance of a historical resource as defined in Section 15064.5 of the CEQA Guidelines;
- Generation of greenhouse gasses that may have a significant impact on the environment;
- Generation of noise levels that exceed the noise standards established by the City of Richmond Municipal Code, and would expose sensitive receptors to substantial temporary or periodic increases in ambient noise levels;
- Generation of or expose persons or structures to excessive groundborne vibration; and
- Construction or expansion of wastewater treatment facilities or conveyance systems that could cause significant environmental effects.

The comment also contends that the Draft EIR must analyze “travel routes, infrastructure improvement needs, and barriers” associated with parkland development. Potential parkland is distributed throughout the City. The demand for additional parks will arise as new development is proposed. At that time, the City will require dedication of parkland or the payment of in-lieu fees to ensure that the development is adequately served by parks. In the absence of specific development proposals, additional discussion of the potential impacts of creating additional parkland would be speculative.

Response to Comment 28-33

The comment refers to General Plan policies and states that relying upon a “master parks plan” defers mitigation. It should be noted again that the referenced text is not a mitigation measure, but a policy of the General Plan. Compliance with the policy and actions would ensure that each future

development provided the appropriate level of park land. Implementation of the policy will ensure that the General Plan's impact on the availability of parks will remain less than significant.

Response to Comment 28-34

The comment states the Draft EIR uses the wrong geographic context for the park and recreation analysis, and fails to disclose all of the potential participants in joint use agreements. The Draft EIR contextualizes the City within a regional park network, which include over 4,300 acres of regional parkland and open space within the City, in addition to City parks. Parkland within the City is currently used by City residents, as well as residents from other areas. The General Plan would not reduce the amount of regional parkland available and would require new development to dedicate parkland or pay an in-lieu fee to be used for recreation purposes. Therefore, the proposed General Plan would not have a negative effect on regional parkland. The comment that requests disclosure of all the jurisdictions that would participate in joint-use agreements does not relate to a physical effect of the General Plan; therefore, it is noted without response.

Response to Comment 28-35

The comment states the Draft EIR ignores the impact of new public safety and public services facilities, concluding that the analysis erroneously focuses on response times rather than the physical impacts of those facilities. The purpose of the discussion of response times for fire and police services is to demonstrate the potential for demand to serve the increased in population. Similarly, the analysis for schools and libraries calculates the estimated demand for those services in proportion with the increase in population. The physical impacts of the development of new facilities cannot be determined unless and until the need to construct such facilities arises.

The Draft EIR includes its analysis of additional public safety and public services facilities within the general analysis of the level of construction required to accommodate the projected increase in population.

Response to Comment 28-36

The comment states that the analysis of fire protection services does not include the location of new facilities or whether existing facilities in developed areas would be able to accommodate additional development. As discussed in Response to Comment 28-35, the Draft EIR recognizes that additional demand for fire protection services will accompany increases in population. At the program level, the City cannot determine the exact location of new fire facilities. New development will undergo project-specific environmental analysis to determine the capacity of existing facilities to serve the proposed project. The location of new facilities, if required, would be determined based on need generated by new development.

Response to Comment 28-37

The comment states that police facilities, similar to the analysis provided for fire facilities, does not address the physical impacts of new police facilities. See Responses to Comments 28-35 and 28-36.

Response to Comment 28-38

The comment questions the housing data in the Draft EIR and states that there is no reason to assume the student-per-household ratio would remain the same until 2030. The Draft EIR estimates the number of students that would be generated based upon the number of housing units that would be constructed within the 20-year planning horizon of the General Plan. As discussed in Response to Comment 28-14, the most recent ABAG population and housing data is within less than five percent of the data disclosed in the Demographics chapter of the Draft EIR. The difference is not substantial. In addition, while the number of housing units could differ from that used in the Draft EIR, the use of the calculations in the Draft EIR are an estimate intended to show the magnitude of the increase in students, not to imply that the EIR contained an actual count of the future students that would be generated. As discussed in the Draft EIR (pages 3.12-14 and 15), the school district would collect fees from developers as new development is proposed. The student-per-household ratio could change over the 20-year planning horizon of the General Plan, which would result in changes to the fees. However, this would not change the conclusions of the Draft EIR. Regarding the comment that the Draft EIR must anticipate the location of school facilities, as discussed in Response to Comment 28-35, the physical effects of the construction and operation of public facilities, including schools, is included in the Draft EIR's analyses, though the exact location of facilities cannot be predicted. In addition, the City would not determine the location of school facilities. It would be speculative to analyze impacts associated with construction of school facilities at specific locations.

Response to Comment 28-39

The comment states that the EIR was incorrect in assuming that development under the General Plan would have no impact on libraries or library services. Though the Draft EIR acknowledges that the City has not adopted a minimum level-of-service standard for libraries, it also states (on page 3.12-19) that increased development in the City does not necessarily equate to an increase in need for total volumes or square feet of library space. The Draft EIR recognizes that development under the General Plan may induce increased need for library services, but concludes that the imposition of impact fees (see Richmond Municipal Code Chapter 12.63) and implementation of General Plan policies will render the impact on library services less-than-significant.

Response to Comment 28-40

The comment restates that the Draft EIR defers mitigation for impacts on public services, specifically fire protection, schools, and libraries. Please see Responses to Comments 28-35, 28-36, 28-38, and 28-39. The comment also states that the Draft EIR does not provide for development fees to pay for facilities and staffing for police. As discussed on page 3.12-4 of the Draft EIR, the City's Municipal Code provides a method for the equitable and consistent collection of fees for public improvements and facilities needed to serve the developing areas of Richmond (see Richmond Municipal Code Chapters 12.64 and 12.65). These fees are used for the construction of new facilities and project-level environmental analysis is performed at the time that new facilities are proposed. The City's tax revenue base will increase commensurate with new development that occurs over the General Plan's 20-year planning horizon.

Response to Comment 28-41

The comment contends that the Draft EIR uses the improper geographic context for analysis of cumulative impacts on fire protection services because the City coordinates with neighboring jurisdictions to provide fire protection. The comment continues that development in other jurisdictions could require the construction of new facilities in the City of Richmond to support those neighboring jurisdictions. It should be noted, however, that the coordination with other jurisdictions and with the Chevron Richmond Refinery in providing fire protection is mutual - “mutual aid agreements” ensure that fire protection services are provided when and where they are needed. The City would not construct facilities to serve adjacent jurisdictions, so fire protection needs of neighboring jurisdictions is not a factor to be considered in the cumulative impacts analysis.

Response to Comment 28-42

Like Comment 28-41, this comment contends that the cumulative context for police protection is wrong because coordination with other jurisdictions could require the construction of new facilities in the City of Richmond to support those neighboring jurisdictions. See Response to Comment 28-41.

Response to Comment 28-43

The comment states that the Draft EIR uses the appropriate geographical context for the discussion of cumulative impacts on schools, but provides no evidence that the students from cities outside of Richmond would be distributed throughout the district and not in Richmond schools. Because an individual school’s capacity is limited, school districts distribute students throughout the system. The City of Richmond does not control the West Contra Costa Unified School District’s decisions about facilities management and the comment provides no information contrary to the Draft EIR’s assumption that District management distributes students throughout the District.

Response to Comment 28-44

The comment states the discussion of cumulative impacts on libraries should include residents of other cities because California residents can get a library card to any jurisdiction. The comment provides no evidence to suggest that residents of other cities are currently creating a burden on the City of Richmond library facilities, or that non-residents would do so in the future. The comment also states that failure to provide adequate library facilities would cause Richmond residents to use libraries in other cities. The comment provides no evidence to support the assumption and the assumed impact is speculative. There is no evidence to suggest that Richmond residents are using or would use the libraries of neighboring cities to the extent that those cities would require expansion.

Response to Comment 28-45

The commenter claims that the City of Richmond General Plan EIR must “contain” a water supply assessment, “as is required by Water Code Section 10910 and 10912”. The commenter has misinterpreted the Water Code Section 10910 and 10912 to be applicable to general plans. As

stated in the *Guidebook for Implementation of Senate Bill 610 and Senate Bill 221 of 2001* (The Guidebook) prepared by the California Department of Water Resources (DWR), general plans prepared by a city or county and the urban water management plan (or equivalent) are the “critical source documents used to substantiate the information required by Senate Bills (SB) 610 and 221 at the local level”. In addition, DWR provides a simple chart on page v of The Guidebook which shows that a general plan and urban water management plan are long-term planning documents that feed each other information (i.e., growth projections, water supply projections, etc.) on a planning horizon of 20 years. In point of fact, in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, the Superior Court of California made clear that identification of likely water supply for a project can vary with the stage of project approval under consideration. The City of Richmond General Plan is a programmatic, long-term planning document with a much lower degree of certainty for future specific development plans as compared with approval and adoption of a specific project (i.e., a Specific Plan), development agreements, issuance of building permits, and newly created physical demands for water supply.

The commenter demands that the EIR provide a solution to future probable shortage of water during severe droughts. The identification of exact or “precise” shortages and measures for shortage of water supplies is under consideration by EBMUD in their current *Water Supply Management Plan 2040* (WSMP 2040), as stated on pages 3.13-1 through 3.13-6 and page 3.13-7. Furthermore, identification of exact or “precise” measures for water shortages during a severe drought is beyond the scope of this General Plan EIR. The Draft EIR adequately addressed the reasonably foreseeable impact of water supplies for the land use changes in the proposed General Plan, including considerations of uncertainties of future long-term water supply planning made by EBMUD in the WSMP 2040, as stated on pages 3.13-8 through 3.13-11 of the Draft EIR. As stated on page 3.13-7 of the Draft EIR, EBMUD confirmed that the land use changes proposed in the Draft EIR match the data used by EBMUD to project future water demand in their analyses in the WSMP 2040. Finally, as stated in the Draft EIR on page 3.13-10, proposed specific projects will require project-specific CEQA analyses and water supply assessments provided by EBMUD, as required by the Water Code and CEQA Guideline 15155, for future approval by the City. This includes, where applicable, the preparation of water supply assessments per SB 610 and an affirmative written verification of sufficient water supply per SB 221 (see Draft EIR pages 3.13-6 and 3.13-7).

The commenter further claims that using the WSMP 2040 is invalid because “some of EBMUD’s projects may not even happen,” specifically improvements at Pardee Reservoir, due to the recent challenge of the WSMP 2040 EIR. Although EBMUD’s EIR on the WSMP 2040 was recently challenged in court, in part, on the analysis and mitigation of impacts from proposed water supply alternatives, the court held that the analysis of water supplies in the WSMP 2040 EIR was sufficient for the preparation of a programmatic EIR. The court did not find that the EIR was lacking in planning for water supplies during shortages from severe drought.³ The court did not find that there was evidence to support that “projects may not even happen,” but only found that the disclosure of the physical impacts associated with the Pardee Reservoir did not provide the level of detail

3 Superior Court of California Case Number 34-2010-80000491, *Foothill Conservancy, et al. v. East Bay Municipal Utility District, et al.*, April 11, 2011.

commensurate with the description of these potential improvements in the Project Description for the WSMP 2040. Because the WSMP 2040 is a long-range plan, it does not guarantee that any particular alternative project may be constructed, but it provides a range of potential projects from which to select alternatives for water supply planning in the future, all of which were analyzed in the WSMP 2040 EIR.

The commenter also claims that the Draft EIR ignores the physical impacts of water supply infrastructure. As discussed in Chapter 1, Introduction, the Richmond General Plan Update Draft EIR is a program-level EIR, which focuses on the overall effects of the proposed General Plan within the City of Richmond. The programmatic analysis does not examine the effects of any potential site-specific projects that may occur during the lifespan of the proposed General Plan, nor does it speculate on construction that may occur outside of the City of Richmond to meet regional infrastructure needs. The Draft EIR does, however, programmatically address the physical impacts related to construction activities. Please see the Draft EIR Chapter 3 sections on air quality, climate change, cultural resources, noise, and hydrology and water quality for analyses of construction-related impacts. Also see Response to Comment 28-16.

Response to Comment 28-46

The comment states that because the City has in the past violated wastewater discharge requirements, there is no reason to believe that the City would not continue to violate wastewater discharge requirements. As discussed in the Draft EIR (pages 3.13- 12 through 3.13-14), three sanitary sewer agencies serve areas within the geographical boundaries of the City of Richmond: West County Wastewater District, Stege Sanitary District, and the Richmond Sanitary Sewer District. All three agencies are responsible for maintenance of their collection and treatment systems, and all three agencies have enacted regulations to ensure that private property owners are tasked with maintaining private sewer laterals. Through enforcement of regulations affecting private property owners, the imposition of development impact fees, the use of bond financing, and the collection of fees for services, all three sewer districts meet their obligations to maintain, repair, expand and upgrade their collections and treatment systems.

The Richmond Sanitary Sewer District operates a wastewater treatment plant within the City of Richmond. The treatment plant is operated and maintained to meet all requirements of federal and state law. The comment assumes that the wastewater treatment plant will not be maintained or operated in accordance with applicable permits or law, and based on that assumption the comment speculates on potential impacts to water quality. Because the impacts assumed in the comment are speculative, they cannot be analyzed in the General Plan EIR.

The Draft EIR acknowledges on pages 3.13-12 and 3.13-13 that under existing conditions, wet weather flows exceed the capacity of the wastewater treatment plant due to inflow and infiltration (I & I). This, however, is the existing condition and not a result of the proposed General Plan. To remedy this existing condition and reduce the potential for infrastructure shortcomings to result in violations of wastewater discharge requirements, the City has developed Sanitary Sewer and Wastewater Treatment Plant Master Plans that address wet weather storage, long and short-term

improvement projects, as well as funding strategies for short-term and long-term Capital Improvement Projects. Projects are identified and prioritized to comply with all regulatory agency requirements and/or mandates as well as the terms of the Baykeeper Settlement Agreement. Additional improvements have been identified to address on-going rehabilitation and replacement of collection and treatment system facilities. The City issued municipal bonds to finance projects over the next three years, and is developing a long term financial plan which identifies methods for funding additional, on-going improvements. The City has also implemented a Lateral Compliance Program (RMC 12.17), which is based on “point-of-sale” for homes and businesses located in the Richmond Municipal Sewer District (RMSD). There are currently over 18,000 lateral connections in the RMSD, totaling an estimated 270 miles in length. Poorly operating or failing laterals allow I & I into the sanitary sewer system during wet weather contributing to system capacity problems and increased potential for sanitary sewer overflows. Repairing and/or replacing these laterals significantly reduces I&I of groundwater and stormwater into the sewer system.

The City policy is to work closely with developers to identify opportunities to include infrastructure improvements as part of proposed developments. The City’s Planning and Engineering Departments work with developers to incorporate these improvements utilizing methods that will not be cost prohibitive. Therefore, the City’s current plans to repair and replace poorly operating or failing laterals would substantially reduce the existing conditions that result in violations of wastewater discharge requirements. In addition, requirements placed on new development to include adequate infrastructure to accommodate that new development would ensure that implementation of the proposed General Plan would improve the condition of the sanitary sewer collection and treatment systems in the City and reduce the risk of unpermitted wastewater discharges. For these reasons, the Draft EIR concluded that implementation of the proposed General Plan would have a less-than-significant impact on wastewater services.

Regarding the comment of whether fair share contributions are sufficient to cover infrastructure costs, the City follows established industry standards for determining the scope of improvements to the existing wastewater system required to accommodate the impacts of new developments. In the event that extensive or large scale improvements are required to accommodate a proposed development, the City considers the total costs of the necessary improvements, as well as the expected economic benefit to the community associated with the development to establish the feasibility of the project.

All of the wastewater from the RMSD flows to the City’s wastewater treatment facility located at 601 Canal Blvd. Flows from areas within the City limits but outside of the RMSD, flow to either the Stege Sanitary District or West County Wastewater District. The City has no jurisdiction over the operation and management of these sewer service areas. The City of Richmond will ensure that any development proposed in areas served by the Stege Sanitary District or West County Wastewater District obtains a will-serve letter prior to project approval to ensure that adequate capacity is available to serve new development.

Response to Comment 28-47

The comment states there is no evidence to conclude that there is sufficient landfill capacity to serve the proposed General Plan and that the Draft EIR relies upon landfills that are outside of the City's jurisdiction. The Draft EIR provides substantial information regarding capacity of landfills that have served the City. It should be noted that none of the landfills are within the City of Richmond, but they receive Richmond-generated waste based upon contractual obligations. As shown in Table 3.13-2 (Draft EIR page 3.13-23), the 14 landfills that served the City have a daily permitted capacity of 51,716 tons/day. As discussed on Draft EIR page 3.13-25, it is estimated that the City would generate 152.9 tons/day of solid waste in 2030, an increase of 34.7 tons/day. The total daily solid waste generated in the City, including existing waste generation, would represent 0.3 percent of the daily capacity of the listed landfills and the increase generated by the General Plan would represent 0.07 percent of that capacity. This is not a significant increase relative to available capacity. It should also be noted that landfills regularly undergo expansions to increase capacity, though the Draft EIR analysis does not consider expansions beyond those already approved. The landfills themselves consider more than one source in calculating the daily and total capacities of the landfill, so the contributions of other jurisdictions are already considered in those capacities.

The comment also questions the use of units when describing solid waste. As shown in Table 3.13-2 (Draft EIR page 3.13-23), the daily capacity is shown in tons and the total landfill capacity is shown in cubic yards. These units are used because the daily unit is measured by the capacity of the haul trucks delivering the waste, in tons. The tonnage at the landfill is not relevant to a landfill's capacity, so the volume of the remaining landfill capacity is measured in cubic yards. Although the makeup of solid waste is variable, it is estimated that one ton of "average" landfill material occupies approximately 2.75 yards.⁴ With the increasing annual solid waste generation in the City that would reach approximately 153,000 yards per year (assuming 55,796 tons/year at 2.75 yards/ton) by 2030, the City's total solid waste would account for less than one percent of the total remaining capacity of the listed landfills. The increment added by the population increase under the proposed General Plan would represent approximately 0.1 percent of the remaining capacity of those landfills. Although this contribution is relatively small, the Draft EIR recognized that landfill capacity is finite and, therefore, concluded that the City's contribution to cumulative impacts on solid waste management will be considerable (see Draft EIR page 3.13-28).

Response to Comment 28-48

The comment states that the Draft EIR should consider the physical impacts of obtaining and delivering electricity and natural gas to the City. The Draft EIR recognizes the potential for expansion of energy-related facilities and analyzes impacts that could occur due to the expansion of facilities to provide energy to the City. Draft EIR pages 3.13-31 and 3.13-32 include the following potential effects that could result from expansion of energy facilities: alteration of aquatic ecosystems and hydrologic processes, soil erosion, disruption of natural fish movement, significant water use, discharge of warmed and polluted water into natural water bodies, generation of radioactive waste, soil contamination, emission of nitrogen oxides, carbon dioxide, sulfur dioxide,

4 Davis, Marge, *What Will POP do for Tennessee's Solid Waste Reduction Efforts?* February 2008.

mercury and methane into the air; significant water use; discharge of warmed and polluted water into natural water bodies; generation of solid waste; soil contamination; alteration of wildlife habitat during surface mining, emission of methane, nitrogen oxides, and carbon dioxide, and alteration of habitat during extraction. The Draft EIR does not include project-specific impacts related to expansion of energy facilities because to do so would be speculative and beyond the scope of the General Plan EIR. The Draft EIR provides a program-level analysis of the potential impacts of expanding energy facilities to meet demand generated by development under the General Plan. The comment also states that the Draft EIR is inconsistent in that it includes “no impact” and a “less-than-significant” impact conclusions. The EIR is not inconsistent: the conclusions in Section 3.13 of the Draft EIR are that the proportional contribution from development under the Richmond General Plan to the impacts from expanding energy-related facilities will be less-than-significant because the General Plan includes numerous policies, goals, and actions to promote conservation and use of renewable energy sources.

Response to Comment 28-49

The comment summarizes previous comments and requests that the Draft EIR be revised. As discussed in the responses above, the Draft EIR adequately addresses the issues raised in the comments.

**TEMPLE BETH HILLEL
801 Park Central
Richmond, CA 94803**



March 31, 2011

Hector Rojas
Planning Department, City of Richmond
450 Civic Center Plaza
Richmond, CA 94804

Re: General Plan Land Use Designation of Temple Beth Hillel

Dear Mr. Rojas:

Temple Beth Hillel, Richmond's Jewish Synagogue, is located on the northeast corner of the intersection of Interstate 80 and Hilltop Drive. It sits on about five acres of land, and is designated under the current General Plan as high-density residential. That designation was sought by the Synagogue when the current General Plan was adopted in 1994, in order to maximize, reasonably, the potential development value of the land.

Temple Beth Hillel is located within the Hilltop Change Area. During the General Plan Advisory Committee process, we requested that the Temple's land and the commercial development to the east, across Park Central, all be designated Regional Commercial Mixed Use, and the GPAC and the consultant agreed.

In the latest draft of the proposed General Plan, however, the Temple's land is designated "Public, Cultural and Institutional." While that is an appropriate designation for the land's current use by the Temple, it does not recognize the highest and best use of the land in the long-run. That whole area off of Hilltop Drive around the entrance to Hilltop Green, right off a freeway offramp, could be a vital commercial hub.

Temple Beth Hillel has long sought opportunities to develop its land in ways that would complement the Temple's own functions and pay for improvements to the Temple's physical plant and/or generate income for the Temple's on-going operations. The designation as "Public, Cultural and Institutional" would deprive the Temple of those possibilities. Please re-designate the Temple's land, and the other adjacent commercial properties, to "Regional Commercial Mixed-Use" or to "Medium Intensity Mixed Use (Gateway and/or Community Node)".

Very truly yours,

Joshua Genser

Joshua Genser, Treasurer

cc: Laura Taub, President

29-1

LETTER 29: Temple Beth Hillel, Joshua Genser

Response to Comment 29-1

The comment states that the property on the northeast corner of the intersection of I-80 and Hilltop Drive should be given the land use designation Medium Intensity Commercial Mixed-Use, not Public, Cultural, and Institutional as proposed. This is not a comment on the adequacy of the analysis contained in the Draft EIR, but on information contained in the draft General Plan. The comment is forwarded to the decision-makers for their consideration.



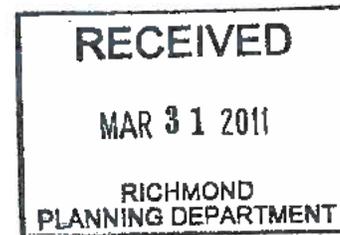
VIRTUAL DEVELOPMENT CORPORATION

Real Estate Development & Management

1387 MARINA WAY SOUTH, SUITE 200, RICHMOND, CA 94804

TEL (510) 233-5595 . FAX (510) 233-5595

March 31, 2011



Planning Commissioners
Bill Lindsay, City Manager
Hector Rojas, Planning Department
Mary Renfro, Assistant City Attorney

Re: Richmond General Plan – Draft Environmental Impact Report

(Note these responses follow the format of the COI summary to DEIR and differ in part from that of the COI , and do go into more details concerning (the property)

Also note the highest priority on impacts is Policy – SN1.3 Hazardous Materials Operations (pg. 3.8-18) as it relates to Marina Bay Westshore on the Ford Peninsula address 1380 – 1450 Marina way south plus vacant lands of 5.9acres APN's 560-181-058,560-181-060 560-181-096,560-181-097 and 560-181-098 (the property")

TABLE ES-2 SUMMARY OF IMPACTS AND MITIGATION MEASURES

3.3 Air Quality

3.3-2 Operational (pg ES-12) "c. The City of Richmond shall continue to require individual developers to implement applicable new stationary source control measures as proposed in the most recent CAP..."

- "CAP" should be spelled out. Agreed , It is not clear to developers the requirements of the recent CAP?

30-1

3.6 Climate Change

3.6-1 b(pg ES-20) "All new development and all retrofits of single-family

30-2

03/16/11 Council
GP/ DEIR

developments, multi-family developments of over 10 units and all commercial/industrial remodels of over 10,000 square feet shall be required to exceed Title 24 standards by 20% by 2020 and 30% by 2030. This mitigation measure enhances General Plan Action EC3.C).

- Since title 24 is the standard , we feel the requirement to exceed title 24 should be stated as a goal , not a requirement. If technologic advancements appear , to allow this standard of exceeding todays title 24 standard to be achievable by 2020 and 2030 , then the city could amended the general plan , to the stated goals become the new standard . if title 24 is amended during the life of the GP, are these requirements to exceed also automatically amended , if so what is the economic impact, and is it achievable ?

3.6-1 c (pg ES-21) "Require all new City-owned and operated facilities and 50% of all new development to generate at least 10 % of their energy use from renewable sources. Enhances General Plan Action EC3.B"

We agree . The City might consider incentives for residents and businesses to move toward using more renewable sources. Is this consistent with what similar cities are doing?

3.6-1 f (pg ES-21) "Develop a program that requires all construction and demolition activities to evaluate energy use and waste and to reduce or mitigate construction-related impacts by 75%. Enhances General Plan Actions EC3.E."

- *How realistic is this ? How will the City assist with this? Will they work with Republic Services to establish a program for recycling construction waste? Without the infrastructure, the reduction is impossible.*

3.6-1 o. (pg ES-23) "Require new development to incorporate water-saving measures demonstrating a minimum reduction of 20 percent in water use over a similar project completed with the previous five years. This measure enhances General Plan Action EC3.F. This measure would be enhanced by General Plan Action EC3.G."

03/16/11 Council of Industries
GP/ DEIR

- *Is 20% a realistic and attainable? How was the number calculated? Is it consistent with what similar cities are doing?*
- *What is the economic impact ?*

30-2
(cont.)

3.10-5 (pgES-30) Future projects shall incorporate project-specific mitigation measures to promote non-motorized transportation to reduce the impact of traffic noise.”

- *What is the economic impact ? To require such a program could very well determine whether or not developers would consider Richmond as a site for their project, or expansions. How does this compare to other cities ?*
- *CHANGE “SHALL INCORPORATE” to “MAY CONSIDER” --- “Future projects shall ~~may consider incorporate-ing~~ project-specific mitigation measures to promote non-motorized transportation to reduce the impact of traffic noise.”*

30-3

3.14 Transportation and Circulation

3.14-1 (pg ES-34) “Future Projects shall incorporate project-specific mitigation measures to reduce traffic impacts.”

- *How does the bicycle plan impact this provision ? since the bicycle plan will compound traffic impact overtime ,(if approved) By reducing traffic lanes per the bicycle plan , does this compounding effect make this provision realistic ? What specific traffic mitigation are being considered ?
 _ To require 3.14.(pg ES-34) does not seem feasible. Growth – both in population and economy – is what the city supports. This growth will result in traffic congestion –*

30-4

GP/ DEIR

- *DELETE: “Future Projects shall incorporate project-specific mitigation measures to reduce traffic impacts.”*

ADD: The city will determine key areas of current and potential traffic congestion and establish a plan to enhance the roadway infrastructure to manage this.” “The City will provide residents and businesses with information regarding ride-sharing, bus lines, bicycle programs, etc. providing education on alternative transportation resources.”

3.10 NOISE

3.6 CLIMATE CHANGE

COI: One of the most detailed chapters it comprises thirty (30) policies and forty-four (44) action items. The DEIR seems to incorporate all the related policies and action items pertaining to this topic. Should the DEIR go into such detail? It appears to be replacing the General Plan. Secondly, the amount of policies and action items beg the question as to whether the city has the resources to implement such a vast plan?

30-5

Potential Effects of Global Climate Change (pg 3.6-3) analysis

Regulatory – Local – Bay Area Air Quality Management District (pg.3.6-11)

“The BAAQMD has not adopted a threshold with respect to construction emissions associated with plan level or individual development projects. However the BAAQMD recommends that the Lead Agency quantify construction emissions and make a significance determination of these emissions in relation to meeting the AB 32 GHG reduction goals.

We understand from COI , the BAAQMD has not established construction emission thresholds, so that any action items the city develops in regard to this area can only be recommendations. The action items listed do not include the BAAQMD’s recommendation to first quantify the construction emissions. There is no analysis of what the city’s concerns are, what monitoring has been done, etc. The city has incorporated action items requiring Best Management Practices – which the BCDC only “encourages”. The city needs to revisit this action items.

30-6

Regulatory – Local – Construction (pg.3.6-12)

“The BAAQMD has not established plan-level analysis methodology for construction activities.”

The BAAQMD “recommends” and “suggests”. The action items for the city need to “recommend” and “suggest”.

IMPACTS AND MITIGATION MEASURES – Standards of Significance – Construction Related Thresholds (pg3.6-13)

“The BAAQMD has not adopted a threshold with respect to construction emissions associated with plan level or individual development projects. “

The BAAQMD “recommends” and “suggests”. The action items for the city need to “recommend” and “suggest”.

“

”

Mitigation Measure (pg. 23.6-16)

3.6-1 a. "All construction projects shall incorporate the most recent Best Management Practices for Greenhouse Gas Emissions as indicated by the BAAQMD."

_See pg.3.6-14, Construction: "the BAAQMD recommends quantification of emissions and the implementation BMP's to reduce those emissions." CHANGE THIS SENTENCE TO: "All construction projects shall CONSIDER incorporating the most recent Best Management Practices for Greenhouse Gas Emissions as indicated by the BAAQMD."

30-7

Clean Air Action Committee has been working on and completed and presented to City Council a Clean Air Action Plan for the public port area. DELETE THIS ACTION ITEM AND REPLACE IT WITH: Continue to monitor the public port Clean Air Action Plan.

"

Policy – SN1.3 Hazardous Materials Operations (pg. 3.8-18)

GP/ DEIR

"Protect Richmond's shoreline and other natural resources from accidental occurrences by controlling the location of new hazardous waste facilities and by limiting the expansion of existing hazardous waste facilities adjacent to the shoreline and along streams or creeks."

>>DEFINE "HAZARDOUS WASTE FACILITY." It is unclear what this describes. Any business or facility can generate hazardous waste (CFR light bulbs, solvents, computers, etc) Is the city saying that NO BUSINESS can be located along the shoreline – what about the port area? along the Santa Fe Channel? The Lawrence Berkeley National Lab expansion and associated incubator companies would not be able to locate there given this language. DELETE. All new developments and expansions require permit review by the city of Richmond. At this time the city can review the developers plans as to what if any hazardous materials will be present, and the programs the business has in place to address waste removal.

30-8

>>>>Note Hazardous materials such as most chemicals do not require hazardous waste facility. These are very different. Please clarify this legal distinction in the DEIR.

Policy – SN1.3 Hazardous Materials Operations (pg. 3.8-18)
Note :

Lawrence Berkeley Lab will view the Marina Bay Westshore on the Ford Peninsula address 1380 – 1450 Marina way south plus vacant lands of 5.9 acres APN's 560-181-058, 560-181-060 560-181-096, 560-181-097 and 560-181-098 (" the property") , as an area for their possible expansion and is suitable for incubator companies spinning off from the Lab (biotech, biofuel, solar, etc.) into this area and complement the current businesses. In addition the proposed language in the draft General plan allows among other things for the Westshore of Marina bay 1380-1450 Marina Way South plus vacant lands to be a " Mixed – use Development with commercial or office/light industrial uses encouraged at street level along corridors; single-use development allowed : mixed –use strongly encourage . " note this allows for existing buildings and Labs to be conforming uses and allowed to expand . Please also see attached letter February 28, 2011 zoning Verification Letter for the (" property") The verification letter said in part " Laboratories have previously been approved on the property and currently exist on the property. Such uses are allowed on the property pursuant to the zoning . Please also see March 2, 2011 letter from City Manager Bill Lindsay stating in part " This letter serves to express the city of Richmond's strong support for Marina Bay as a candidate site for Lawrence Berkeley National Laboratory's (LBNL) Second campus . Will this policy SN1.3 Hazardous Materials Operations (pg. 3.8-18) allow for this development on the Westshore to expanded as conceived in the draft general plan and supported by current zoning and proposed zoning ?

30-8
(cont.)

Furthermore:

Under Policy – SN1.3 Hazardous Materials Operations (pg. 3.8-18)
How would the policy be interpreted and applied to this recently approved project in the city as described here : Project Description

The proposed project consists of the construction of a 16,888 square foot industrial building for research and development, which will primarily include laboratory and office space. The property is currently occupied by Bio-Rad Laboratories, a chemical manufacturing plant that develops a variety of chemicals products for pharmaceutical use. The project is located at 3110 Regatta Blvd and is 3.8 acres in size . The proposed building would replace six existing dilapidated metal structures and accessory buildings with one single structure. The new structure will be used for the same activities, and be located within the same location on the property.

30-9

The proposed building is single story with a height of 26 feet. The proposed building will be sand/brown with a pitched roof that is green in color. Eighty-six (86) parking spaces including 2 handicap spaces are currently provided on-site.

Site improvements will include conversion of two regular parking spaces to handicap spaces and the elimination of one parking space that currently blocks sidewalk access. The proposed project also involves the installation of landscaping, lighting, utilities, implementation of storm water management measures, and demolition of existing structures.

30-9
(cont.)

Also Under Policy – SN1.3 Hazardous Materials Operations (pg. 3.8-18)

If the three projects, Marina Bay west shore, Ford Peninsula address 1380 – 1450 Marina way south plus vacant lands of 5.9 acres APN's 560-181-058, 560-181-060 560-181-096, 560-181-097 and 560-181-098, and Bio-Rad located at 3110 Regatta BLVD , and the EPA lab in the UC Richmond field station can't expand what long term economic impact would this have to the city ?

30-10

Sincerely ,

Richard R Poe
CEO Virtual Development Corporation.

CITY MANAGER'S OFFICE



March 2, 2011

Ms. Laura B. Crosby
University of California
Lawrence Berkeley National Laboratory
1 Cyclotron Road
Berkeley, CA 94720-8280

Dear Ms. Crosby:

This letter serves to express the City of Richmond's strong support for Marina Bay as a candidate site for Lawrence Berkeley National Laboratory's (LBNL) Second Campus.

The Marina Bay site offers existing buildings to accommodate the most immediate needs of the LBNL while working in conjunction with the Richmond Field Station (RFS). The site sits on San Francisco Bay and has views of San Francisco, Brook Islands, and the inner harbor basin. The buildings were built in a campus-like setting for a computer software company, and can be easily connected to the RFS by expanded shuttle service. The site is also connected to the RFS by the Bay Trail.

In addition, this site can work in conjunction with Terminal 3, which the city can explore as a potential expansion space for LBNL for uses associated with sea, algae production, tidal research, climate work and other maritime applications and research.

Please do not hesitate to contact me at (510) 620-6512 or at bill_lindsay@ci.richmond.ca.us if you have further questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "William A. Lindsay".

William A. Lindsay
City Manager



Department of Planning and Building Services

February 28, 2011

Mr. Richard Poe
Virtual Development Corporation
1387 Marina Way S, Suite 200
Richmond, CA 94804

Re: Zoning Verification Letter

Dear Mr. Poe:

This letter confirms that APNs: 560-181-058, 560-181-060, 560-181-096, 560-181-097, and 560-181-098 (the "Property") are zoned Planned Area (PA) district. This PA zoning district allows the following uses:

1. Research and Development
2. Commercial
3. Office
4. Hotel
5. High Density residential

Laboratories have previously been approved on the Property and currently exist on the Property. Such uses are allowed on the Property pursuant to the zoning.

In addition, in 1998, the City/Agency and property owner entered into a Commercial Development Commitment Agreement ("CDCA") for the Property. Section A.3(b) of the CDCA sets forth the following development standards:

- a. For Westshore Parcel A, the CDCA provides that "the building will be located on approximately 5 acres and it will contain approximately 60,000 square feet or more of space, of which not less than 10,000 square feet shall be dedicated to office space and the remainder may be used for other uses in conformity with existing zoning and General Plan designations such as warehouse spaces. It shall be substantially similar in design and quality as has been approved through the City's design review process."
- b. For Westshore Parcel C, the CDCA provides that "the building will be located on approximately 4 acres and it shall contain approximately 60,000 square feet or more of space, all of which shall be designed to accommodate office and or research and development uses. It shall be substantially similar in design and quality to the previously submitted proposal depicted on Exhibit B to the 1997 CDCA."

If you have any questions, please feel free to contact me at (510) 620-6706 or via email at Richard_Mitchell@ci.richmond.ca.us.

Sincerely,



Richard Mitchell
Planning & Building Services Director

LETTER 30: Virtual Development Company, Richard Poe

The introduction to the comment letter notes that the comments are similar to those prepared by the Council of Industries (Letter 9). Consequently, the following responses may include references to certain responses in Letter 9.

Response to Comment 30-1

The comment repeats comments made in Letter 9. See Response to Comment 9-14.

Response to Comment 30-2

The comment repeats comments made in Letter 9. See Response to Comment 9-17. The comment also requests that energy conservation measures for certain development not be required to exceed Title 24 standards. The comment also states that the General Plan should be amended in 2020 or 2030 to include the requirement to exceed Title 24 standards, after technological advancements allow projects to achieve additional reductions. Technologies are currently available to reduce emissions below the current Title 24 standards and projects are regularly required to meet these reductions. As these technologies are regularly employed in projects, it is assumed that technologies will continue to advance to meet the growing need for energy efficiency.

Response to Comment 30-3

The comment repeats comments made in Letter 9. See Response to Comment 9-18. The comment also refers to the economic impact of Mitigation Measure 3.10-5 (Draft EIR page 3.10-33). Economic impacts are not subject to CEQA review.

Response to Comment 30-4

The comment asks how the Bicycle Master Plan would affect Mitigation Measure 3.14-1 (see Impact 3.14-1 on Draft EIR pages 3.14-40 through 3.14-45), which requires that future projects incorporate project-specific mitigation measures to reduce traffic impacts. The comment also asks for information on the specific traffic mitigation being considered. Regarding the bicycle plan, encouraging the use of bicycles as an alternate mode of travel would be considered a positive effect on vehicle traffic reduction. Because specific measures to reduce vehicle traffic would be location specific, the Draft EIR does not include specific measures that would be required of development projects. However, typical measures to reduce vehicle traffic include provision of pedestrian and bicycle amenities, circulation options that provide pedestrian and bicycle access, improved transit access, and employer incentives for employees to use transit (see General Plan policies on Draft EIR pages 3.14-40 through 3.14-44). As all options may not be appropriate for all locations, a project-specific analysis would be required when development is proposed.

Response to Comment 30-5

The comment repeats comments made in Letter 9. See Response to Comment 9-26.

Response to Comment 30-6

The comment repeats comments made in Letter 9. See Response to Comment 9-28.

Response to Comment 30-7

The comment repeats comments made in Letter 9. See Response to Comment 9-31.

Response to Comment 30-8

The comment repeats comments made in Letter 9. See Response to Comment 9-38. The comment also asks if General Plan Public Safety and Noise Policy SN1.3 (Hazardous Materials Operations) would allow the expansion of laboratory uses on the Westshore. General Plan Public Safety and Noise Policy SN1.3 requires safe production, transportation, handling, use and disposal of hazardous materials and consistency with guidelines, standards, and requirements of the City, West Contra Costa County, and OSHA. Assuming the expanded operations of this facility would comply with these regulations, General Plan Public Safety and Noise Policy SN1.3 (Hazardous Materials Operations) would not disallow such an expansion.

Response to Comment 30-9

The comment requests a consistency analysis of a specific project with General Plan Public Safety and Noise Policy SN1.3 (Hazardous Materials Operations). As a program-level EIR, project-specific analysis is not within the scope of the Draft EIR. Such an analysis would be prepared at the time an application is submitted to the City for review. Also see Response to Comment 30-8.

Response to Comment 30-10

The comment questions the economic impact if three expansion projects referenced in the comment are not constructed. Economic impacts are not subject to CEQA review.



2950 PERALTA OAKS COURT PO. BOX 5381 OAKLAND CALIFORNIA 94605-0381 T. 1 888 EBPARKS F. 510 569 4319 TDD. 510 633 0460 WWW.EBPARKS.ORG

Hector Rojas, Associate Planner
 City of Richmond
 Planning and Building Services
 PO Box 4046
 440 Civic Center Plaza
 Richmond, CA 94804

RECEIVED
 APR 01 2011
 RICHMOND
 PLANNING DEPARTMENT

RE: City of Richmond Draft General Plan and General Plan EIR

Mr. Rojas,

The East Bay Regional Park District (the 'District') has reviewed the draft General Plan and associated Environmental Impact Report (EIR) prepared for the City of Richmond.

The District operates regional park and trail facilities within the Richmond planning area including the Wildcat Canyon Regional Park, Point Isabel Regional Shoreline, Miller Knox Regional Shoreline, and Point Pinole Regional Shoreline as well as the Wildcat Creek Trail and Bay Trail. The District's Master Plan Map, updated in 2007, identifies potential future parklands at the Point Molate and North Richmond Wetlands area and seeks to complete the regional trails within the City.

31-1

The District appreciates the City's efforts to identify and include goals and policies that recognize the existing and planned regional park and trail facilities within the Richmond Planning Area.

The District looks forward to working with the City of Richmond and other stakeholders in accomplishing the goals and policies that seek to protect and enhance the vital trails, open space and wildlife resources found within the City.

Thank you for the opportunity to review and provide comments on the draft Richmond General Plan and EIR. Please keep us apprised as the project moves forward and feel free to contact me at (510) 544-2623 or bholt@ebparks.org should you have any questions.

Respectfully,

A handwritten signature in black ink, appearing to read "B Holt", is written over a white rectangular area.

Brian W. Holt, AICP
Senior Planner

Cc: Larry Tong, Interagency Planning Manager

Board of Directors

Beverly Lane President Ward 6	Carol Severin Vice-President Ward 3	John Sucter Treasurer Ward 2	Ayn Wieskamp Secretary Ward 5	Whitney Dotson Ward 1	Doug Siden Ward 4	Ted Radke Ward 7	Robert E. Doyle General Manager
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LETTER 31: East Bay Regional Park District, Brian Holt

Response to Comment 31-1

The comment states appreciation of the City's effort to include goals and policies that recognize the existing and planned regional parks and trail facilities within the Richmond Planning Area. The comment is noted. No response is required.

CITY OF RICHMOND
CITY PLANNING COMMISSION

PUBLIC HEARING
PARTIAL TRANSCRIPT - AGENDA ITEM 2
PLN09-137: RICHMOND GENERAL PLAN 2030

RICHMOND CITY HALL
CITY COUNCIL CHAMBERS
440 CIVIC CENTER PLAZA
RICHMOND, CALIFORNIA

MARCH 17, 2011

6:30 P.M.

Reported by:
Richard A. Friant, CER

A P P E A R A N C E S

Commissioners

Charles Duncan, Chair

Ben Choi

Roberto Reyes

Andrés Soto

Carol Teltschick-Fall

Staff

Richard H. Mitchell, Planning Director

Carlos A. Privat, Assistant City Attorney

Mary J. Renfro, Assistant City Attorney

Hector Rojas, Associate Planner

Lamont Thompson, Senior Planner

Consultant

Patrick Hindmarsh, Senior Environmental Manager- CEQA
PBS&J

Others Present

Del Price, Richmond Equitable Development Initiative (REDI)

Ana Orozco, Communities for a Better Environment

Greg Karras, Communities for a Better Environment

Tiana Drisker, Communities for a Better Environment

Maria Alegria, Faith Works

Tarnel Abbott, Richmond Progressive Alliance

Others Present (continued)

Nita Sisamouth

Colin Miller, Urban Habitat
Richmond Equitable Development Initiative (REDI)

Marcy Rein, Richmond Equitable Development Initiative (REDI)

Antonio Medrano, Contra Costa Faith Works

Ric Borjes, National Park Service

Ralf Morgan

Nick Krause

Daniel Buntin Murray, Jr.

Daniel Buntin Murray, Sr.

Len Nibbi, JHS Properties

Robert Herbst

Joshua Genser, Richmond Development Company

Christine Griffith, Attorney at Law
representing JHS Properties and Richmond Development Company

Owen Martin

Katrinka Ruk, Council of Industries

Mary Selva, Richmond Annex Neighborhood Council

Garland Ellis, Richmond Annex Neighborhood Council

Jerry Yoshida, Richmond Annex Neighborhood Council

Torm Nompraseurt

Teijae Taylor

Patricia Jones, Citizens for East Shore Parks

John Adams, Alliance of Californians for Community
Environment

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1 right, senior environmental manager with the environmental
2 consulting firm of PBS&J.

3 The purpose of tonight's meeting is to accept
4 public and Planning Commission comment on the Draft
5 Environmental Impact Report for the Proposed General Plan
6 prior to the conclusion of the 45 day comment period on
7 March 31st.

8 Before the Commission accepts and provides
9 comments on the EIR tonight I will overview the time line
10 for the proposed General Plan and the EIR to date. Patrick
11 Hindmarsh from PBS&J will overview the EIR. Then I'll come
12 back and talk about the next steps for the proposed General
13 Plan and the EIR. Lastly I'll cover the format for
14 commenting on the EIR and through the close of the comment
15 period for the EIR.

16 The city authorized the comprehensive update to
17 the 1994 general plan in February 2006 in conjunction with
18 the City's Centennial Celebration. An extensive and
19 inclusive community-based outreach effort took place over
20 the following two years.

21 On February 1, 2008, following development of land
22 use alternatives that would be used for the purposes of the
23 environmental analysis, the city released a Notice of
24 Preparation to inform responsible agencies and interested
25 parties that an Environmental Impact Report was being

1 prepared and to solicit guidance on the scope and content.

2 A scoping meeting was held on February 28, 2008
3 and comments received at that meeting along with those
4 received prior to the close of the scoping hearing on March
5 2, 2008 were used to develop the scope of the analysis that
6 is now reflected in the DEIR.

7 The first and second Draft General Plans were
8 released for public review and comment in July 2009 and
9 November 2009, respectively.

10 The current Draft General Plan was subsequently
11 finalized to allow for completion of the DEIR. The current
12 Draft General Plan and DEIR were released on February 14,
13 2011 for public review and comment. At that time a Notice
14 of Completion was transmitted to the State Office of
15 Planning Research to solicit comments from state and
16 regional agencies and a Notice of Availability was published
17 and sent to persons on the General Plan mailing list.

18 This brings us up to tonight's public hearing on
19 the DEIR.

20 I am not going to turn it over to Patrick
21 Hindmarsh from PBS&J who will be providing the Planning
22 Commission and public with an overview of the DEIR.

23 MR. HINDMARSH: Good evening, Chairman and
24 Commissioners. You see before you the scope of the
25 environmental analysis prepared and the Draft EIR covered a

1 number of different issue areas. All of those are based on
2 the Appendix G checklist for the California Environmental
3 Quality Act.

4 The General Plan EIR is a program EIR under CEQA;
5 and a program EIR provides a more general analysis of the
6 General Plan elements that are proposed as part of the
7 General Plan.

8 A program EIR also focuses on the overall affects
9 of the General Plan within the proposed change areas in the
10 city and does not examine the affects on potential site-
11 specific projects that may occur during the life span of the
12 proposed General Plan.

13 General Plans are intended to be more general in
14 nature and therefore no development or subdivision maps are
15 being requested as part of the General Plan. Any future
16 development that would occur under the General Plan would be
17 subject to project-specific CEQA review.

18 For each impact in the Environmental Impact Report
19 the analysis is based on the General Plan horizon year and
20 the amount of projected regional growth that the city
21 anticipates it could capture within the planning horizon.
22 The conclusions about the significance in mitigation
23 identified in the EIR are based on these projections.

24 The EIR also includes a general discussion of the
25 implications of full build-out of the General Plan.

1 Generally the Draft EIR acknowledges that the magnitude of
2 the additional demand that could occur under full build-out
3 is greater than the demand of the development anticipated
4 during the General Plan's planning horizon. And where
5 applicable the Draft EIR acknowledges that the capacity does
6 not exist for the additional demand of full build-out of the
7 General Plan. However, the additional demand of that full
8 build-out would occur at a time period beyond the horizon of
9 the General Plan.

10 The EIR analyzed three alternatives, a No Project
11 alternative, which assumes that the proposed General Plan
12 would not be adopted and all future development would be
13 guided by the existing General Plan.

14 The first development alternative, Alternative 1,
15 assumes a lower intensity of development in a city which is
16 -- that the city would capture 8.39 percent of the
17 population growth in the county, which is consistent with
18 the past growth. For your information, the proposed General
19 Plan assumes a capture of 13 percent.

20 Under Alternative 1 the population increase would
21 be approximately 19,400 and it would add over 17,000 jobs
22 and 9400 new households by the horizon year of 2030. About
23 65 percent of the population -- this alternative would be
24 about 65 percent of the population assumed for the proposed
25 General Plan and about 77 percent of the jobs.

1 The population in this alternative would be
2 focused in the Downtown, MacDonald Avenue, Hilltop, Ford
3 Peninsula and Marina Bay areas. And Change Area 11, the
4 northern parkway area, would include residential development
5 under this alternative but Change Areas 12 through 16 would
6 not include residential development.

7 The second development alternative, Alternative 2,
8 assumes that the city would capture 10.19 percent of the
9 population growth over the next 20 years, which is higher
10 than the historic growth rate but less than is assumed in
11 the proposed General Plan. This alternative would result in
12 a population increase of a little over 25,000, over 20,000
13 new jobs and around 12,400 new households by 2030. The jobs
14 would be approximately 90 percent of the proposed General
15 Plan.

16 Residential growth under this alternative would
17 occur in the Northern Parkway, the San Pablo Peninsula and
18 Regatta Marina Bay areas. There would be no residential
19 growth in the North Shore priority use or Southern Gateway
20 areas under this alternative.

21 The EIR found that Alternatives 1 and 2 would have
22 lesser environmental impacts than the proposed project
23 because they have reduced development intensity but neither
24 would reduce any of the significant impacts to less-than
25 significant that were found for the proposed General Plan.

1 The DEIR also found that Alternative 1 would be
2 the environmentally superior alternative because it includes
3 the least amount of development and therefore would have the
4 least impacts.

5 The project -- the EIR identified a number of
6 significant unavoidable impacts. And as you can see in the
7 slide, of the topics that were covered in the EIR we
8 identified significant unavoidable impacts in air quality in
9 that it would -- development under the General Plan would
10 result in air emissions that could conflict with the Clean
11 Air Plan and contribute to air quality violations in the air
12 district.

13 For cultural resources it could affect historical
14 structures and historical resources through removal or
15 alteration of historic resources.

16 Climate change, which is fundamentally a
17 cumulative impact, but development under the General Plan
18 would generate greenhouse gas emissions that could affect
19 climate change.

20 Several noise impacts were identified during
21 construction. There would be construction, significant
22 unavoidable construction noise and potentially significant
23 unavoidable construction vibration as well as operational
24 noise impacts.

25 Under public utilities. The General Plan would

1 require the expansion of the wastewater treatment plant for
2 transportation. The project would -- the General Plan would
3 increase congestion and exceed the current level, the
4 current standard of LOSD. And it would also generate demand
5 for transit that would exceed current capacity.

6 Under visual resources, development under the
7 General Plan could change the existing visual characters
8 that some persons could conceive as a negative change. And
9 there would be new light and glare that would be associated
10 with the new development and that would also be a
11 potentially significant impact.

12 MR. ROJAS: Thanks, Patrick. Next I'd like to
13 provide the public and the Commission with an overview of
14 the next steps leading to the certification of the General
15 Plan EIR and the adoption of the proposed General Plan
16 itself.

17 As mentioned before the 45 day public review and
18 comment period for the DEIR will conclude on March 31, 2011.

19 Following the closing of the public comment period on the
20 DEIR a Final Environmental Impact Report will be prepared.
21 The FEIR will include the comments received on the DEIR, the
22 city's responsive comment on the adequacy of the DEIR and
23 any text edits made in response to the comments.

24 The public and Planning Commission will have two
25 opportunities to comment on the proposed General Plan

1 itself. On April 7 the Commission will hold a study session
2 to provide comment on the Economic Development, Land Use and
3 Urban Design, Circulation, Conservation and Open space,
4 Growth Management, Community Health and Wellness and Public
5 Safety and Noise Elements of the General Plan.

6 A similar study session on the remaining General
7 Plan elements, Education and Human Services, Community
8 Facilities and Infrastructure, Energy and Climate Change,
9 Parks and Recreation, Arts and Culture, Historic Resources
10 and National Parks will be held on April 21st.

11 All comments received on the proposed General Plan
12 up to April 21st will be considered and incorporated if
13 necessary into a fourth and final draft of the General Plan.

14 The Final Draft General Plan and FEIR could be brought
15 before the Commission for a formal recommendation to the
16 City Council as soon as this coming June. The exact date
17 would depend on the extent of comments received on both the
18 DEIR itself and the current Draft General Plan. However,
19 staff's objective is to put the final Draft General Plan and
20 FEIR in front of the City Council by late June.

21 Our last item to cover tonight is the format for
22 providing comments on the DEIR both tonight and prior to the
23 close of the comment period. Verbal comments are being
24 accepted, recorded and transcribed tonight. We ask the
25 members of the public complete a speaker card, state their

1 full name, city of residence and limit their remarks to two
2 minutes.

3 It is important to understand that comments are
4 limited to the DEIR only. Specifically comments should
5 focus on whether the DEIR adequately identifies and analyzes
6 the potential environmental impacts associated with the
7 implementation of the proposed General Plan.

8 Also there will be no response to comments being
9 provided tonight. Responses to comments will be provided as
10 part of the final Environmental Impact Report.

11 Following public comments the Planning
12 Commissioners may also provide their comments on the
13 adequacy of the DEIR.

14 Written comments can be also submitted to staff
15 tonight or can be mailed or emailed to staff by March 31st.

16 And I'd like to conclude by just stating that
17 copies of the DEIR and the proposed General Plan are
18 available at the Richmond Planning Division counter, the
19 public counter, that is. Richmond public libraries and the
20 City of Richmond's General Plan website. Thank you.

21 CHAIR DUNCAN: Thank you, Mr. Rojas. And before
22 we start the public testimony section are there any
23 questions of the staff? Commissioner Teltschick-Fall.

24 COMMISSIONER TELTSCHICK-FALL: There were a couple
25 of things in the summary that I would like to make sure that

1 I understand correctly. One of them is that when you were
2 talking about full build-out, which is not actually expected
3 within the scope of this General Plan -- I guess I'm trying
4 to understand. Full build-out is expected eventually but
5 not within the scope of this General Plan. Is that what you
6 were trying to say?

7 MR. HINDMARSH: No. Full build-out as analyzed in
8 the EIR was development of every area within the city that
9 has a, that has a land use designation. That is not the
10 intent of the General Plan. The General Plan is intended to
11 provide a variety of areas where development could occur but
12 the intent is not for every area to develop. The way it was
13 analyzed in the EIR, in terms of the economy today, the
14 absorption rate of 13 percent of the county growth would be
15 an optimistic projection on the amount of development that
16 would occur.

17 COMMISSIONER TELTSCHICK-FALL: Okay.

18 MR. HINDMARSH: So the analysis in the EIR
19 probably overstates the impacts.

20 COMMISSIONER TELTSCHICK-FALL: Right. But for the
21 typical Alternatives 1 and 2, those did not reach the 13
22 percent growth that was the more optimistic --

23 MR. HINDMARSH: That is correct. Those have
24 lesser, lesser development intensities in terms of land use
25 and the assumption is also less in terms of the amount of

1 development that would occur.

2 COMMISSIONER TELTSCHICK-FALL: Okay. And then you
3 also said something about that -- I think you said that that
4 13 percent growth by 2030 was somehow associated with 90
5 percent of the General Plan.

6 MR. HINDMARSH: Oh, no.

7 COMMISSIONER TELTSCHICK-FALL: I didn't get the
8 connection there with the 90 percent.

9 MR. HINDMARSH: I believe it was Alternative 2 is
10 -- Alternative 1 is the, is the most reduced, the 8.39
11 percent. Alternative 2 is --

12 COMMISSIONER TELTSCHICK-FALL: In the middle.

13 MR. HINDMARSH: In the middle, yes, which is 90
14 percent of the proposed General Plan.

15 COMMISSIONER TELTSCHICK-FALL: And that's 90
16 percent of what's proposed, okay. Thank you for clarifying
17 that.

18 And then the other thing is that Alternatives 1
19 and 2 in general throughout the whole plan, both were deemed
20 to create significant environmental impacts. Is that what
21 you said?

22 MR. HINDMARSH: Yes. Generally due to the scope
23 of the General Plan, whether it's a reduced intensity plan
24 or the one that was analyzed for the proposed General Plan.
25 Because development -- I mean, we're talking 20 years worth

1 of development over the entire city. You will necessarily
2 have air quality, traffic and other sorts of impacts.

3 COMMISSIONER TELTSCHICK-FALL: Cultural, climate,
4 noise.

5 MR. HINDMARSH: Yes.

6 COMMISSIONER TELTSCHICK-FALL: Public utilities,
7 transportation and visual.

8 MR. HINDMARSH: Yes. And that is just due to the,
9 to the --

10 COMMISSIONER TELTSCHICK-FALL: Growth.

11 MR. HINDMARSH: Right.

12 COMMISSIONER TELTSCHICK-FALL: So is continual
13 growth our only option and our only desirable option? I
14 mean, what are cities -- this is more of a philosophical
15 question, I guess. But there is always the assumption of
16 continual growth. I know that some cities are pushing for
17 smart growth and some cities are actually, I believe have
18 started to think about limiting growth to maintain a certain
19 quality of life. Does that figure into any of this at all?

20 MR. HINDMARSH: Well there is, there is a -- under
21 CEQA and purely environmental -- for purely environmental we
22 have the "no project" which is not to adopt a new General
23 Plan and allow growth as is currently allowed under the
24 General Plan; let the current General Plan go forward.

25 There is also a "no project, no development" which

1 we did not analyze in this EIR because it is not practical
2 for a jurisdiction to completely stop growth. So a "no
3 project, no development" alternative was determined to be
4 infeasible.

5 COMMISSIONER TELTSCHICK-FALL: So the only options
6 are going forward with what's in this plan with the growth
7 recommended at the 1 and 2 levels or revert back to the old
8 General Plan?

9 MR. HINDMARSH: Well, in terms of the
10 environmental document that is, that is all we had analyzed.

11 COMMISSIONER TELTSCHICK-FALL: Okay.

12 MR. HINDMARSH: In terms of the General Plan
13 itself, that would be, that would be something that the city
14 would make a determination as to what are the options.

15 COMMISSIONER TELTSCHICK-FALL: Okay, thank you.

16 And then one last one with respect to the noise
17 impacts. You talked about the temporary impacts due to
18 construction and then I think you said that there would also
19 be some operational. Does that mean ongoing and constant so
20 that after construction is finished you have an increase in
21 the noise impacts?

22 MR. HINDMARSH: Right. In terms of the General
23 Plan you would assume that even the temporary impacts
24 associated with construction are a long-term impact. They
25 would be happening consistently throughout the development

1 of the General Plan.

2 COMMISSIONER TELTSCHICK-FALL: Okay.

3 MR. HINDMARSH: So those would be, those would be
4 long-term construction impacts, construction noise impacts
5 in general would be long-term. At a particular site they
6 would be short-term.

7 COMMISSIONER TELTSCHICK-FALL: I understand. Did
8 you analyze --

9 MR. HINDMARSH: And there would also be additional
10 impacts associated with increases in traffic and rail noise.

11 COMMISSIONER TELTSCHICK-FALL: Right. Then with
12 respect -- going back to noise. Did you analyze -- I don't
13 know what you would call the noise but it would not be
14 construction noise, it would be permanent ambient noise.

15 MR. HINDMARSH: Operational, operational noise.

16 COMMISSIONER TELTSCHICK-FALL: Okay. So that's
17 part of this?

18 MR. HINDMARSH: Yes.

19 COMMISSIONER TELTSCHICK-FALL: Part of the impact
20 that you summarized here.

21 MR. HINDMARSH: Yes.

22 COMMISSIONER TELTSCHICK-FALL: All right, thank
23 you very much.

24 CHAIR DUNCAN: Thank you. Are there other
25 questions? Mr. Soto.

1 COMMISSIONER SOTO: I was curious. In looking at
2 the different sections that you identified of having
3 impacts. I guess what I found curious was the areas that
4 you didn't identify, whether it was under the 1994 No
5 Project or Alternative 1 or 2, specifically in the areas of
6 parks and recreation as well as public services.

7 When I was with the Healthy Eating and Active
8 Living project we did an analysis of the conditions and the
9 uses of all the parks in Richmond. And Richmond is under-
10 parked, at least as recommended by the American Park and
11 Recreation Association.

12 And in our analysis of the usage of the parks we
13 found that many of the parks are really at this point
14 drastically overused and it is virtually impossible for the
15 maintenance and upkeep to really be up to par as we speak.
16 In part because of cuts in city staff and city services.

17 So it would seem to me that we are -- we have
18 already lost ground in those two areas, just in the parks
19 and recreation. Not to mention any additional potential
20 growth, additional population that would impact not just the
21 parks but a whole array of city services.

22 Our libraries are not fully open. We have already
23 suffered a number of cuts in services that are not yet fully
24 restored and it seems here that any growth, according to
25 this analysis, it's insignificant. So I'm puzzled as to the

1 matrix of analysis that you may have used to come to those
2 conclusions. Not to mention any of the other vital services
3 such as -- well, you indicated the wastewater treatment and
4 that sort of thing. So I am curious about that. Ho did you
5 arrive that there would be no impact if we are already
6 under-serviced?

7 MR. ROJAS: If I can just clarify. When we were
8 looking at what was being presented, these are the
9 significant unavoidable impacts. So what we didn't cover in
10 the presentation were all of the ranges of impacts. And if
11 you look at the mitigation monitoring table within the
12 executive summary it really provides a good summary of all
13 of the impacts associated with the implementation of the
14 General Plan, along with the mitigations that bring them
15 down to a less-than significant level.

16 So for the purposes of this presentation we just
17 wanted to bring to your attention those significant impacts
18 that really we were unable to identify mitigations for
19 because -- you could probably address why, you know, the
20 reason for the -- basically no mitigation is available for
21 those specific significant impacts.

22 So the impact that you're talking about in terms
23 of the parks, we should take a look at the range of impacts
24 that are listed in the DEIR and there's an analysis behind
25 that. But for those specifically there has been mitigations

1 identified to bring it down to less-than significant.

2 COMMISSIONER SOTO: Okay. And so I guess along
3 similar lines, and I am not exactly sure how this fits in
4 but it was under the demographics as not being one of the
5 key areas. And I guess my concern has been -- and this ties
6 into the housing element. Is that we have already seen an
7 impact on our community as a result of the predatory lending
8 practices of the financial industry in evacuating members of
9 our community through foreclosures. And that primarily
10 impacts low income and moderate income people. And in this
11 community that also tends to be primarily African-Americans
12 and Latinos and Southeast Asians. And so I, you know. Is
13 that not part of the calculus as well?

14 MR. ROJAS: Most definitely it is. I mean, the
15 whole purpose of the EIR is basically we have this General
16 Plan that is in response to the necessary growth that is
17 going to happen in the region. Along with that, you know,
18 the housing element does play a vital role. You know, how
19 many, how many units of housing is this -- is the city
20 basically going to absorb out of the entire county and where
21 is that housing going to go.

22 And so for the purposes of the General Plan it
23 identifies where that housing is going to go. Which
24 primarily we are out of green fields, we're out of, you
25 know, suburban areas to, you know, develop. Our

1 agricultural areas, we just don't have them. So what we are
2 doing is we are funneling all of the development along our
3 primary corridors which are commercial, retail corridors and
4 putting it there. So that's how it's, I guess, accounted
5 for, if you will.

6 I don't know how well that addresses your question
7 but that's how the housing interplays with the rest of the
8 General Plan.

9 COMMISSIONER SOTO: all right.

10 CHAIR DUNCAN: Okay, other questions?

11 In that case I'd like to move on to our primary
12 function tonight, which is to take your comments on the
13 Draft EIR for the General Plan.

14 I would like to remind you that there is nothing
15 actionable on the part of the Commission tonight, we won't
16 be voting on anything. We are here to collect your comments
17 in a public forum.

18 So to that end first of all I would like to ask
19 each speaker to come up. You each have two minutes. Please
20 state your name and city of residence. And as I mentioned
21 before, if you could cite the element that you are referring
22 to in your comments that would help keep order.

23 So with that may we have the first speaker.

24 MR. ROJAS: All right. The first back of
25 commentors are Del Price, Ana Orozco and Greg Karras.

1 MS. PRICE: Good evening, I'm Del Price. I am a
 2 coordinator, program coordinator for the Richmond Equitable
 3 Development Initiative, REDI. And REDI is a diverse
 4 coalition of regional social justice and community-based
 5 organizations that have been actively working here in
 6 Richmond since 2006 to help shape the policies and promote
 7 social equity and equitable development for the city's
 8 General Plan.

32-1

9 Together with our coalition partners ACCE, APEN-
 10 LOP, CCISCO, CBE, Faith Works, GRIP and Urban Habitat we
 11 represent hundreds of Richmond residents. Like I said,
 12 since 2006 we have worked side by side with city staff,
 13 officials and consultants to help bring the General Plan
 14 forward to this point and to help create a plan of which we
 15 can all be proud.

16 This is a program EIR as staff has pointed out,
 17 which provides us the opportunity to talk about exactly
 18 these next six things. What do we mean when we say,
 19 equitable development?

32-2

20 The six elements of equitable development as
 21 defined by REDI are commitment to the reduction of poverty
 22 and social inequities, revitalization of core neighborhoods,
 23 adequate provision of basic needs and services for all
 24 people regardless of their socioeconomic status, awareness
 25 of interdependence of land use, economic development,

1 transportation, housing and health.

2 Development that results in a healthy, local
3 environment and strong quality of life. Meaningful
4 community engagement and leadership development of those
5 most directly impacted or displaced by development. Low
6 income families, communities of color, immigrants.

7 With these commitments and principles in mind we
8 are prepared to highlight specific issues with the DEIR and
9 follow up with a written summary by the March 31 deadline.

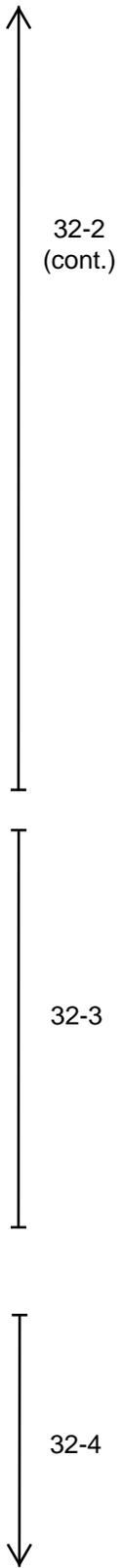
10 For example, we believe the DEIR needs to include
11 sufficient analysis of environmental impacts likely to
12 result from expansion, intensification of industrial and
13 commercial land uses.

14 It should also include a complete transportation
15 needs analysis and mitigation options.

16 For example, last night I attended a meeting,
17 Contra Costa County Transportation Authority. They pointed
18 out that Richmond is expected in the next 25 years to have
19 the second highest projection of jobs in the county that is
20 second to Concord.

21 (Timer tone.)

22 MS. PRICE: I have one more sentence. Further, it
23 should ensure that the environmental clean-up and
24 improvement assistance funded by the city, with city
25 resources, benefit low income communities and ensure that



1 contaminated lands in proximity to residential areas or
2 other areas planned for residential use are fully remediated
3 to residential use levels.

4 My colleagues will address these issues in more
5 detail and I thank you for your time.

6 (Applause.)

7 MR. ROJAS: Ana Orozco.

8 MS. OROZCO: Before I speak I have some
9 information that I'd like to share with the members of the
10 Planning Commission.

11 CHAIR DUNCAN: Please state your name and city of
12 residence.

13 MS. OROZCO: Ana Orozco. I am representing
14 Communities for a Better Environment in Richmond.

15 So for CBE we'd like to say that the Draft
16 Environmental Impact Report is flawed as it is written. It
17 fails to include sufficient information and analysis of the
18 environmental impacts likely to result from expansion and
19 intensification of industrial and commercial land uses.

20 The climate element within the General Plan sets a
21 goal of reducing greenhouse gas emissions, those are the
22 emissions that accelerate climate change, by 20 percent over
23 the next 10 years but it only targets traffic and
24 residential emissions. As long as Richmond ignores
25 commercial/industrial sources of greenhouse gas emissions

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1 not only will the city not be able to accomplish its goals
 2 set out in the climate element but emissions will only
 3 worsen unless there is explicit language in the plan that
 4 explains that industrial/commercial facilities will be under
 5 strict regulation and will have to cooperate with the city's
 6 goal of emissions reduction.

7 And this graph that my colleague Jessica is
 8 holding over to my right, your left, illustrates this point
 9 very clearly. Here over on the right the column illustrates
 10 all greenhouse gas emissions in the city of Richmond. The
 11 black part, which is the majority, are emissions that come
 12 from commercial/industrial facilities. And within those
 13 facilities, the Richmond oil refinery creates -- makes up
 14 most of those emissions in the commercial/industrial
 15 emissions.

16 If we only focus on traffic and residential
 17 emissions, which are here at the top. Even if we were to
 18 remove those 100 percent, which is impossible, you wouldn't
 19 be able to get to your goal set out in the plan. Which this
 20 green bar represents the goals of the General Plan. By 2020
 21 Richmond hopes to get greenhouse gas emissions down to this
 22 level and clearly it's impossible without including
 23 industrial/commercial facilities. So that's the point that
 24 I want to make today.

25 (timer tone)



32-5
(cont.)

32-6

1 MS. OROZCO: The General Plan has to include
2 commercial/industrial facilities. Thank you.

3 CHAIR DUNCAN: Thank you. Next speaker, please.

4 MR. ROJAS: Greg Karras.

5 MR. KARRAS: Greg Karras, Communities for a Better
6 Environment, Oakland. Picking up where Ana Orozco left off.

7 CBE asked you to add measures to require the
8 industrial emissions reductions needed to meet city climate
9 protection targets in Richmond. Reductions in Richmond, not
10 offsets to reduce somewhere else while emissions don't get
11 reduced here.

12 Industrial emissions drive the citywide emissions.
13 What does that mean? Total emissions go up or down with
14 industrial emissions. These fossil fuel combustion
15 emissions emit toxic co-pollutants along with greenhouse
16 gases. You burn fossil fuels you get all the combustion
17 products, including the ones that are hurting our health
18 here.

19 Now doing, doing what we request, requiring
20 industrial emissions reductions needed to meet the city
21 climate reduction goals will protect climate, reduce severe
22 ongoing impacts causing environmental injustice and blight
23 in the shadow of the smokestacks here and redirect huge
24 resources towards the green energy and green jobs economy in
25 Richmond before that green economy ship sails away. We can

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32-9

1 do that now. That's the real benefit in addition to
2 protecting our health, which we absolutely have to do.

3 The project as proposed does not do that and the
4 EIR fails to analyze it. There's three absurd consequences
5 of that. It ignores a potentially dangerous significant
6 increase in total pollution from industrial pollution
7 increases; ignores needed and job-creating ways to avoid
8 that pollution; and three, it then falsely claims that the
9 pollution impacts are unavoidable. By the way, I'm talking
10 mainly about the energy and climate element.

11 So unavoidable. That's EIR-speak for asking you
12 to throw up your hands, rubber stamp most poisoning, when
13 you can act now to avoid it.

14 Now adopting an EIR like that with those fatal
15 flaws would be inappropriate in every sense.

16 (Timer tone.)

17 MR. KARRAS: So we urge you to fix it. Thank you.

18 I have an expert report with a copy for each of you and an
19 original for staff.

20 CHAIR DUNCAN: Thank you. Next speaker, please.

21 MR. ROJAS: The next speakers include Tiana
22 Drucker (sic), Maria Alegria and Tarnel Abbott.

23 CHAIR DUNCAN: Please state your name and city of
24 residence, please.

25 MS. DRISKER: Hi, my name is Tiana Drisker. I'm a

1 Richmond resident and I'm a volunteer with Communities for a
 2 Better Environment. I also volunteer with the Richmond
 3 Progressive Alliance.

4 And first I would like to challenge the gentleman
 5 that said climate change is unavoidable and preserving
 6 culture is unavoidable in this process of the General Plan.

7 I believe that we can -- industrial/commercial
 8 sources of pollution are not included in the General Plan to
 9 reduce greenhouse gases. I want you to include these
 10 facilities like Chevron and they have to change their ways.
 11 They have to make real upgrades to reduce their emissions.
 12 This will create jobs.

13 These facilities should be mandated to train and
 14 hire locally for these jobs. And training and hiring
 15 locally will help preserve the culture in the community
 16 because people will be empowered, people will be learning,
 17 and these opportunities will help the community grow. So
 18 with the funding that Chevron and the four other refineries
 19 surrounded by Contra Costa County has, we expect the General
 20 Plan to include job training, especially alternative energy
 21 training, because the resources are available.

22 In addition to that the DRE fails to evaluate the
 23 health impacts on Richmond residents from local pollution
 24 sources. The goal of the climate change within the General
 25 Plan is to reduce greenhouse emissions, that's great.



32-9
(cont.)

32-10

32-11

1 However, there is no plan to reduce co-pollutants, which is
2 the type of pollution that causes health problems like
3 asthma and cancer.

4 Richmond is already plagued with preventable
5 illnesses and diseases. Richmond cannot afford for the
6 General Plan to overlook these serious health hazards. We
7 cannot ignore the fact that Contra Costa County is home to
8 more than four -- home to four refineries; and oil
9 refineries are the top pollutants --

10 (Timer tone.)

11 MS. DRISKER: -- top producers of co-pollutants.
12 So please consider our health in the general plan and help
13 create some green jobs.

14 CHAIR DUNCAN: Thank you. Next speaker.

15 MR. ROJAS: Maria Alegria.

16 MS. ALEGRIA: Thank you and good evening. My name
17 is Maria Alegria; I am representing Faith Works and its
18 local project, Richmond Vision, which is located here in
19 Richmond. We are a coalition of faith, labor and community
20 organizations and individuals committed to working for
21 policies that provide social, environmental and economic
22 justice to Richmond residents.

23 In regards to the General Plan's housing element,
24 which has been removed from this Draft EIR process due to
25 the extensive revisions to correct the legal deficiencies to

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32-11
(cont.)

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1 make the draft housing element compliant with state housing
 2 laws I would like to submit for your consideration that
 3 meeting affordable housing needs has tangible, environmental
 4 benefits. And failing to do so would have harmful,
 5 environmental impacts.

↑
 32-13
 (cont.)

6 It is important to consider in land use
 7 designations that residents of all incomes have housing
 8 opportunities near jobs, reliable transit, recreation
 9 opportunities and services. In doing so they will drive
 10 less, walk more and enjoy healthier lives.

↑
 32-14

11 Environmental impacts will also be reduced. Less
 12 traffic, less air pollution, less greenhouse gases and
 13 improved public health. On the other hand if a housing
 14 element EIR were done thoroughly and the necessary rezoning
 15 included at the same time as a housing element update, that
 16 could smooth the way for the approval of projects to move
 17 forward.

↑
 32-15

18 Similarly the housing element would be consistent
 19 with the land use policies in the EIR that include mixed
 20 income and integrated neighborhoods, walkable neighborhoods
 21 and livable streets, neighborhood-serving goods and
 22 services, your stores, equitable distribution and access.

23 As I stated earlier, the housing element should
 24 lay out the city's plan to meet its housing needs. However,
 25 adequate environmental review of the current draft housing

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 32-15
 ↓

1 element was impossible because the draft --

2 (Timer tone.)

3 MS. ALEGRIA: -- failed to include vital pieces of
4 the complete housing plan, including an adequate assessment
5 of the community's housing needs and an inventory of sites
6 available for housing to meet those needs.

7 And finally I request that you make an official
8 statement reassuring the public that the environmental
9 impacts of the housing element will be studied fully once
10 the revisions to the housing element have been completed.
11 Thank you.

12 CHAIR DUNCAN: Thank you. Next speaker please.

13 MR. ROJAS: Tarnel Abbott followed by Nita
14 Sisamouth, Colin Miller and Mary Rein. Marcy Rein, I'm
15 sorry.

16 MS. ABBOTT: Good evening, Commissioners. My name
17 is Tarnel Abbott, I'm a resident of Richmond. I work with
18 the Richmond Progressive Alliance and I am also a volunteer
19 with Communities for a Better Environment.

20 This reduction in greenhouse gas is imperative.
21 That is acknowledged in -- I'm sorry, I'm speaking on the
22 General Plan element 8, Energy and Climate. It's
23 acknowledged that reduction of greenhouse gas is imperative.

24 But we have a problem with this because the
25 Chevron refinery, which is the largest emitter of greenhouse



32-15
(cont.)



32-16

1 gas emissions in the city, and it's either the first or the
2 second in the state depending on what you look at.

3 SPEAKER FROM THE AUDIENCE: It's first.

4 MS. ABBOTT: First in the state, okay. The
5 largest emitter of greenhouse gases in the state of
6 California.

7 But according to our Draft EIR, we can't do
8 anything about that. This is a problem. It's like saying
9 there's a bully in the schoolyard but he's too big of a
10 bully so we're going to let him go on bullying us. This
11 cannot go on.

12 And we are supposed to be in our, in our EIR we
13 are -- in our, sorry. In our planning document we are
14 supposed to be a leadership, in a leadership position to
15 ending greenhouse gas emissions.

16 Climate change affects all of us, it's coming fast
17 and it's going to hit poor people first and hardest.

18 We import food from all over the planet. Gas
19 prices are going up and food shortages are going to occur as
20 climate is affected in all continents.

21 What are we doing? It's time to wake up, take
22 real leadership and put that bully in a place where --

23 (Timer tone.)

24 MS. ABBOTT: -- those emissions, those greenhouse
25 gas emissions are contained. We've got to put a lid on it.

32-16
(cont.)

32-17

↑ 32-17
↓ (cont.)

1 We've got to do it now. We don't have time.

2 CHAIR DUNCAN: Thank you. Nice time to start.

3 (Applause.)

4 MS. SISAMOUTH: Good evening, Planning Commission.

5 Nita Sisamouth, a proud resident of Richmond, born and

6 raised. I will be touching on elements 1 and 8.

7 First I just kind of want to acknowledge the

8 policy of the Contra Costa Environmental Justice which was

9 adopted in 2003. The framework considers human health and

10 environment with fair treatment of all people who have a

11 environmental concern.

12 And my concerns of Element 1, which is Economic

13 Development, is that the green jobs have kind of explicit

14 language around being accessible to multiple languages to

15 specifically serve the Richmond residents.

16 For Element 8, the Energy and Climate. Green jobs

17 and also better green practices/policies need to be more

18 specific and explicit in the language on how Richmond will

19 regulate the 3.5 millions of metric tons that they have

20 jurisdiction over.

21 Which leads me into air quality. So of that 3.5

22 millions of metric tons that the city of Richmond has

23 jurisdiction over, 70.3 is emitted by commercial/industrial

24 sources while the remaining is collectively emitted from

25 transportation, residential and waste. We need to have more

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1 -- like I said, more explicit language on how to reduce that
2 70.3 percent.

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32-20
(cont.)

3 In the DEIR under the air quality, Item 3.3/3 the
4 language of toxic air contaminants impacts classified as
5 being less-than significant needs to be reevaluated to
6 consider the -- excuse me. To be reconsidered to include
7 residents and also the sensitive receptors, especially for
8 those that are here for years. I think that the toxic air
9 contaminants impacts being classified as less --

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32-21

10 (Timer tone.)

11 MS. SISAMOUTH: Anyways, in conclusion, the
12 greenhouse gas inventory is included in the DEIR yet the
13 commercial and industrial is excluded as a source of the
14 General Plan and needs to be put back into the General Plan
15 to have parallel, linear language.

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32-22

16 CHAIR DUNCAN: Thank you.

17 MS. SISAMOUTH: Questions?

18 CHAIR DUNCAN: Next speaker, please.

19 MR. ROJAS: Colin Miller.

20 (Applause.)

21 MR. MILLER: Good evening. My name is Colin
22 Miller and I am the climate justice coordinator for Urban
23 Habitat; founding member with the Richmond Equitable
24 Development Initiative. My comments are regarding the
25 housing element.

32-23

1 The Draft Environmental Impact Report needs to
2 consider the potential for significant environmental impacts
3 of higher greenhouse gas emissions due to an increase of
4 vehicle miles traveled resulting from the displacement of
5 low income Richmond residents.

6 The critical importance of preventing displacement
7 by ensuring adequate renter protections to reduce greenhouse
8 gases is justified by the 2010 report from the Dukakis
9 Center for Urban and Regional Policy called Maintaining
10 Diversity in Transit-Rich Neighborhoods.

11 The study found that transit-oriented development
12 and transit investments leads to increased housing prices
13 resulting in gentrification and displacement unless
14 strategies, including strong renter protection policies, are
15 in place. The demographic of communities moving into new
16 gentrifying, transit-oriented development are more likely to
17 own and drive cars and less likely to use public transit.
18 Thus, new transit stations actually tend to result in less
19 transit usage. Because the core transit users, namely low
20 income communities, renters and communities of color, have
21 been priced out and displaced in favor of car-owning and
22 driving residents.

23 Without policy safeguards to prevent displacement
24 existing renters face serious pressures of being priced out
25 of Richmond. Displaced residents are then forced to drive

1 long commutes between Richmond from the Central Valley and
 2 outside the region as they travel between home, job, place
 3 of worship, family, friends and community. Also
 4 significantly increasing greenhouse gas emissions.

5 This situation contradicts the very purpose of
 6 transit-oriented development to address climate change by
 7 reducing greenhouse gas emissions and must be considered a
 8 significant environmental impact in your report. Thank you
 9 for your time and good evening.

10 CHAIR DUNCAN: Thank you. may we have the next
 11 speaker, please.

12 MR. ROJAS: Marcy Rein followed by Antonio
 13 Medrano, Ric Borjes and Ralf Morgan.

14 MS. REIN: Hi, I'm Marcy Rein, I live here in
 15 Richmond and I work with REDI.

16 I want to say one general thing, which is as I've
 17 been learning about what a General Plan is I have been
 18 struck by what a very powerful thing it is. It's a city's
 19 vision of what it wants to be and it's a very concrete
 20 commitment to that vision because it is going to guide all
 21 the laws and policies.

22 So to me this Environmental Impact Report is
 23 really something very serious because it's insuring that we
 24 are embodying a vision of a city that is going to be a
 25 really healthy, thriving place that has sustainable jobs,



1 that has no neighborhoods that bear more than their share of
 2 pollution burden, that has polluters paying their fair share
 3 of reducing that burden.

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 32-25
 (cont.)

4 So in line with that I just want to emphasize some
 5 of the threads that my friends and neighbors are talking
 6 about or will talk about. One is that the DEIR should
 7 include a study of local hire. As not only obviously good
 8 for people for jobs but as a key strategy for reducing
 9 greenhouse gas emissions. Which is really quite sensible in
 10 a non-technical way. If people who live here are working
 11 here they are not going to drive as much and there's going
 12 to be less pollution.

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 32-26

13 And then in line with that also the DEIR should
 14 include a really careful transportation needs assessment,
 15 which it doesn't.

↓
 32-27

16 And then also I think as other speakers have
 17 broken down really in detail, there's a need to look at the
 18 way that the Plan approaches meeting the greenhouse gas
 19 emission targets. Because it is pretty clear that that's
 20 not going to happen unless commercial and industrial
 21 polluters are included in the framework and that's a pretty
 22 serious emission.

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 32-28

23 So I recognize that there is a huge amount of work
 24 that went into this and this is just to say that there's,
 25 you know, always going to be something with something this

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1 big and important that's left out. So thank you for the
2 opportunity to speak to this.

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32-28
(cont.)

3 CHAIR DUNCAN: Thank you. Next speaker, please.

4 MR. ROJAS: Antonio Medrano.

5 MR. MEDRANO: Good evening, members of the
6 Commission, Antonio Medrano. I live in San Pablo but I work
7 here in Richmond with Contra Costa Faith Works. Buenas
8 noches, good evening.

9 I'm here to speak on the Draft EIR as it relates
10 to equitable economic development whose purpose is to
11 conduct strategic planning here in the city of Richmond.
12 This would establish long term priorities and criteria to
13 guide future economic development and growth.

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32-29

14 It also encourages collaboration with one, unions,
15 nonprofits and educational institutions and major employers.

16 And here I hear the voice of Corky Gonzalez on the city
17 council, strengthen job training, job opportunities for
18 local residents.

19 The Draft EIR should study local hire and
20 workforce training programs as strategies to increase the
21 number of people who both live and work in Richmond. And
22 also help decrease harmful gas house emissions. For
23 example, the General Plan will increase vehicle mileage
24 traveled by 50 percent by 2030, which far outstrips the
25 contemplated 21.95 percent population increase so there's an

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1 imbalance there.

2 The Draft EIR identifies four significant impacts
3 that result in part from the dramatic increase in vehicle
4 miles traveled, the climate change.

5 One, regional emissions in conflict with the Clean
6 Air Plan. Two, increased greenhouse gas emissions. Three,
7 traffic congestion that exceeds levels of service standards.
8 And four, increased congestion and lower travel speeds.

9 Because the length of trips internal to Richmond
10 is dramatically lower than trips that originate outside the
11 city, 2.6 miles versus 12.0 miles, increasing the proportion
12 of workers who are also Richmond residents --

13 (Timer tone.)

14 MR. MEDRANO: -- is likely to reduce vehicle miles
15 traveled. Gracias, good evening.

16 CHAIR DUNCAN: Thank you very much. If we could
17 pause for just a minute. The placard with the dinosaur is a
18 bit distracting for the speakers so if you could take that
19 out of the view of the television camera, please.

20 SPEAKER FROM THE AUDIENCE: Okay.

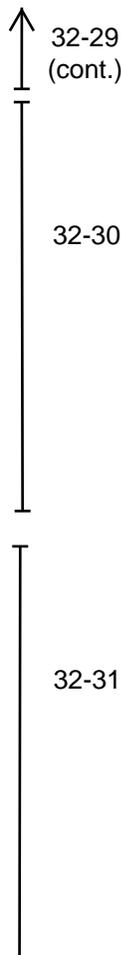
21 CHAIR DUNCAN: Thank you.

22 MR. ROJAS: Rick Borjes.

23 COMMISSIONER SOTO: Hold on. Mr. Medrano?

24 MR. MEDRANO: Yes.

25 COMMISSIONER SOTO: I believe you meant -- as much



1 as I enjoyed you invoking Corky Gonzalez I think you meant
2 Corky Boozé.

3 MR. MEDRANO: Oh, I'm sorry, Corky Boozé.

4 (Laughter) I apologize to Corky. He would have called me
5 tonight, I guess. Gracias, gracias, thank you.

6 MR. BORJES: Yes, I hear Corky dialing the phone
7 right now.

8 My name is Ric Borjes, I'm the chief of cultural
9 resources for the National Park Service at Rosie the Riveter
10 World War II Home Front National Historical Park.

11 We are honored to be a component of Richmond's
12 efforts to rediscover and honor its history and
13 significance. Our interest is primarily in the national
14 historical park element. We also have interest in the
15 zoning element and the historic resources section.

16 The National Park Service believes that the
17 Environmental Impact Report does adequately describe the
18 impacts and mitigations related to those resources that are
19 directly or indirectly associated with Richmond's national
20 park.

21 We believe that implementation of the General
22 Plan, and particularly the National Historical Park element,
23 will have a beneficial effect on the resources of Rosie the
24 Riveter as well as the significance of Richmond as a
25 nationally recognized point within the National Park System

32-32

1 for all World War II Home Front associated activities.

2 We look forward to continuing to work with the
3 city of Richmond in the close partnership that is described
4 in the Draft General Plan. Thank you.

5 CHAIR DUNCAN: Thank you, Ric. Next speaker,
6 please.

7 MR. ROJAS: Ralf Morgan.

8 MR. MORGAN: Hi, I'm Ralf Morgan, I'm a resident
9 of the city of Richmond. I would like to address the fact
10 that the Draft EIR does not include the Escronia (phonetic)
11 estates specific plan or reference it in any way as becoming
12 part of the General Plan.

13 We have submitted a letter to the Planning
14 Commission from our counsel, Stuart Fleishman, and I am not
15 going to bore you by rehashing all of that stuff.

16 What I would like to address is that this is
17 really an element of fundamental decency and fairness.
18 There are 24 homeowners who have built their homes to far
19 more restrictive standards than are available elsewhere in
20 the city of Richmond. We have paid specific fees to the
21 city of Richmond in order to be allowed to build in this
22 area.

23 And the effective rescission of this plan is
24 basically going to eliminate everything that we have worked
25 for in that area in terms of creating view corridors for all

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32-32
(cont.)

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32-33

1 the city residents of Richmond, creating open space for the
 2 citizens of Richmond to use. And above all the fact that
 3 our homes, because of the restrictive standards, have been
 4 situated in a manner that when the additional development
 5 happens in the open space that windows will be in the wrong
 6 place and we will not have views of anything other than
 7 other walls. And it is just a very, very unfair thing.

8 And I feel that this Escronia Estates specific
 9 plan has been around since 1986. We have all complied to
 10 it, we have all paid into it. And I think to eliminate it
 11 from the General Plan is a travesty against the citizens who
 12 actually live there and work there. thank you.

13 CHAIR DUNCAN: Thank you. Next speaker, please.

14 MR. ROJAS: Next we have Nick Krause, Daniel
 15 Buntin Murray, Dan Murray and Len Nibbi.

16 MR. KRAUSE: Hello, my name is Nick Krause, I'm a
 17 resident of El Cerrito. I want to speak regarding the noise
 18 element of, well actually both the EIR and the General Plan
 19 update.

20 I am a professional acoustical engineer with over
 21 30 years of experience in community noise assessment. My
 22 interest in this is pretty much just professional. I have a
 23 comprehensive library of noise elements and noise ordinances
 24 from all the municipalities and the counties in the area.
 25 And just as a matter of course I wanted to try to interject

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(cont.)
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1 my comments to help you guys improve the quality of what
2 you've got here.

3 I have a written write-up on the analysis. I've
4 spent the last couple of weeks going fairly carefully
5 through both the General Plan and the EIR. I only have
6 three sets. You should get one. You should get one. You
7 can give it to --

8 MR. KRAUSE: To him is okay?

9 CHAIR DUNCAN: Yes.

10 MR. KRAUSE: Anyway, it's very specific in what it
11 says. I'll just go through very quickly what I think are
12 the highlights.

13 First and foremost is a couple of general
14 comments. One is, based on my experience it's a bad idea to
15 lump the noise element in with another element in the
16 General Plan. You've got it stuck in there with public
17 safety. That's usually a bad idea and is indicative of
18 somebody trying to dodge the noise issues. It says quite
19 specifically in the General Plan guidelines that noise
20 should be a separate element. They even have a separate
21 appendix stating what should be in it. So that would be a
22 general recommendation. That's probably kind of late in the
23 process to do anything about now.

24 Another general comment is that the noise data
25 that is being presented is --

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(cont.)

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1 (Timer tone.)

2 MR. KRAUSE: -- often in a format that's really
3 not appropriate. Too much precision.

4 Anyway, general comments, they're here in the
5 package. I make myself available to you for any questions.

6 I've got my contact information on the top of the sheet
7 there. I do pro bono work for nonprofits in the community.

8 So if there is any way I can help you folks with the
9 quality of the noise element I'd be happy to do so.

10 CHAIR DUNCAN: Thank you very much, sir. Next
11 speaker, please.

12 COMMISSIONER TELTSCHICK-FALL: Thank you.

13 MR. ROJAS: Daniel Buntin Murray. I'm sorry if I
14 pronounced the --

15 MR. D. MURRAY, JR.: Exactly right.

16 My name is Daniel Buntin Murray, Jr. and I live in
17 Mill Valley. I'm a landowner in Richmond. We own some
18 land on the shoreline on the Richmond Parkway.

19 The Draft General Plan, the accompanying Draft
20 Environmental Impact Report falsely characterize our land,
21 omit key analyses of proposed land use changes and offer
22 inadequate alternative analysis.

23 Twice in 2010 an attempt to associate an open
24 space land use designation to our property's change area was
25 motioned by the City Council. Both times they lacked the



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(cont.)

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1 requisite support to pass a vote. In the Draft General Plan
 2 -- in the Draft General Plan that's accompanying the Draft
 3 Environmental Impact Report our land appears in Change Area
 4 12. The suggested changes are similar to the language and
 5 spirit to the motions that lacked the support of the City
 6 Council in 2010. The new documents do not contain adequate
 7 alternative land uses or adequate analysis of impacts of
 8 proposed changes. Such analysis is mandated by CEQA.

9 In light of the gross and negligent oversight
 10 important questions arise. If an open land use designation
 11 lacks Council support in 2010 who gave direction to staff to
 12 make the changes, but most importantly, when? Were the
 13 specific changes to Change Area 12 in the Draft General Plan
 14 when they were given to the authors of the Draft
 15 Environmental Impact Report? Why is there a lack of
 16 alternatives and analysis in the DEIR in connection with
 17 Change Area 12?

18 The lack of alternatives in this document is
 19 particularly troublesome to us because we recently were
 20 given support for industrial development on our land by the
 21 city and the neighboring community. We recently responded
 22 to the request for qualifications by the Lawrence Berkeley
 23 National Lab who is looking for a second site for a campus.

24 The letter of support was written by the city manager to
 25 the LBNL on our behalf. Right here it states the city of



32-37
(cont.)

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1 Richmond will give full support to the Lab if they could
2 choose our site.

3 (Timer tone.)

4 MR. D. MURRAY, JR.: The Parchester Village
5 Neighborhood Council also offered it's similar emailed
6 support.

7 So I ask you, how is it conflicting? If there is
8 one alternative in the Draft General Plan that is analyzed
9 by the EIR to make our land open space, and there is obvious
10 support by the community and city to keep it industrial use,
11 how is it no alternative was examined for that industrial
12 use? That needs to be examined and rectified before you
13 guys finalize that document. Thank you.

14 CHAIR DUNCAN: Thank you very much. Next speaker,
15 please.

16 MR. ROJAS: Dan Murray.

17 MR. D. MURRAY, SR.: Good evening, councilmen. My
18 name is Daniel Buntin Murray, Senior, that was my son. I am
19 here to talk a little bit about Area Change number 12, which
20 my son alluded to. And I am here to talk about fairness and
21 justice and how the General Plan is being used in this
22 particular case to downgrade or try to downgrade our land
23 from light industrial to open space recreational. Obviously
24 the land would be worth more as light industrial than it
25 would be as recreational.

32-39
(cont.)

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1 It's a thin guise there to leave a small economic
2 use in the last designation. So you are taking the General
3 Plan or you're following two groups that are primarily
4 responsible or promoting this, the North Richmond Shoreline
5 Open Space Alliance and Citizens for the Richmond Shoreline.

6 Anyway, they wanted -- they want -- in their literature
7 they want the land to -- commercial land to be lowered to
8 the lowest possible use and still give it an economic.

9 You know, we can build a bicycle shop there under
10 there under the current designation if you read it. We can
11 build a bicycle shop, we can build a museum, whatever that
12 might mean. But the land is not going to be worth much.

13 Which opens itself up to what else they want to do
14 and that is to bring the land into public ownership. How
15 would that happen? I think you might guess. Eminent
16 domain. They're going to condemn it. And when they condemn
17 it they're going to condemn it at a very low price, pennies
18 on the dollar of what it's worth now.

19 (Timer tone.)

20 MR. D. MURRAY, SR.: The process, the General Plan
21 process is being used in a wrong way as a taking or
22 attempted taking of our land. Thank you.

23 CHAIR DUNCAN: Thank you. May we have the next
24 speaker, please.

25 MR. ROJAS: Len Nibbi and followed by Robert

32-40
(cont.)

1 Herbst, Joshua Genser and Christine Griffith.

2 MR. NIBBI: Good evening, members of the
3 Commission. My name is Len Nibbi from JHS Properties.
4 Together with Richmond Development Company we own 26 acres
5 located at Goodrich Avenue at the north side of the Richmond
6 Parkway. These 16 building lots are zoned M-1, industrial/
7 office flex, and have had that zoning for at least 30 years.

8 This property is also referred to as the Free (phonetic)
9 Industrial Park. My comments this evening are relative to
10 these lots.

11 In the Draft Plan and EIR we are located within
12 Change Area 12. The draft land use element maps designate
13 this property as open space and the text of the land use
14 element indicates open space, parks and recreation
15 designation. There is no definition in the General Plan
16 glossary for either open space or open space/parks and
17 recreation.

18 On page 3.37 of the draft plan land use element it
19 states that Change Area 12 lacks infrastructure and has long
20 remained undeveloped. This is a serious error in the draft
21 plan and EIR as the property was subdivided in 1982, there
22 is a map on file, a record map that has been filed, a final
23 map. And in addition to that the infrastructure was
24 installed pursuant to that final map. And I have some
25 handouts that were supposed to be given out. Oh, they're

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1 over here, okay.

2 In -- that set of documents includes the aerial
3 photograph of our property, the final map for the
4 subdivision, the as-built improvement plans for the
5 subdivision, the engineer's cost estimate for those
6 improvements and a letter from the Department of Public
7 Works giving the current status of the roadways on the
8 property, which were dedicated and accepted.

9 In 1982, as I indicated, the final subdivision for
10 this property was approved. And that map was deemed to meet
11 the tentative subdivision map which had been approved
12 earlier by the Planning Commission.

13 That final map that you have in front of you, and
14 I have highlighted sections, was signed by the planning
15 director, the city clerk, the city engineer, the district
16 manager of the sanitation district, the recorder. Lands
17 were shown on that map that would be dedicated and they were
18 dedicated.

19 And in addition there was a subdivision
20 improvement plan which is also in your set --

21 (Timer tone.)

22 MR. NIBBI: -- that shows all the improvements on
23 the property. I'll just recite real quickly what those
24 improvements are. Curb gutter roadway side, street
25 lighting, storm water drainage, individual lot drainage,

32-42
(cont.)

1 fire hydrants, cable, telephone, electrical underground,
 2 sewer pump station, gas, monuments. This was \$750,000 worth
 3 of improvements that we installed, which are equivalent to
 4 \$2 million worth of improvements today.

5 In conclusion, the Free Industrial Park is
 6 certainly not, as erroneously stated in the General Plan,
 7 undeveloped and lacking infrastructure. It is fully
 8 entitled with streets, roads and utilities and we have
 9 active plans currently to build on that property. Thank
 10 you.

11 CHAIR DUNCAN: Thank you. May we have the next
 12 speaker, please.

13 MR. ROJAS: Robert Herbst.

14 MR. HERBST: Good evening, Commissioners and
 15 Chair. My name is Robert Herbst from San Rafael,
 16 California.

17 My family owns ten of the building lots in the
 18 Free Industrial Park that you're looking at in front of you.
 19 We bought those lots specifically because they are already
 20 zoned for industrial use and each lot is already served by
 21 existing streets and utilities. That's a huge cost savings
 22 in any development and we paid a commensurate price for
 23 those improvements.

24 We learned on February 14th without any written
 25 notice whatsoever from the city, that the new General Plan

32-42
(cont.)

32-43



1 proposes to take away our zoning and change us to parks and
2 open space. What we would like to know is who made this
3 decision and based on what city approvals or community
4 support.

5 Hector Rojas led off the meeting tonight by
6 stating that the General Plan process included an extensive
7 community-based outreach effort. He is absolutely right.
8 We have been involved in that process throughout. And as
9 you all know it's five-plus years and going. That process
10 has included a number of steps, one of the first was the
11 General Plan Advisory Committee.

12 In your handouts you've got a list of the General
13 Plan Advisory Committee members. There were 40 or 50
14 members that represented a very broad cross-section of the
15 entire Richmond community from business to environmental
16 groups. Whitney Dotson is on that list, Bruce Baird, a
17 number of names that you recognize that are advocating for
18 open space on our property.

19 In April of 2008 the GPAC voted on the preferred
20 land use in our area, in the North Shoreline area, and that
21 vote was 22 to 9 for development over open space. So the
22 open space groups within the city got 9 votes and the rest
23 of the city voted 22. So that was a vote for development,
24 for jobs and economic growth.

25 The only time the Planning Commission has

32-43
(cont.)

1 considered the matter is in October '09 they held a study
2 session on the change areas. They made no decisions on land
3 use but --

4 (Timer tone.)

5 MR. HERBST: -- a number of the Commissioners did
6 note that whatever land use was going to be proposed needed
7 to be picked so that the EIR for the General Plan would be
8 sufficient and would not be flawed by not having analyzed
9 those uses. And in fact we have spoken with the EIR
10 consultant who prepared your document and he has confirmed
11 that open space was not considered in the EIR as an
12 alternative.

13 The City Council --

14 CHAIR DUNCAN: Sir, thank you, your time is up.
15 Thank you. Next speaker, please.

16 MR. ROJAS: Joshua Genser.

17 MR. GENSER: Good evening, Chair Duncan and
18 Commissioners. My name is Joshua Genser. I am a resident
19 of the city of Richmond, a property owner in the city of
20 Richmond, a business owner in the city of Richmond. And
21 that is in fact why I am one of the partners in the Richmond
22 Development Company along with Jerry Overuth who many of you
23 know, who was also born and raised in the city of Richmond
24 and has extensive business interests in the city of
25 Richmond.



32-43
(cont.)



32-44

1 In 1998 we decided that the city of Richmond could
2 use some good homegrown developers to bring some really
3 quality development to the city of Richmond. People who
4 weren't scared of Richmond's reputation. So we created the
5 Richmond Development Company. And among our investments we
6 bought the rest of the Free Industrial Park, the part that
7 Bob and his family didn't buy and we are working in
8 partnership with them.

9 And this was a wonderful opportunity. A fully
10 entitled, industrial subdivision in a great location, right
11 on a freeway. An opportunity to bring really high-quality
12 development to the city of Richmond. A place we could bring
13 attractive businesses. A place that businesses would come
14 to who wouldn't ordinarily otherwise come to Richmond.
15 Because it's got such a great location and because it's
16 farther away from the older and not so attractive parts of
17 Richmond. But not that far away and it's in the path of
18 development.

19 And we have put a tremendous number of resources
20 into it. Now our timing was a little bit poor because as
21 you know we bought it in the year 2000 and it wasn't a year
22 later when the dot-bomb hit and the demand for industrial
23 land went through the floor. But we understand, that's the
24 risk of development. And we were willing to wait and we did
25 wait.

32-44
(cont.)

1 And we've gone through -- we've done some
2 planning. We did consider a residential subdivision when
3 that was really hot. Not a really great use for the
4 property but we talked about it.

5 And now we're waiting for the General Plan. And
6 lo and behold all of a sudden the third draft of the General
7 Plan comes out and it's designated as open space. This is
8 just (snaps fingers) a taking of our land. It is
9 fundamentally, basically unfair and immoral and not to
10 mention illegal.

11 And the EIR, as Bob points out, actually is based
12 upon false facts about this land and about this.

13 (Timer tone.)

14 MR.GENSER: So the EIR is inadequate. The very
15 basis of this is fundamentally unfair.

16 CHAIR DUNCAN: Thank you, Josh. Next speaker,
17 please.

18 MR. ROJAS: Christine Griffith followed by
19 Reverend Kenneth Davis, Owen Martin and Tarnel Abbott.

20 MS. GRIFFITH: Good evening, Commissioners. My
21 name is Christine Griffith, I'm an attorney representing the
22 JHS Properties and Richmond Development Company, the
23 gentlemen that have just been up here speaking about their
24 property being downzoned or downgraded in the General Plan
25 from industrial to open space.

32-44
(cont.)

32-45



32-45
(cont.)

1 The reason that I am here to talk to you is to
2 talk to you about some of the legal consequences that we
3 believe might follow from such a designation.

4 As some of the speakers have mentioned, this
5 change from an economically viable use of industrial,
6 particularly where you have already an approved subdivision,
7 to open space, results in what's called an inverse
8 condemnation. Some of you may be familiar with it. Because
9 it removes all economically viable use of the property.

10 All of the uses that are indicated as permitted
11 under the proposed designation are public in nature. The
12 General Plan specifically states that these areas should be
13 open to the public as much as possible. That's not really
14 possible on private land.

15 The 0.5 FAR that's designated for this area we
16 understand was proposed specifically to avoid a takings
17 claim. It's a sham. There is not any kind of use that is
18 designated in the Plan that would actually be possible on 12
19 acres or 13 acres of this land.

20 It also, as has been I think alluded to, violates
21 the Equal Protection Clause. The reason for this, and there
22 are several cases that are directly on point, is that it is
23 unlawful to downgrade a piece of property in order to lower
24 its economic value for the purpose or with the intent of
25 later putting that land to public use through an eminent

1 domain proceeding. And there are several cases both in the
 2 Ninth Circuit and in the California courts that are directly
 3 on point on this, on this point.

4 (Timer tone.)

5 MS. GRIFFITH: We are also going to be submitting
 6 written comments. We believe that there are significant
 7 flaws in the EIR document itself and will be detailing those
 8 in our written comments to be submitted by the end of March.

9 CHAIR DUNCAN: Thank you.

10 MS. GRIFFITH: Thanks.

11 MR. ROJAS: The Reverend Kenneth Davis.

12 SPEAKER FROM THE AUDIENCE: He's gone.

13 MR. ROJAS: Owen Martin.

14 MR. MARTIN: Good evening, everyone. My name is
 15 Owen Martin, I live in the city of Richmond.

16 CHAIR DUNCAN: Could you speak into the mic,
 17 please.

18 MR. MARTIN: Sorry. My name is Owen Martin, I
 19 live in the City of Richmond. And what I am hoping is that
 20 the General Plan updates meetings I've gone to they talk
 21 about multi-use residential and business on San Pablo and
 22 other commercial areas.

23 Basically I don't see any part of the Plan talking
 24 about tearing down buildings and having any kind of high-
 25 class or low-class or any kind of class selling from trucks

32-45
(cont.)

32-46

1 and trailers.

2 What I'm hoping with the General Plan update is
3 that we encourage Richmond to grow. If you have businesses
4 and residents in the same area you can reduce the driving
5 and therefore have cleaner air. And whether people drive
6 cars with biofuels or electric cars there are ways to
7 mitigate driving distances.

8 But the open shoreline, we have 35 miles of it.
9 And to mix any portion of that 35 miles with businesses and
10 residences would increase our tax base, our income base and
11 both property tax and business tax and income tax. So
12 hopefully our business community can grow. Thank you.

13 CHAIR DUNCAN: Thank you. Next speaker, please.

14 MR. ROJAS: Next we had Tarnel Abbott but she
15 spoke earlier and I don't believe I see her in the audience.
16 After that we have Katrinka Ruk, Mary Selva and Garland
17 Ellis.

18 MS. RUK: Good evening, Commissioners. My name is
19 Katrinka Ruk and I am a resident of Richmond. Sorry for the
20 noise. I'm going to pass this on to you all, thank you.
21 Like I said, I live in the city of Richmond but I am
22 representing the Council of Industries tonight.

23 I wanted to speak about a couple of things in the
24 DEIR, just the DEIR specifically, and I have more specific
25 comments on the handouts there. But just a couple points in

32-46
(cont.)

32-47

1 regards to actions that are noted in the DEIR about noise,
2 demolition procedures of historic sites and diesel truck
3 idling.

4 There is actually progress being made on this
5 within the city right now. We have a couple of ordinances
6 put together and we're working on a few more. So I'm just
7 wondering if perhaps the DEIR can make note of that because
8 there is some serious progress being made on that.

9 I wanted to point out, and it could just be my
10 printer, but it looks like the maps reflecting the
11 transition buffer zone in the indus -- Ford peninsula area,
12 it appears as though there is some live-work and medium
13 density mixed-use residential in that area. And it's by
14 ordinance supposed to be a buffer zone, not having any
15 residential in it because of its adjacency to the industrial
16 port uses. So again, it could be my printer ink but if you
17 all could just take a look at that I'd appreciate it.

18 Also maps depicting the Ford Peninsula Harbor Way
19 area where the industrial zone currently is. Again, it
20 looks as if that has been rezoned to show commercial and
21 mixed-use. So I'm hoping I, again, just misunderstood that.

22 (Timer tone.)

23 MS. RUK: And I just wanted to state a couple of
24 things. Demographic statistics need to be updated. I think
25 Commissioner Soto pointed that out.



32-47
(cont.)

32-48

32-49

1 And I would also like to suggest that the climate
 2 change chapter include the Bay Planning Coalition's reports
 3 also, so the BPC.

4 CHAIR DUNCAN: Thank you very much.

5 MS. RUK: Thank you, thank you very much.

6 MR. ROJAS: Mary Selva.

7 MS. SELVA: Good evening, my name is Mary Selva, I
 8 am the president of the Richmond Annex Neighborhood Council.

9 The same as the last General Plan update we're
 10 reviewing this current General Plan. We put a lot of effort
 11 into the previous General Plan and worked hard to make sure
 12 that certain goals and policies were put in there.

13 We want to make sure that there is a distinction
 14 and separation between what the planning department is
 15 classifying as the South Shoreline and the Point Isabel area
 16 and not lump those two together. As it currently reads, I
 17 mean anybody who looks at it and we were all under the
 18 impression that the South Shoreline Plan included the entire
 19 South Shoreline area. In which case single family homes,
 20 multi-family units, condos, townhouses, the Point Isabel
 21 area would be totally inappropriate. We have always been
 22 opposed to that.

23 The area along San Joaquin. This is under the
 24 land use element. The proposed community nodes and gateway
 25 land use category. We strongly feel that that is

32-50

32-51

1 inappropriate. And the height of 55 feet, you can imagine
2 how that would be. Beyond the Boat Mill Center the blue
3 building is 48 feet. If you can imagine something like that
4 there, 55 feet would dramatically and significantly block
5 views for much of the Richmond Annex, where most of the
6 residents of the Annex bought their homes for that direct
7 in-line view through the Golden Gate. We'd like that to be
8 changed.

32-51
(cont.)

9 Also the land -- the infrastructure does not have
10 the sewer capacity. There is a main sewer line that goes
11 through there. It leaks. And that has been an issue for
12 every project that we have reviewed in that area --

32-52

13 (Timer tone.)

14 MS. SELVA: -- including a flooding problem. So
15 there's a lot of other things that I would like to address
16 but I have run out of time so we will submit it in writing.

17 CHAIR DUNCAN: Thank you.

18 MS. SELVA: We'll get together, thank you.

19 CHAIR DUNCAN: Thank you.

20 MR. ROJAS: Garland Ellis.

21 MR. ELLIS: My name is Garland Ellis, I'm a
22 resident of Richmond. I'm the vice president of the
23 Richmond Annex Neighborhood Council, also on the RNCC Board.

32-53

24 I'm addressing the LOS, Level of Service. It's
25 found in Section 3 of the DEIR.

1 I-80, I-580, of course have traffic problems that
 2 will probably never be cured. But to take those traffic
 3 issues and then relegate the same concerns to the whole city
 4 is unfair. Going through the DEIR you have taken about six
 5 streets which you have cherry-picked and stated them as
 6 being the worst of all conditions. Although when you look
 7 through the DEIR about 80 percent of the streets meet an EOS
 8 of A through C. You're wanting to not accept the old
 9 standard of D but not shift it to E. Throughout the whole
 10 city residential streets, frontage roads, everything, which
 11 is unacceptable.



32-53
(cont.)

12 Mitigation will not be equitable to all
 13 neighborhoods. Too much depends upon public transit.
 14 There's unrealistic goals. AC Transit receives more than 50
 15 percent of its funding from the state; we know where that's
 16 going. The city of Richmond has no funds for paratransit.



32-54

17 By going to this system you cannot mitigate
 18 problems from neighboring cities. For example, if Albany
 19 were to put 5,000 apartments on Albany Hill the city of
 20 Richmond could do nothing if all that traffic flowed toward
 21 Central Avenue. By having a higher EOS you could do
 22 something about that.



32-55

23 It shifts too much of the responsibility towards
 24 ferry boats and buses which have higher emission standards
 25 than cars. So are you really fixing anything --



32-56

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(Timer tone.)

MR. ELLIS: -- by shifting to those modes of transportation and not using cars?

There's a lot more but we don't have time to cover it.

CHAIR DUNCAN: Thank you. Next speaker, please.

MR. ROJAS: And we come to our last three speakers, Jerry Yoshida, Torm Nompraseurt and Teijae Taylor.

MR. YOSHIDA: Good evening; Jerry Yoshida, Richmond Annex Neighborhood Council board. I'm a resident of Richmond.

I'm just going to take off on a couple of pieces that was discussed with my two colleagues. It's regarding land use, circulation, economic development and if I have time I'll go into something else, public utilities.

Just to fill in with the land use. It's regarding the -- what's being proposed on the south side. And it wasn't discussed in the General Plan or anything else and it wasn't totally addressed in the EIR. It was proposing single-family and multi-family housing on the south side, which is totally inappropriate in an industrial area.

We're talking about the Seneca site, the campus and those areas. That's the south side. So it should be more specific of where they're talking about, otherwise it shouldn't be allowed in an industrial -- just because of the

32-56
(cont.)

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32-58

1 buffering that's necessary.

2 The other thing related to economic development
 3 that should be discussed is the fact that single-family is
 4 the law of diminishing returns. Where are you going to get
 5 your bucks in the cities? Industrial and commercial uses.
 6 That's where it's going to come. Other cities are trying to
 7 do that and I think the city of Richmond should do the same
 8 thing, not relying on just single-family or residential. We
 9 know that, Prop 13, right?

10 Regarding LOS. You don't throw the baby out with
 11 the bath water. I thought that the chart was a little
 12 shewed because it talks about worst case situations. A lot
 13 of them are marked Bs and Cs. And so -- a few of them are
 14 Ds but why throw it out with an F or E?

15 (Timer tone.)

16 MR. YOSHIDA: Thank you.

17 CHAIR DUNCAN: Thank you, Jerry.

18 MR. YOSHIDA: We will be submitting comments.

19 CHAIR DUNCAN: Yes. And all of you who are here,
 20 please be mindful that the 31st is the date for written
 21 comments.

22 MR. YOSHIDA: Thank you.

23 MR. ROJAS: Torm Nompraseurt.

24 MR. NOMPRASEURT: Well good evening, Commission
 25 Chair and also Commission Members. It's nice coming back to

↑ 32-58
 ↓ (cont.)

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32-61

1 see some of the new faces on the Commission.

2 CHAIR DUNCAN: Sir, please state your name and
3 city of residence.

4 MR. NOMPRASEURT: Torm Nompraseurt, I live here in
5 Richmond for 35 year. There are two areas that I want to
6 address today, particularly on the climate and energy
7 element.

8 But the point I want to bring up is that I heard
9 the staff mention earlier that the General Plan is not
10 specific to any project. That's true. But General Plan is
11 specific plan or specific guide for the city to develop, to
12 move implementation of any future plan for the city. And if
13 the plan is not focused enough in terms of the intention of
14 the policy intention of the goal of having to implement the
15 plan, then that is a flaw.

16 The land use commercial -- industrial and
17 commercial and land use area, it needs to be really strong,
18 specific in terms of the environmental impact, especially
19 air quality and the climate change.

20 As you know, that climate change is not something
21 we going to take literally, it's serious. We see the
22 consequences around the world now and Richmond is right
23 here. And we will need to take seriously in terms of our
24 plan, how we can implement that. It could be five year, ten
25 year, whatever. However the state also -- AB 32 that also

32-61
(cont.)

1 talking about in terms of the greenhouse gas.

2 And that's not, that's not something we just
3 talking, it has to happen. And it has to be a specific
4 guide in terms of those are huge areas. And Richmond -- I'm
5 not talking about just pollution. The big industry who
6 pollute here, sit here right here in our city as number one
7 in state.

8 (Timer tone.)

9 MR. NOMPRASEURT: And we need to be serious about
10 how we going to mitigate those issues. Thank you.

11 CHAIR DUNCAN: Thank you.

12 MR. ROJAS: Teijae Taylor.

13 MS. TAYLOR: Good evening, my name is Teijae
14 Taylor; I'll be addressing the transportation element, thank
15 you.

16 We need the EIR to provide feasible mitigation
17 options for identifying significant impacts. Richmond ACCE
18 has recently begun a new project here in the city of
19 Richmond that will begin to organize clinic patients,
20 neighbors, community members and around health care and
21 health-related issues.

22 Concepts related to individual health are
23 expanding to not only include traditional health care but
24 also prevention and how the environment and built
25 environment impacts an individual's health.

32-61
(cont.)

32-62

1 A transportation plan that responds to identified
 2 community needs would be more effective in reducing driving
 3 and improving the health of individuals within our
 4 community.

32-62
(cont.)

5 Because the DEIR omits a transportation needs
 6 assessment it fails to include a discussion of feasible
 7 measures to mitigate identified transportation impacts,
 8 including the rerouting of the proposed city-run shuttle
 9 service and streetcar and reprioritizing of transit
 10 investments to better meet identified transit needs, et
 11 cetera. Thank you so much.

12 CHAIR DUNCAN: Thank you. Next speaker, please.

13 MR. ROJAS: And these two speaker cards were found
 14 under a stack so I do apologize for that. Patricia James or
 15 Jones and then John Adams. The last two.

16 MS. JONES: Thank you for finding me. Good
 17 evening, Chair Duncan and Commissioners. My name is
 18 Patricia Jones; I am speaking on behalf of Citizens for East
 19 shore Parks. I believe my comments are probably more of the
 20 general variety.

32-63

21 Overall CESP sees improvements to this version of
 22 the General Plan and DEIR. CESP is pleased with the open
 23 space designation of the North Shoreline west of the
 24 parkway. However, as some people have mentioned, the Plan
 25 and DEIR fall short of addressing the loss of natural

1 habitat of many endangered flora and fauna due to sea level
2 rise. Look at your figure 8-1.

3 CESP urges the General Plan, the DEIR, to require
4 protection of sufficient replacement upland open space to
5 mitigate the loss of the shoreline habitat and that the city
6 commit to implementing such a plan.

7 CESP is also pleased to see positive changes to
8 the LUDE and the Southern Gateway and Point Isabel areas,
9 notwithstanding some of the comments that those folks have
10 just mentioned. We would suggest that the wording about
11 appropriate setbacks, which say should be observed in order
12 to respect the natural habitats and adjacent marsh areas,
13 should be replaced with the word "shall." Change "should"
14 to "shall."

15 CESP however does not support any housing along
16 the Southern Shoreline.

17 In view of the General Plan's stated policy in CN-
18 2.2 and CN-1.1, CESP urges that at least three-quarters of
19 Point Molate to be preserved as open space and that any
20 development in this area shall require restoration of native
21 plants. Thank you very much.

22 CHAIR DUNCAN: Thank you. Next speaker.

23 MR. ROJAS: John Adams.

24 MR. ADAMS: My name is John Adams. Good evening,
25 Planning Commissioners. I am here representing Richmond



1 ACCE and ACCE stands for the Alliance of Californians for
2 Community Empowerment.

3 We need the Draft EIR to include a complete
4 transportation needs analysis, which is a necessary step to
5 analyzing the impacts of the Draft General Plan and
6 potential alternatives on traffic, public transit and
7 roadway safety.

8 The Draft EIR should study the transportation
9 needs of Richmond residents, including the location of
10 transit-dependent populations and the needs of special
11 populations such as youth and seniors.

12 Without this analysis the Draft EIR leaves the
13 public and decision makers in the dark about assessing the
14 General Plan's transportation priorities and the potential
15 for understanding environmentally superior alternatives
16 cannot be performed. Thank you.

17 CHAIR DUNCAN: Thank you. And I take it there are
18 no other speakers.

19 MR. ROJAS: That concludes the speakers for
20 tonight.

21 CHAIR DUNCAN: Thank you, Mr. Rojas. Do you have
22 any summary comments?

23 MR. ROJAS: No. I would like to thank all the
24 public that showed up and, you know, offered their time to
25 come up and comment. I would note that we do have a City of

32-66
(cont.)

1 Richmond General Plan website. All the information that has
2 been published has been published to that site so I'd just
3 encourage everybody to keep apprised of that website for any
4 updates in terms of the upcoming updates.

5 CHAIR DUNCAN: Thank you very much all of you for
6 coming out tonight and thank you for your patience and
7 waiting for the start of the comment period.

8 Our final agenda item tonight is the report of
9 officers and staff. Do we have anything from staff?

10 COMMISSIONER TELTSCHICK-FALL: Are we allowed to
11 make comments?

12 CHAIR DUNCAN: Oh, I'm sorry.

13 COMMISSIONER REYES: I want to thank everyone for
14 coming out. I just want to ensure folks that I know that I
15 am going to be looking at everything, you know, openly as we
16 move forward. I'm going to wait until the comment period is
17 completed and then focus more on that.

18 CHAIR DUNCAN: Thank you. Mr. Soto.

19 COMMISSIONER SOTO: Yeah. I just want to thank
20 all the folks who did show up tonight. Having been a
21 lifelong resident of this community I am really impressed at
22 the quality of analysis and commentary that the public has
23 offered to us on a variety of these issues. It really
24 speaks to the intentional interest that the community has in
25 trying to plan for what is really a very uncertain future.

1 So I really want to thank everybody for taking the time to
2 come out.

3 Also thank all those who provided written
4 commentary and look forward to receiving additional written
5 commentary from the folks who -- obviously two minutes is
6 not enough to make all their, all their comments known to
7 us. So just a general thank you for everybody's
8 participation.

9 CHAIR DUNCAN: Thank you. Commissioner
10 Teltschick-Fall.

11 COMMISSIONER TELTSCHICK-FALL: Thank you. I would
12 also like to thank everyone for their input. I know it's
13 been a long way so thank you for doing that.

14 I had a couple of things I wanted to mention I
15 noticed in terms of the document, an insufficiency. Senate
16 Bill 375 was not -- those requirements were not addressed in
17 this document and those are no longer voluntary so I think
18 it would behoove the city to include those. That's a lot
19 about climate change but it's also just about, you know,
20 promoting smart growth and all of the things that really
21 work together in this plan to make our community a better
22 place.

23 I also think that it's a shortcoming of the
24 document that there is no analysis or provision for looking
25 at the idea of limited or smart growth at all. Because even

1 though we may not want that immediately we are looking
2 forward to the future. You know, there are a lot of
3 initiatives. The public health law and policy workshop that
4 I attended, a lot of cities are planning for healthy places
5 and limiting growth.

6 A lot of the comments here were that we need to
7 start thinking about regulating growth. So I think that we
8 should have some sort of an analysis in there, a provision
9 for the idea of limited growth and not just the idea that
10 growth is inevitable and we must accommodate it, even though
11 the impacts will be -- we cannot mitigate them.

12 Because all of the areas that, you know, we have
13 listed at the beginning where the impacts are, they are all
14 extremely important to quality of life and to the health of
15 our community. So I just think that should be an option.

16 Also in terms of hazardous waste. Similar to
17 housing there is no real inventory there and I didn't see a
18 plan for reduction of risk there either. So that was just
19 one thing I noticed.

20 And lastly just that, you know, it's -- having
21 each element is a good thing to think about it but in
22 listening to people it just becomes so apparent that all of
23 these have a synergistic effect on one another. That's just
24 a general comment, I don't know if there is any way to
25 quantify that. But I do think that in some way it must be

1 acknowledged that it is all connected.

2 And that if you give -- poor planning here is
3 going to impact all the other elements as well. So if you
4 allow, if you allow more impacts that you don't mitigate
5 here, they will spread into the other elements as a natural
6 matter of course.

7 And thank you for your work in preparing this
8 document, it was quite readable.

9 CHAIR DUNCAN: Thank you. And Commissioner Choi.

10 COMMISSIONER CHOI: I'd just like to echo my
11 fellow commissioners' appreciation of the comments tonight.

12 Very well thought out, very articulate. And I look forward
13 to seeing the written comments as they come in towards the
14 31st. It's good to hear from good neighbors, thank you.

15 CHAIR DUNCAN: Thank you. Thank you again for all
16 of you coming out.

17 So with that the next agenda item is reports of
18 Commissioners and staff.

19 (Thereupon, the Public Hearing concluded at
20 9:10 and the meeting continued on to Item 3.)

21 --oOo--

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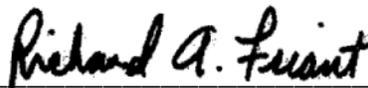
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CERTIFICATE OF REPORTER

I, Richard Friant, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing Richmond City Planning Commission meeting; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting or in any way interested in the outcome of said matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of April, 2011.



Richard Friant, CER

LETTER 32: City of Richmond City Planning Commission Public Hearing**Response to Comment 32-1**

The comment notes the history of the Richmond Equitable Development Initiative (REDI) and states its purpose. The comment is noted. No response is required.

Response to Comment 32-2

The comment states that the Draft EIR needs to include sufficient analysis of environmental impacts likely to result from expansion and intensification of industrial and commercial land uses. As discussed in Responses to Comments 13-1 through 13-10, the Draft EIR programmatically addresses the potential effect of future development that could occur under the General Plan. Because the General Plan does not include specific proposals to expand existing or develop new industrial uses, the Draft EIR does not attempt to quantify emissions from these uses, as it would be speculative at this point to do so. However, to the extent that changes in land use would increase the emissions of greenhouse gases or other pollutants, those would be disclosed and analyzed in a project-specific environmental document at the time the application is submitted to the City. It should also be noted that the General Plan includes policies that would be applied to future projects to reduce project emissions, thereby reducing the City's contribution to climate change. Please refer to Draft EIR pages 3.6-14 through 3.6-32 for a discussion of the potential effects of future development of the General Plan on climate change and the proposed General Plan policies and EIR mitigation measures designed to reduce these effects.

Response to Comment 32-3

The comment states that the Draft EIR should include a transportation needs assessment. The City bases its circulation system on known population densities and land uses that are included in the draft General Plan. The Draft EIR is a program-level EIR and, therefore, does not speculate as to the timing, details, or location of the future development. It would be premature to assess transportation needs before it is known where people will be living and working. Circulation needs will be analyzed as specific development is proposed. See also Response to Comment 15-7.

Response to Comment 32-4

The comment states that the environmental clean-up and improvement assistance funded by the City should benefit low-income communities to ensure that contaminated lands in proximity to residential areas are fully remediated to a standard appropriate for residential use. The Draft EIR addresses the potential for residential development adjacent to contaminated properties. For a discussion on clean-up of hazardous waste sites, please see pages 3.8-21 through 3.8-24 of the Draft EIR. Proposed General Plan Conservation, Natural Resources and Open Space Policy CN6.1 (Toxic and Contaminated Sites) and associated Actions CN6.A (Site Remediation) and CN6.B (Hazardous Substance Management) establish a process that must be followed to address contaminated sites that could be affected by development. The City requires those who apply to develop potentially contaminated sites to retain a Registered Environmental Assessor (i.e., a

professional environmental scientist or engineer registered as an Registered Environmental Assessor in California) to inspect the sites for the presence of hazardous materials and wastes.

Response to Comment 32-5

The comment states that the Draft EIR fails to include sufficient information and analysis of the impacts likely to result from expansion and intensification of industrial and commercial land uses. As discussed above and in Responses to Comments 13-1 through 13-10, the Draft EIR programmatically addresses the potential effect of future development, but does not attempt to quantify emissions or other impacts from future uses, because it would be speculative to do so before specific uses are proposed. However, to the extent that changes in land use would increase the emissions of greenhouse gases or other pollutants, those would be disclosed and analyzed in a project-specific environmental document at the time the application is submitted to the City. Please refer to Draft EIR pages 3.6-14 through 3.6-32 for a discussion of the potential effects of future development on climate change and the proposed General Plan policies and EIR mitigation measures to reduce these effects.

Response to Comment 32-6

The comment states that the goal of the General Plan Energy and Climate Change Element of reducing greenhouse gases to a certain level by 2020 is impossible without including existing industrial and commercial facilities. As discussed in Responses to Comments 13-1 through 13-10, emissions from existing facilities are assumed as part of the baseline for the City. The greenhouse gas emissions used in the analysis were obtained from the City's Greenhouse Gas Emissions Inventory, which includes emissions generated by the Refinery and other commercial and industrial facilities. Refer to Draft EIR pages 3.6-14 through 3.6-32 for a discussion of the potential effects of future development on climate change and the proposed General Plan policies and EIR mitigation measures to reduce these effects.

Response to Comment 32-7

The comment states that measures need to be added that require industrial emissions to be reduced in order to meet city climate projection targets. As discussed in Responses to Comments 13-1 through 13-10, emissions from existing facilities are assumed as part of the baseline for the City, and have, therefore, been accounted for in the analysis. The General Plan includes policies for the overall improvement of air quality throughout the City, though it is not a mechanism for regulation of existing facilities.

Response to Comment 32-8

The comment states that the Draft EIR ignores an increase in total pollution generated by industrial facilities; ignores job-creating ways to avoid the pollution; and incorrectly concludes that pollution impacts are unavoidable. The EIR does not ignore industrial pollution. As discussed in Responses to Comments 13-1 through 13-10, emissions from existing facilities are assumed as part of the baseline for the City, and have, therefore, been accounted for in the analysis. The General Plan

includes policies and actions to reduce emissions of pollutants and greenhouse gases and the Draft EIR includes mitigation measures that would further reduce emissions and limit exposure of residents to criteria pollutants and toxic air contaminants, as well as further reducing greenhouse gases. Nonetheless, due to the programmatic nature of the EIR, the City cannot assure efficacy of the mitigation measures to reduce impacts of future development to a less-than-significant level. For this reason, the impacts were found to be significant and unavoidable.

Response to Comment 32-9

The comment states that industrial and commercial sources of pollution should be required under the draft General Plan to reduce greenhouse gases, and that industrial and commercial facilities should be required to make upgrades to reduce emission which in turn will create jobs. As discussed in Response to Comment 18-15, the majority of the industrial sources are associated with processes that are monitored and permitted under the BAAQMD. Because the City's authority to address the emissions from these sources is limited to those occasions on which the facilities apply for land use approvals, their emissions and operations are generally addressed at a regional level. The City does not have jurisdiction to impose restrictions on existing facilities that conflict with regional, state, or federal regulations. Therefore, the focus of the Draft EIR analysis is related to growth of emission sources over which the City has direct jurisdictional control.

Response to Comment 32-10

The comment states that industrial and commercial facilities should be mandated to train and hire locally and that the draft General Plan should include alternative energy job training. Business practices of industrial and commercial facilities are beyond the scope of this EIR. The comment is forwarded to the decision makers for their consideration.

Response to Comment 32-11

The comment states that the Draft EIR fails to evaluate the health impacts on Richmond residents from local pollution sources. The Draft EIR discusses the potential health risks associated with ozone, a smog precursor (page 3.3-4), particulate matter (page 3.3-5), and nitrogen dioxide and sulfur dioxide (page 3.3-6). Potential impacts associated with sources of these pollutants are addressed in Impact 3.3-3 on Draft EIR pages 3.3-25 through 3.3-28.

Response to Comment 32-12

The comment provides information on the purpose of the group, Faith Works. The comment is noted without response.

Response to Comment 32-13

The comment states that the draft General Plan's Housing Element must comply with state housing laws regarding affordable housing and that meeting affordable housing needs has tangible, environmental benefits. The comment does not address environmental issues related to the General Plan; therefore, it is noted without response.

Response to Comment 32-14

The comment states that environmental impacts can be reduced if the Housing Element designates land uses so that residents have housing opportunities near jobs and reliable transportation. While this is not a comment on the adequacy of the Draft EIR, the following references to policies cited in the Draft EIR respond to the comment: page 3.1-7 of the Draft EIR discusses General Plan Land Use and Urban Design Policy LU2.1 (promote mixed-income and integrated neighborhoods), Policy LU2.2 (promote safe and walkable neighborhoods and inter-connected streets), Policy LU2.3 (encourage local-serving retail and public amenities), and Policy LU2.4 (promote equitable distribution of community facilities and infrastructure).

Response to Comment 32-15

The comment requests a public notice stating that the environmental impacts of the Housing Element will be studied fully once the revisions to the housing element have been completed. The comment is noted without response.

Response to Comment 32-16

The comment questions measures to address greenhouse gases emitted by the Chevron Richmond Refinery. As an existing use in the City, operations at the Chevron Richmond Refinery are not the focus of the Draft EIR. As discussed in Response to Comment 18-15, the majority of the industrial sources are associated with processes that are monitored and permitted under the BAAQMD. Therefore, the focus of the Draft EIR analysis is related to reductions of future emission sources at the time that a commercial or industrial facility applies for development approval.

Response to Comment 32-17

The comment states that the General Plan should be responsible for taking a leadership position in ending greenhouse gas emissions. The commenter is referred to Section 3.6, Climate Change, in the Draft EIR for a discussion of the federal, state, and regional agencies that focus on climate change, as well as the many policies and actions the City will implement to reduce energy demand in the City, which would have a positive effect on greenhouse gas emissions and the City's contribution to climate change.

Response to Comment 32-18

The comment states that the Economic Development Element should be accessible to multiple languages to serve all Richmond residents. This is not a comment on the adequacy of the analysis contained in the Draft EIR, but on the draft General Plan. The comment is forwarded to the decision-makers for their consideration.

Response to Comment 32-19

The comment states that the Energy and Climate Change Element should have more specific language regarding green jobs and policies on emissions. The comment does not address the

adequacy of the analysis contained in the Draft EIR. The comment is forwarded to the decision-makers for their consideration. See Draft EIR Sections 3.3, Air Quality and 3.6, Climate Change for policies related to emission reductions.

Response to Comment 32-20

The comment expresses concern that the Energy and Climate Change Element should have more explicit language on how to reduce the emissions from industrial and commercial sources. Draft EIR Section 3.3, Air Quality includes a discussion of proposed General Plan policies and EIR mitigation measures that would reduce emissions generated in the City. Specific controls on emissions would vary by use, so explicit policies and mitigation measures cannot be formulated at this point in the process of the General Plan or EIR. The General Plan and EIR do, however, include policies and mitigation measures to reduce emissions, discussed on pages 3.3-17 through 3.3-25 of the Draft EIR. Also see Responses to Comments 13—1 through 13-10 for a discussion of emissions from existing industrial and commercial uses in the City.

Response to Comment 32-21

The comment states that Section 3.3, Air Quality, of the Draft EIR should reconsider the less-than-significant conclusion with regard to toxic air contaminant impacts and should consider residents and sensitive receptors. BAAQMD defines typical sensitive receptors as residences, schools, playgrounds, childcare centers, athletic facilities, long-term health care facilities, rehabilitation centers, convalescent centers, and retirement homes. Impact 3.3-3 of the Draft EIR analyzes TAC with regard to residents and sensitive receptors and concludes that it would be a less-than-significant impact with implementation of Mitigation Measure 3.3-3, which requires overlay zones with buffers for sources that emit TAC and requirements for a health risk assessment for industries or uses that are TAC sources. The health risk assessment would be used to identify the potential for exposure and to ensure emissions do not result in exposure to contaminants at off-site receptors to levels that exceed regulatory standards. Compliance with this measure would reduce impacts to a less-than-significant level.

Response to Comment 32-22

The comment states that the “greenhouse gas inventory is included in the Draft EIR yet the commercial and industrial is excluded as a source of the General Plan and needs to be put back into the General Plan.” The Draft EIR does not exclude industrial and commercial uses as sources of greenhouse gases. As discussed in Responses to Comments 13-1 through 13-10, the Draft EIR relies on the City’s Greenhouse Gas Emissions Inventory, which includes emissions generated by the Refinery and other commercial and industrial facilities. However, because these are existing sources of emissions, including greenhouse gases, the Draft EIR does not attribute those sources to development that may occur under the proposed General Plan.

Response to Comment 32-23

The comment states transit-oriented-development results in gentrification, which results in more higher-income residents who own more cars and increase VMT. The comment states that the Draft EIR, therefore, needs to consider the potential impacts of higher greenhouse gas emissions due to an increase of VMT resulting from the displacement of low-income Richmond residents. The traffic analysis in the Draft EIR is based upon the Contra Costa Transit Authority (CCTA) Model, which is based upon travel patterns specific to Contra Costa County. The proposed General Plan includes policies and actions intended to increase the use of alternative modes of travel, irrespective of the income level of residents, thus looking to reduce the use of single occupancy vehicles. However, the Draft EIR acknowledges that VMT would increase in the City, as discussed in Impact 3.3-1 on Draft EIR pages 3.3-17 through 3.3-21. As no specific projects are proposed as part of the General Plan, the Draft EIR cannot speculate as to which residents could be displaced and the socio-economic level of those who would occupy certain areas in the future. Because the efficacy of the General Plan policies and Mitigation Measure 3.3-1 cannot be determined at this time, the impact was found to be significant and unavoidable.

Response to Comment 32-24

The comment notes that the goal of a general plan is to be a vision of the City-preferred future and it is a very concrete commitment to that vision because it is going to guide laws and policies. As it is not a direct comment on environmental issues or the content or adequacy of the Draft EIR, the comment is noted without response.

Response to Comment 32-25

The comment notes that the goal of the Draft EIR is to ensure that the vision of the draft General Plan includes healthy communities and sustainable jobs. Although this is not a direct comment on the EIR, the following information is provided for clarification. The goal of the CEQA process, as defined by the CEQA Guidelines, is to avoid or minimize environmental damage of a project, where feasible (CEQA Guidelines Section 15021(a)). "An EIR is an informational document which will inform public agency decision makers and the public generally of the significant environmental effect of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project." (CEQA Guidelines Section 15121(a))

Response to Comment 32-26

The comment states that the Draft EIR should include a study of hiring local employees as a strategy for reducing greenhouse gas emissions by encouraging fewer vehicle trips. Because development in the City would be market driven, information is not available to provide an analysis of local hiring, and such a study is beyond the scope of the EIR. However, the proposed General Plan includes a range of policies as strategies to sustain businesses and industries, diversify the economic base, accommodate job growth and increase access to employment for Richmond residents. Overarching goals of the General Plan focus on providing a vibrant urban core, active public spaces and enhanced neighborhood character in the context of balanced and compatible uses and seek to

ensure efficient mobility and access for all residents, workers and visitors through a safe, interconnected, multimodal transportation system. (See Overview of the General Plan Elements on Draft EIR pages 2-7 and 2-8) Regarding vehicle trips, daily VMT were estimated using the CCTA Travel Demand Model to determine the reasonably foreseeable 2030 development of the draft General Plan land use plan. See page 3.14-29 of the Draft EIR for a discussion of travel demand forecasting.

Response to Comment 32-27

The comment states that the Draft EIR should include a transportation needs assessment. See Response to Comment 15-7.

Response to Comment 32-28

The comment states that the General Plan needs to include commercial and industrial polluters in the framework in order to meet greenhouse gas emissions targets. See Responses to Comments 13-1 through 13-10.

Response to Comment 32-29

The comment states that the Draft EIR should study local hire and workforce training programs as strategies to increase the number of people who both live and work in Richmond which would help decrease harmful greenhouse gas emissions. Hiring and business practices are beyond the scope of the EIR. The comment is forwarded to the decision-makers for their consideration. See Response to Comment 32-26.

Response to Comment 32-30

The comment acknowledges four significant impacts identified in the Draft EIR related to VMT: conflict with the Clean Air Plan (Impact 3.3-1, pages 3.3-17 through 3.3-21), increases in greenhouse gas emissions (Impact 3.6-1, pages 3.6-14 through 3.3-31), traffic congestion exceeding levels of service (Impact 3.14-1, pages 3.14-40 through 3.14-45), and increased congestion and lower travel speeds (Impact 3. 14-6, pages 3.14-51 through 3.14-52). The comment merely acknowledges information in the Draft EIR; therefore, it is noted without response.

Response to Comment 32-31

The comment states that because the length of vehicle trips internal to Richmond is dramatically lower than trips outside the city, increasing the number of workers who are also residents would reduce VMT. The comment is noted. Daily VMT was estimated using the CCTA Travel Demand Model to determine the reasonably foreseeable 2030 development of the draft General Plan land use map. Please see page 3.14-29 of the Draft EIR for a discussion travel demand forecasting.

Response to Comment 32-32

The comment expresses belief that the implementation of the General Plan, and particularly the National Historical Park Element, will have a beneficial effect on the resources of Rosie the Riveter National Park, as well as the significance of Richmond, as a nationally recognized point within the National Park System for all World War II Home Front associated activities. This is not a comment on the adequacy of the analysis contained in the Draft EIR. Therefore, it is noted without response.

Response to Comment 32-33

The comment notes that the draft General Plan states its intent to rescind the Tiscornia Estates Specific Plan and resulting potentially significant impacts need to be discussed. Please refer to Response to Comment 8-1.

Response to Comment 32-34

This comment contains introductory material and background on the speaker. As it is not a direct comment on environmental issues or the content or adequacy of the Draft EIR, no response is required.

Response to Comment 32-35

The comment expresses concern that the Noise Element is lumped in with the Public Safety Element of the General Plan. Please see Response to Comment 10-1.

Response to Comment 32-36

The comment states that the noise data presented is not in an appropriate format and is too precise. Please see Response to Comment 10-2.

Response to Comment 32-37

The comment states that the draft General Plan and the Draft EIR incorrectly characterize the commenter's property, omit analyses of proposed land use changes and offer inadequate alternative land uses. As discussed in Responses to Comments 25-1 through 25-5, the characterization of existing uses in Change Area 12: Northshore is intended to be general in nature. The property referenced in the comment is currently undeveloped and contains upland grasslands. The comment provides no specific impacts that were not addressed in the Draft EIR and, thus, a response is not possible. Regarding additional alternatives, CEQA does not require that the EIR include alternative land uses for every area within the General Plan, thus such an analysis is not included. The Draft EIR does, however, include an analysis of two alternatives that are less intense than the proposed General Plan, the intent of which was to demonstrate the potential reduction in impacts that could be achieved by reducing the overall development intensity in the City. However, the intensity of development that would occur with any alternative that develops at a rate consistent with historic growth would still result in significant effects similar to those of the proposed General Plan.

Response to Comment 32-38

The comment states that the “Open Space/Recreation” land use designation for the Northshore area did not have the support of the City Council in 2010 and expresses concern as to when this decision was made. The comment also states that there is a lack of alternatives and analysis in the Draft EIR in connection with Change Area 12. The process for assigning land use designations is not within the scope of CEQA review, which is concerned solely with the physical impacts of decisions affecting the environment.

Response to Comment 32-39

The comment states that an alternative to the “Open Space/Recreation” land use designation needs to be analyzed for Change Area 12: Northshore because “there is obvious support by the community and the City to keep it industrial use.” As discussed on page 5-1 of the Draft EIR, the alternative analysis in the EIR is intended to evaluate the comparative merits of a reasonable range of alternatives to the proposed project, or to the location of the proposed project that could feasibly attain most of the basic objectives of the project while avoiding or substantially lessening any of the significant effects of the project (CEQA Guidelines, section 15126.6). Because the impacts identified in the Draft EIR would be a result of the intensity of development, rather than of any specific type of use, an alternative that includes different uses with similar intensity would not result in a reduction in impacts. As discussed in Response to Comment 32-37, the Draft EIR includes an analysis of two alternatives that are less intense than the proposed General Plan to demonstrate the potential reduction in impacts that could be achieved by reducing the overall development intensity in the City.

Response to Comment 32-40

The comment states that changing the land use designation for the property from Business/Light Industrial to “Open Space/Recreation” land use would make the property less valuable. The comment does not address an environmental issue; therefore, it is noted without response. The comment is forward to the decision makers for their consideration.

Response to Comment 32-41

The comment states that the draft General Plan does not define either “Open Space” or “Open Space/Parks and Recreation”. The “Open Space” and “Parks and Recreation” classifications are described on page 3.21 of the draft General Plan.

Response to Comment 32-42

The comment states that Freethy Industrial Park is incorrectly described in the draft General Plan as undeveloped and lacking infrastructure. To the extent that infrastructure exists in Change Area 12: Northshore, including the Freethy Industrial Park property, the impacts due to development of previously disturbed land would be less than assumed in the Draft EIR. The comment further alleges that the proposed change in land use designation would diminish the value of the property. See Response to Comment 32-40.

Response to Comment 32-43

The comment states that the open space land use designation change did not have the support of the General Plan Advisory Committee (GPAC) in 2008 and expresses concern as to when this decision was made. The comment also states that there is a lack of alternatives and analysis in the Draft EIR in connection with Change Area 12: Northshore. See Response to Comment 32-38. The comment is forwarded to the decision-makers for their consideration.

Response to Comment 32-44

The comment provides historical background information on Freethy Industrial Park. As it is not a direct comment on environmental issues or the content or adequacy of the Draft EIR, the comment is noted without response.

Response to Comment 32-45

The comment states that changing the land use designation of the property from Business/Light Industrial to "Open Space" land use would make the property less valuable and violates the Equal Protection Clause. The Draft EIR analyzes the physical impacts of decisions affecting the environment and does not address the economic or legal implications of those decisions.

Response to Comment 32-46

The comment expresses support for economic growth in Richmond, particularly on San Pablo Avenue and the shoreline. As it is not a direct comment on environmental issues or the content or adequacy of the Draft EIR. The comment is merely noted and forwarded to the decision-makers.

Response to Comment 32-47

The comment notes that the City of Richmond is working on new noise ordinances and requests that the Draft EIR make note of them. Please see Response to Comment 9-25 for a discussion of the Noise Ordinance.

Response to Comment 32-48

The comment states that it appears that some residential uses may be allowed in the Transitional Buffer Zone on the Ford Peninsula at Marina Bay. See Response to Comment 9-6.

Response to Comment 32-49

The comment states the demographic data needs to be updated. Please see Response to Comment 9-8 regarding the currency of the data used in the Draft EIR. As discussed in Response to Comment 9-8, the revised population projections are very close to those used in the Draft EIR and would not alter the findings of the EIR.

Response to Comment 32-50

The comment suggests that the climate change chapter of the Draft EIR include the Bay Planning Coalition's reports. See Responses to Comments 2-1 through 2-6 for a discussion of other sources for sea level rise.

Response to Comment 32-51

The comment expresses concern that the draft General Plan has not made a distinction between the South Shoreline and the Point Isabel areas and it should be made clear that the South Shoreline Plan does not include Point Isabel. The comment is forwarded to the decision-makers for their consideration. However, this is not a comment on the adequacy of the analysis contained in the Draft EIR, but on information contained in the draft General Plan. The comment also states that a 55-foot tall structure along San Joaquin Street is inappropriate as it would block the view of the Golden Gate Bridge. As discussed in the Draft EIR (page 3.15-10), the Richmond Municipal Code provides development standards that guide the City in its development practices related to valued scenic corridors and views. In addition, future development projects would be subject to environmental review, which would include an opportunity for public input. However, the Draft EIR acknowledges that if development occurs at the maximum intensity allowed by the General Plan, development could result in a significant and unavoidable impact related to blocking views (Draft EIR Impact 3.15-1, pp. 3.15-9 through 3.15-17).

Response to Comment 32-52

The comment states that there is a lack of adequate sewer capacity which needs to be addressed. Where inadequate sewer facilities exist within the City, those facilities are considered part of the existing condition and those inadequacies are not a result of implementation of the General Plan. Therefore, the funding to maintain or replace existing infrastructure that is not associated with new development is not addressed in the EIR. The Draft EIR does, however, analyze the potential for new development in areas where inadequate infrastructure exists. In those instances, the City would require new development to provide or fund necessary improvements to ensure that new development is not exposed to flooding due to inadequate infrastructure or that new development does not cause flooding off site. Please see General Plan page 6.26 regarding the City's use of development impact fees to mitigate new development's impact on infrastructure and services. See also Response to Comment 28-46.

Response to Comment 32-53

The comment states that the draft General Plan would allow the level of service on select streets to deteriorate from LOS "D" to "E," which is unacceptable. This is not a comment on the adequacy of the analysis contained in the Draft EIR, but on information contained in the draft General Plan. While the current LOS standard used by the City are those listed for Routes of Regional Significance in the West County Action Plan – 2009 Update, the proposed General Plan, particularly through Policy CR1.9 (Multi-Modal Level of Service Standards for West County Routes of Regional Significance) and Action CR1.M (Place-Based Street Classification and Multi-Modal Level of Service

Standards), makes clear that the City's circulation system should be managed, going forward, to ensure balanced access to all modes of travel, and that vehicle capacity and LOS would not be the only criteria by which physical and operational improvements are planned and implemented.

Response to Comment 32-54

The comment states that transportation mitigation in the Draft EIR will not be equitable to all neighborhoods because it relies too heavily on public transit. The comment includes no supporting evidence for the assertion that reliance on public transit would result in inequity. Impact 3.14-3 on page 3.14-46 of the Draft EIR discusses expanded public transit service and the General Plan policies that would support the increased demand for public transit. As new development is proposed, it would be analyzed for impacts on the transportation system, including increased demand on transit systems. Changes to the transit system will be dependent on the location and intensity of new development.

Response to Comment 32-55

The comment states that traffic from neighboring cities could impact traffic levels in the City and providing additional capacity on Richmond streets would remedy this problem. The comment is noted; however, traffic generated by other jurisdictions is not an effect of the General Plan and those jurisdictions would have to consider effects on their internal roadways, as well as roads in other jurisdictions as they review applications for development.

As discussed in section 3.14, Transportation and Circulation, of the Draft EIR, it is the intent of the General Plan to shift away from the primarily vehicle-based level of service to a place-based system that uses multi-modal level of service standards that are currently being development as part of the Fifth Edition of the Transportation Research Board's Highway Capacity Manual. The intent of this approach is to convert trips to alternative modes of transportation while optimizing roadway and intersection capacity within the constraints of the place-based street classification and evaluation policy. Therefore, the Draft EIR acknowledges some impacts on roadway LOS as a result of the shift to the place-based model (Draft EIR pp. 3.14-40 through 3.14-45).

Response to Comment 32-56

The comment expresses concern that shifting transportation from personal vehicles to ferry boats and busses could result in higher emissions. Because buses and ferries carry more passengers than personal vehicles (many of which would carry only a single passenger), the per-passenger emissions would generally be lower for busses and ferries. In addition, it would take an increase in demand that exceeds current capacity to require an increase in either the number of buses or ferries or the number of trips those conveyances would make. Therefore, net reductions would occur as travelers choose to switch from personal vehicles to transit, and would not result in increases in transit-related emissions until such time that the number of transit passengers exceeds transit capacity. At such time that increases in transit ridership result in the need for changes in the operation of the transit vehicles, the reductions from the decrease in personal vehicle use would have already offset the increase in transit emissions. Also see Response to Comment 9-12.

Response to Comment 32-57

This comment contains introductory material and background on the speaker. As it is not a direct comment on environmental issues or the content or adequacy of the Draft EIR, the comment is noted without response.

Response to Comment 32-58

The comment expresses concern that the draft General Plan is not specific enough regarding the location of residential development on the south side, specifically the Zeneca site, and notes potential incompatibilities among uses. The draft General Plan is intended to increase the mixed-use character in Central Richmond, and it is possible that incompatibilities could occur. However, the EIR is a program-level EIR and does not include project-level analysis for development that could occur under the General Plan. The Draft EIR includes program-level mitigation measures to reduce the effects that may arise from the proximity of incompatible uses, and any development that would involve residential and industrial adjacent to one another would be required to make site-specific changes to reduce the potential for incompatibilities.

Response to Comment 32-59

The comment states that single-family residential is not as profitable in terms of tax revenues as industrial and commercial uses, and, therefore, the City should not rely solely on residential development. The comment is not directly related to an environmental issue; therefore, it is noted without response.

Response to Comment 32-60

The comment expresses concern that the draft General Plan proposes to reduce roadway segment level of service to level “E” or “F,” regardless of current level of service. This is not a comment on the adequacy of the analysis contained in the Draft EIR, but on information contained in the draft General Plan. While the current LOS standards used by the City are those listed for Routes of Regional Significance in the West County Action Plan – 2009 Update, the proposed General Plan, particularly through Policy CR1.9 (Multi-Model Level of Service Standards for West County Routes of Regional Significance) and Action CR1.M (Place-Based Street Classification and Multi-Modal Level of Service Standards), makes clear that the City’s circulation system should be managed, to ensure balanced access to all modes of travel, and that vehicle capacity and LOS would not be the only criteria by which physical and operational improvements are planned and implemented.

Response to Comment 32-61

The comment expresses concern that industrial and commercial land uses in Richmond contribute to pollution and climate change. See Responses to Comments 13-1 through 13-10.

Response to Comment 32-62

The comment states that because Draft EIR omits a transportation needs assessment, it fails to include a discussion of feasible measures to mitigate identified transportation impacts, including the rerouting of the proposed city-run shuttle service and streetcar and reprioritizing of transit investments to better meet identified transit needs. The City bases its circulation system on known population densities and land uses that are included in the draft General Plan. Because the Draft EIR is a program-level EIR, it would be premature to assess transportation needs before development is proposed that may alter where people will be living and working. Once specific development is proposed, circulation needs can be analyzed. Please see page 3.14-46 of the Draft EIR for a discussion of transit impacts.

Response to Comment 32-63

The comment states that the draft General Plan and the Draft EIR should require protection of sufficient replacement upland open space to mitigate the loss of shoreline habitat due to sea level rise. See Response to Comment 20-1.

Response to Comment 32-64

The comment suggests that the term “shall” be used instead of “should” for the discussion of setbacks being observed in order to respect the natural habitats and adjacent marsh areas. The comment is noted and forwarded to the decision-makers for their consideration.

Response to Comment 32-65

The comment suggests that the draft General Plan preserve at least three-quarters of Point Molate to be preserved as open space and that any development in the area shall require restoration of native plants. This is not a comment on the adequacy of the analysis contained in the Draft EIR, but on the draft General Plan. The comment is forwarded to the decision-makers for their consideration. Also see page 3.4-29 of the Draft EIR, which discusses policies contained in the draft General Plan that protect native plants, specifically, Policy CN1.1, which is intended to preserve and restore Richmond's natural habitat and associated range of plants and wildlife including wetlands, baylands, riparian areas, oak woodlands, and other sensitive biological resources.

Response to Comment 32-66

The comment states that the Draft EIR needs to include a transportation needs analysis and should examine the needs of special populations such as youths and seniors. See Response to Comment 15-7.

5. MITIGATION MONITORING AND REPORTING PROGRAM

5.0 MITIGATION MONITORING AND REPORTING PROGRAM

INTRODUCTION

The California Environmental Quality Act (CEQA) requires review of any project that could have significant adverse effects on the environment. In 1988, CEQA was amended to require reporting on and monitoring of mitigation measures adopted as part of the environmental review process. This Mitigation Monitoring and Reporting Program (MMRP) is designed to aid the City of Richmond in its implementation and monitoring of measures adopted from the Richmond General Plan Update Environmental Impact Report (EIR).

MITIGATION MEASURES

The mitigation measures are taken from the Richmond General Plan Update EIR and are assigned the same number they had in the Draft EIR. The MMRP describes the actions that must take place to implement each mitigation measure, the timing of those actions, and the entities responsible for implementing and monitoring the actions.

MMRP COMPONENTS

The components of each monitoring form are addressed briefly, below.

Impact: This column summarizes the impact stated in the Draft EIR.

Mitigation Measure: All mitigation measures that were identified in the Richmond General Plan Update EIR are presented, and numbered accordingly.

Action: For every mitigation measure, one or more actions are described. These are the center of the MMRP, as they delineate the means by which EIR measures will be implemented, and, in some instances, the criteria for determining whether a measure has been successfully implemented. Where mitigation measures are particularly detailed, the action may refer back to the measure.

Implementing Party: This item identifies the entity that will undertake the required action.

Timing: Each action must take place prior to the time at which a threshold could be exceeded. Implementation of the action must occur prior to or during some part of approval, project design or construction or on an ongoing basis. The timing for each measure is identified.

Monitoring Party: The City of Richmond is responsible for ensuring that mitigation measures are successfully implemented. Within the City, a number of departments and divisions would have responsibility for monitoring some aspect of the overall project.

TABLE 5-1					
RICHMOND GENERAL PLAN UPDATE MITIGATION MONITORING AND REPORTING PROGRAM					
Impact	Mitigation Measure(s)	Action(s)	Implementing Party	Timing	Monitoring and Enforcement
3.2 Demographics					
3.2-1 Implementation of the proposed General Plan could result in new physical impacts due to population growth.	3.2-1 The City shall continue to track the number of new housing units as building permits are issued to determine if new development exceeds the amount of development assumed in the EIR (15,548 housing units). As part of its annual Housing Element progress report City staff shall provide a report on the number of new housing units to the City Council annually. If the number of units approaches or exceeds 80 percent of the number assumed in the General Plan EIR (12,438 housing units), the City shall prepare an update to the General Plan and General Plan EIR to assess the environmental effects of additional projected growth.	Track the number of new housing units as building permits are issued to determine if new development exceeds the amount of development assumed in the EIR	Planning & Building Services	Annually	Planning & Building Services
3.2-2 Implementation of the proposed General Plan could result in new physical impacts due to job growth.	3.2-2 Based on available U.S. Census or ABAG data, the City shall track the number of new jobs to determine if new development exceeds the amount of development assumed in the EIR (22,488 jobs). City staff shall provide a report on the number of new jobs to the City Council annually and if the number of jobs approaches or exceeds 80 percent of the number assumed in the General Plan EIR (9,950 jobs), the City shall prepare an update to the General Plan and General Plan EIR to assess the environmental effects of additional projected growth.	Track the number of new jobs to determine if new development exceeds the amount of development assumed in the EIR	Planning & Building Services	Annually	Planning & Building Services
3.3 Air Quality					
3.3-1 Implementation of the proposed General Plan could provide new sources of regional air emissions that would conflict with or obstruct implementation of the Clean Air Plan. Though all feasible mitigation measures would be implemented to reduce this impact, there is insufficient evidence to quantify the effect of those measures. Because	3.3-1 a. Encourage the inclusion of the ferry terminal within the shuttle service feasibility study and within the current transportation system to promote the use of public transportation and provide for convenience of use. b. Promote reduced transit fares for daily commutes within the City, and encourage the cooperation between all modes of transportation to provide for ease of use, such as the institution of a monthly commuter pass that would provide access to the ferry, as well as bus, train, and/or BART systems. c. Continue to expand the Bay Trail and other routes for bicycle and pedestrian travel.	Include the ferry terminal within the shuttle service feasibility study Promote reduced transit fares for daily commutes within the City Expand routes for bicycle and pedestrians	Planning & Building Services City Manager's Office Project Applicant/Engineering Services Department	During preparation of feasibility study On-going On-going	Planning & Building Services City Manager's Office/Planning & Building Services Planning & Building Services

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RICHMOND GENERAL PLAN UPDATE MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure(s)	Action(s)	Implementing Party	Timing	Monitoring and Enforcement
<p>it cannot be stated with certainty the mitigation would reduce the impact to a less-than-significant level, this impact would be considered <i>significant and unavoidable</i>.</p>	<p>d. Provide bicycle and pedestrian amenities, such as benches and bike storage, along routes leading to the Richmond and El Cerrito Del Norte BART stations to promote non-motorized travel to and from public transit.</p> <p>e. Provide development incentives, such as reduced parking requirements, for businesses that provide transit incentives to employees.</p>	<p>Provide bicycle and pedestrian amenities along routes leading to BART stations</p> <p>Provide incentives for businesses that provide transit incentives</p>	<p>Project applicant/ Engineering Services Department</p> <p>City Manager's Office/Planning & Building Services</p>	<p>On-going</p> <p>Within 18 months of the adopting of the General Plan</p>	<p>Planning & Building Services</p> <p>Planning & Building Services</p>
<p>3.3-2 Implementation of the proposed General Plan would result in construction and operational emissions that could contribute substantially to an existing or projected air quality violation. Though all feasible mitigation measures would be implemented, the impact of operational emissions remains uncertain and, therefore, would be considered <i>significant and unavoidable</i>.</p>	<p><u>Construction</u></p> <p>3.3-2 a. All construction projects shall incorporate the most recent Best Management Practices as required by the BAAQMD.</p> <p>b. Future development under the proposed General Plan shall be subject to review to determine construction air quality impacts in accordance with CEQA.</p> <p><u>Operational</u></p> <p>c. The City of Richmond shall continue to require individual developers to implement applicable new stationary source control measures as proposed in the most recent CAP, while conforming with existing BAAQMD stationary source regulations and requirements and complying with BAAQMD rules and regulations regarding indirect sources.</p> <p>d. The City of Richmond shall consult with project proponents during the pre-application review process to ensure that uses with a high level of operational emissions are appropriately designed and sited to avoid impacts on neighboring uses and regional air quality.</p>	<p>Incorporate the most recent BMPs</p> <p>Future projects shall be reviewed to determine air quality impacts</p> <p>Require developers to implement stationary source control measures as proposed in the most recent CAP</p> <p>Ensure that uses with a high level of operational emissions are designed and sited to avoid impacts on neighboring uses and regional air quality</p>	<p>Project applicant</p> <p>Project applicant</p> <p>Project applicant</p> <p>Project applicant</p>	<p>On-going during grading and construction</p> <p>During project design and development review</p> <p>During project design and development review</p> <p>During project design and development review</p>	<p>Planning & Building Services/ BAAQMD</p> <p>Planning & Building Services</p> <p>Planning & Building Services</p> <p>Planning & Building Services</p>

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RICHMOND GENERAL PLAN UPDATE MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure(s)	Action(s)	Implementing Party	Timing	Monitoring and Enforcement
	<ul style="list-style-type: none"> • Other proposed sources of TACs including furniture manufacturing and repair services that use Methylene Chloride or other solvents identified as a TAC shall be sited at least 300 feet from sensitive land uses. • Proposed distribution centers with more than 100 trucks per day; more than 40 trucks with operating transport refrigeration units per day; or where transport refrigeration unit operations cumulatively exceed 300 hours per week should not be sited within 1,000 feet of sensitive land uses. • Proposed rail yards for major service and maintenance operations should not be sited within 1,000 feet of sensitive land uses. • Proposed chrome platers should not be sited within 1,000 feet of new sensitive land uses. • The City will support buffer zones between industrial areas and sensitive land uses, including port development. Proposed port developments should not site the heavily impacted areas immediately upwind (based on prevalent wind direction) of sensitive land uses. Siting of port developments that have the potential to emit TACs should be done in consultation with the BAAQMD to determine the need for a health risk assessment. • The City will support buffer zones between industrial areas and sensitive land uses, including refinery development. Proposed petroleum refineries should not site the heavily impacted areas immediately upwind (based on prevalent wind direction) of sensitive land uses. Siting of refineries should be done in consultation with the BAAQMD to determine the need for a health risk assessment. 				

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RICHMOND GENERAL PLAN UPDATE MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure(s)	Action(s)	Implementing Party	Timing	Monitoring and Enforcement
	<p>c. Proposed sensitive land uses including schools, daycare facilities, congregate care facilities, hospitals, or other places of long term residency for people shall be sited:</p> <ul style="list-style-type: none"> • At least 500 feet from dry cleaners and film processing services that use Perchloroethylene. • A least 500 feet from auto body repair services. • At least 50 feet from existing gasoline dispensing stations with an annual throughput of less than 3.6 million gallons and 300 feet from existing gasoline dispensing stations with an annual throughput at or above 3.6 million gallons. • At least 300 feet from existing land uses that use Methylene Chloride or other solvents identified as a TAC, including furniture manufacturing and repair services. • At least 1,000 feet from distribution centers with more than 100 trucks per day; more than 40 trucks with operating transport refrigeration units per day; or where transport refrigeration unit operations cumulatively exceed 300 hours per week. In addition sensitive land uses should not be sited near facility entry and exit points. • At least 1,000 feet from major service and maintenance rail yards. • At least 1,000 feet from chrome plating facilities. • The City will support buffer zones between industrial areas and sensitive land uses, including port development. Avoid siting sensitive land uses immediately downwind (based on prevalent wind direction) from stationary TAC sources or primary loading areas located within the boundaries of existing port facilities. 	<p>Implement mitigation measures identified to reduce exposure of sensitive receptor to pollutants</p>	<p>Project applicant</p>	<p>During project design and development review</p>	<p>Planning & Building Services</p>

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RICHMOND GENERAL PLAN UPDATE MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure(s)	Action(s)	Implementing Party	Timing	Monitoring and Enforcement
	<ul style="list-style-type: none"> • The City will support buffer zones between industrial areas and sensitive land uses, including refinery development. Avoid siting sensitive land uses immediately downwind (based on prevalent wind direction) from stationary TAC sources located within the boundaries of petroleum refineries. d. The City of Richmond shall consult with the BAAQMD to identify TAC sources and determine the need for and requirements of a health risk assessment for proposed developments. 	Identify TAC sources and determine the need for a health risk assessment	Planning & Building Services	During project design and development review	Planning & Building Services
3.5 Cultural Resources					
<p>3.5-1 Development activities associated with the proposed Richmond General Plan Update could cause a substantial adverse change in the significance of a historical resource as defined in section 15064.5 of the CEQA Guidelines. Because mitigation is not certain to reduce impacts to a less-than-significant level, this would be considered a <i>significant and unavoidable impact</i>.</p>	<p>3.5-1 Future projects shall implement the City's Historic Structures Code to minimize impacts on historical resources by requiring thorough scrutiny before any resource may be demolished and ensuring that alteration conforms to the Secretary of the Interior's Standards for the Treatment of Historic Properties.</p>	Investigate historical resources before demolition and ensure that alteration conforms to the Secretary of the Interior's Standards for the Treatment of Historic Properties	Project applicant	Prior to approval of application for demolition or alteration	Planning & Building Services

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RICHMOND GENERAL PLAN UPDATE MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure(s)	Action(s)	Implementing Party	Timing	Monitoring and Enforcement
<p>3.5-2 Development activities associated with the proposed Richmond General Plan Update could cause a substantial adverse change in the significance of an archaeological resource as defined in section 15064.5 of the CEQA Guidelines or disturb human remains, including those interred outside of formal cemeteries. With the implementation of mitigation measures, this is considered a less-than-significant impact.</p>	<p>3.5-2 a. The City shall require that impacts on unique archaeological resources be mitigated to a less-than-significant level through methods identified in Public Resources section 21083.2, including planning construction to avoid archaeological sites, deeding archaeological sites into permanent conservation easements, capping or covering archaeological sites with a layer of soil before building on the sites, or planning parks, greenspace, or other open space to incorporate archaeological sites.</p> <p>b. The City shall require new development within the City to evaluate the potential for impacts on human remains. The City shall require that the treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable state and federal laws, including notification of the County Coroner and, in the event of the Coroner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC).</p>	<p>Comply with mitigation requirements regarding consultation and subsequent actions if archaeological resources are encountered</p> <p>Comply with mitigation requirements regarding consultation and subsequent actions if human remains are encountered</p>	<p>Construction contractor</p> <p>Construction contractor</p>	<p>Prior to grading activities and ongoing during construction</p> <p>Prior to grading activities and ongoing during construction</p>	<p>Planning & Building Services</p> <p>Planning & Building Services</p>
<p>3.5-3 Development activities associated with the proposed Richmond General Plan Update could directly or indirectly destroy a unique paleontological resource or site or unique geologic feature. With the implementation of mitigation measures, this is considered a less-than-significant impact.</p>	<p>3.5-3 The City shall require new development within areas of high sensitivity paleontological resources to evaluate the potential for impacts on significant paleontological resources. The City shall require that impacts on significant paleontological resources be mitigated to a less-than-significant level through data recovery or other methods determined adequate by a professional paleontologist.</p>	<p>Comply with mitigation requirements regarding consultation and subsequent actions if paleontological resources are encountered</p>	<p>Construction contractor</p>	<p>Prior to grading activities and ongoing during construction</p>	<p>Planning & Building Services</p>

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RICHMOND GENERAL PLAN UPDATE MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure(s)	Action(s)	Implementing Party	Timing	Monitoring and Enforcement
3.6 Climate Change					
<p>3.6-1 Implementation of the proposed General Plan would result in the generation of GHGs that may have a significant impact on the environment. Implementation of BAAQMD BMPs would ensure that construction emissions of GHGs would be less than significant. However, even with the implementation of all feasible mitigation measures, the impacts of operational emissions would remain uncertain and, therefore, be considered significant and unavoidable.</p>	<p>3.6-1 a. All construction projects shall incorporate the most recent Best Management Practices for Greenhouse Gas Emissions as indicated by the BAAQMD.</p> <p>b. All new development and all retrofits of single-family developments, multi-family developments of over 10 units, and all commercial/industrial remodels of over 10,000 square feet shall be required to exceed Title 24 standards by 20 percent by 2020 and 30 percent by 2030. This mitigation measure enhances General Plan Action EC3.C.</p> <p>Measures to reduce emissions can include, but are not limited to:</p> <ul style="list-style-type: none"> • Install energy efficient appliances, including air conditioning and heating units, dishwashers, water heaters, etc.; • Install solar water heaters; • Install top quality windows and insulation; • Install energy efficient lighting; • Optimize conditions for natural heating, cooling and lighting by building siting and orientation; • Use features that incorporate natural ventilation; • Install light-colored "cool" pavements, and strategically located shade trees along all bicycle and pedestrian routes; and • Incorporate skylights, reflective surfaces, and natural shading in buildings design and layouts; • Replace inefficient air conditioning and heating units with new energy efficient models; • Replace older, inefficient appliances with new energy efficient models; • Replace old windows and insulation with top-quality windows and insulation; 	<p>Incorporate the most recent BMPs</p> <p>New development and all retrofits shall be required to exceed Title 24 standards by 20 percent by 2020 and 30 percent by 2030</p>	<p>Project applicant</p> <p>Project applicant</p>	<p>On-going during grading & construction</p> <p>During project design and development review</p>	<p>Planning & Building Services</p> <p>Planning & Building Services</p>

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RICHMOND GENERAL PLAN UPDATE MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure(s)	Action(s)	Implementing Party	Timing	Monitoring and Enforcement
	<ul style="list-style-type: none"> • Replace inefficient and incandescent lighting with energy efficient lighting; and • Weatherize existing buildings to increase energy efficiency. <p>c. Require all new City-owned and operated facilities and 50 percent of all new development to generate at least 10 percent of their energy use from renewable sources. Enhances General Plan Action EC3.B.</p> <p>d. All new commercial and multi-family developments installing boilers shall be required to install energy efficient boilers such that they achieve a minimum 4.5 percent reduction in energy usage. The same reductions shall be required of all remodeled multi-family developments of over 10 units and all commercial/industrial remodels of over 10,000 square feet.</p> <p>e. Develop improved waste reduction and expanded recycling programs such that a 75 percent diversion rate is achieved by 2020 and an 85 percent diversion rate is achieved by 2030 for all non-construction waste streams. Potential measures could include: providing recycling containers in parks and public spaces; establishing computer reuse and recycling programs; enhancing recycling and green waste services for all residents; and providing locations for household hazardous wastes to be recycled. Enhances General Plan Actions EC3.D.</p> <p>f. Develop a program that requires all construction and demolition activities to evaluate energy use and waste and to reduce or mitigate construction-related impacts by 75 percent. Enhances General Plan Actions EC3.E.</p>	<p>Require facilities to generate at least 10 percent of energy use from renewable sources</p> <p>Developments installing boilers shall be required to install energy efficient boilers</p> <p>Develop improved waste reduction and expanded recycling programs</p> <p>Require construction and demolition activities to evaluate energy use and waste</p>	<p>Project applicant</p> <p>Project applicant</p> <p>Planning & Building Services/City Manager's Office</p> <p>Planning & Building Services/City Manager's Office</p>	<p>During project design and development review</p> <p>During project design and development review</p> <p>Within two years of adoption of the General Plan</p> <p>Within two years of adoption of the General Plan</p>	<p>Planning & Building Services</p> <p>Planning & Building Services</p> <p>City Manager's Office</p> <p>City Manager's Office</p>

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Impact	Mitigation Measure(s)	Action(s)	Implementing Party	Timing	Monitoring and Enforcement
	<p>g. Implement an Anti-Idling Policy for heavy-duty diesel trucks, including local delivery trucks and long-haul truck transport within the City. This policy would prohibit idling of on and off-road heavy duty diesel vehicles for more than 5 minutes. This policy would be implemented by requiring signage at all loading docks and along truck routes informing drivers of the requirement to limit idle time to no more than five minutes at loading docks and parking areas. Variances to the policy would include the necessity to idle while in traffic lanes due to traffic congestion on the roadway, or during emergency situations. Employers who own and operate truck fleets would be required to inform their drivers of the anti-idling policy. Enhances General Plan Policy EC5.3.</p> <p>h. Provide tax and development incentives for employers with more than 100 employees within the City to establish a trip reduction plan that would incorporate annual employee commute surveys, marketing of commute alternatives, ride matching assistance, and transit information at a minimum. Additional measures shall be incorporated such that vehicle trips are reduced by a minimum of 4%. Measures may include secure bicycle parking, showers and lockers for employees who bike to work, among others. This measure would encourage building management companies and smaller localized businesses to cooperate in establishing joint trip reduction plans. Enhances General Plan Actions EC2.F and EC2.I.</p> <p>i. Implement Citywide car and bicycle sharing programs. Collaborate with service providers to identify potential sites for locating carshares.</p>	<p>Implement an Anti-Idling Policy for heavy-duty diesel trucks</p> <p>Provide tax and development incentives for employers with more than 100 employees to establish a trip reduction plan</p> <p>Implement Citywide car and bicycle sharing programs</p>	<p>City Manager's Office</p> <p>Planning & Building Services/City Manager's Office</p> <p>Project Applicants/ Planning & Building Services/City Manager's Office</p>	<p>Within two years of adoption of the General Plan</p> <p>Within two years of adoption of the General Plan</p> <p>On-going</p>	<p>City Manager's Office</p> <p>City Manager's Office</p> <p>Planning & Building Services</p>

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Impact	Mitigation Measure(s)	Action(s)	Implementing Party	Timing	Monitoring and Enforcement
	<p>j. Require new local-serving mixed-use in residential areas to provide needed services and amenities close to where people live and work. Require new development and redevelopment projects to provide community amenities and uses that serve priority community needs. Enhances General Plan Policy EC4.1 and General Plan Actions EC4.A, EC4.B, and EC4.D.</p> <p>k. Require mixed-use development along transit-oriented corridors that attracts people and facilitates activity throughout the day. Prohibit isolated or gated communities in order to improve physical connectivity throughout the City, and remove barriers in existing gated areas. Maintain streets to ensure that neighborhoods and streets are safe and well used. Enhances General Plan Policy EC4.2 and Actions EC2.C, EC2.E, EC2.G, EC4.A, EC4.B, EC4.C and EC4.E.</p> <p>l. Collaborate with AC transit, BART, West Contra Costa Transit Agency, Amtrak, and major employers in Richmond that provide shuttle service to expand transit in the evenings and late nights, and for people with special needs. Enhance Richmond's paratransit service. Collaborate with major employers to provide employer-based "open-door" shuttles to BART, the planned ferry terminal and other transit hubs. Collaborate with regional and Contra Costa County transportation agencies to maintain and enhance service within the City and region. Explore strategies to address affordability, access, and safety. Expand outreach and information programs to promote transit use. Measure results in a 10 percent expansion of transit system, and an increase in service frequency</p>	<p>Include new local-serving mixed-use as part of development in residential areas</p> <p>Include mixed-use as part of development along transit-oriented corridors</p> <p>Collaborate with transit authorities and major employers in Richmond that provide shuttle service to expand transit in the evenings and late nights, and for people with special needs</p>	<p>Project applicant</p> <p>Project applicant/ Planning & Building Services</p> <p>Engineering Services Department/ Planning & Building Services</p>	<p>During project design and development review</p> <p>During project design and development review</p> <p>On-going</p>	<p>Planning & Building Services</p> <p>Planning & Building Services</p> <p>Engineering Services Department/ Planning & Building Services</p>

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RICHMOND GENERAL PLAN UPDATE MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure(s)	Action(s)	Implementing Party	Timing	Monitoring and Enforcement
	<p>and speed for 2020; and a 15 percent expansion by 2030. Expand outreach and information programs to promote transit use. Enhances General Plan Policy EC2.C.</p> <p>m. All new street lighting and all re-modeled or replaced street lighting shall consist of high-efficiency lamps that reduce energy consumption by a minimum of 16 percent.</p> <p>n. All new traffic lights and all replaced traffic lights shall consist of LED lights. This high efficiency lighting would reduce emissions from traffic lights by 90 percent.</p> <p>o. Require new development to incorporate water-saving measures demonstrating a minimum reduction of 20 percent in water use over a similar project completed within the previous five years. This measure enhances General Plan Action EC3.F. This measure would be enhanced by General Plan Action EC3.G.</p>	<p>Use high-efficiency lamps for street lighting</p> <p>Use LED technology for new traffic lights</p> <p>Incorporate water-saving measures in new development</p>	<p>Project applicant/ Engineering Services Department</p> <p>Project applicant/ Engineering Services Department</p> <p>Project applicant/ Engineering Services Department</p>	<p>On-going</p> <p>On-going</p> <p>During project design and development review</p>	<p>Engineering Services Department/ Planning and Building Services/City Manager's Office</p> <p>Engineering Services Department/ Planning and Building Services/City Manager's Office</p> <p>Engineering Services Department/ Planning & Building Services</p>

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RICHMOND GENERAL PLAN UPDATE MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure(s)	Action(s)	Implementing Party	Timing	Monitoring and Enforcement
	<p>p. The City of Richmond shall adopt a Climate Action Plan within 18 months of the adoption of the General Plan Energy and Climate Change Element. The Climate Action Plan shall include the following pursuant to CEQA section 15183.5(b):</p> <ul style="list-style-type: none"> a. The quantification of greenhouse gas emissions, both existing (2005) and projected for 2020 and General Plan horizon year (2030). These inventories and projections shall be used in the forthcoming Climate Action Plan. b. The Climate Action Plan shall define reduction targets that are California State Assembly Bill 32 (AB 32) compliant and continue reducing emissions past 2020 in order to address cumulatively considerable impacts of greenhouse gas emissions. At a minimum, the Climate Action Plan shall set a target to reduce emissions to 1990 levels by 2020, which is anticipated to be a reduction of 15% from 2005 levels. c. The 2020 and 2030 Business As Usual (BAU) Inventories provide emissions by land use types and emission sectors based upon the anticipated changes and growth in land use within the General Plan Land Use and Urban Design Element, which fulfills the criteria of CEQA Guidelines 15183.5(b)(C). As such, the inventories shall provide quantities and context of the emissions that need to be reduced in order to achieve the reduction target. Reduction measures in the Climate Action Plan shall focus on reducing the emissions from the sectors and land use types identified in the 2020 and 2030 BAU inventories. 	<p>The City of Richmond shall prepare a Climate Action Plan</p>	<p>City Manager's Office/Planning & Building Services</p>	<p>Within 18 months of the adoption of the General Plan Energy and Climate Change Element</p>	<p>City Manager's Office/Planning & Building Services</p>

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RICHMOND GENERAL PLAN UPDATE MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure(s)	Action(s)	Implementing Party	Timing	Monitoring and Enforcement
	<p>d. The Climate Action Plan shall specify reduction measures or groups of reduction measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the AB 32 compliant reduction target. To implement the goals and policies in the General Plan Energy and Climate Change Element, the Climate Action Plan shall include adaptation strategies that focus on potential local impacts of climate change, such as sea level rise, increased risk of flooding, diminished water supplies, and public health. Broader sustainability measures may include the preservation of local water quality, air quality, open space, and biodiversity. In addition, the following reduction strategies shall be incorporated into the Climate Action Plan:</p> <ul style="list-style-type: none"> i. Require all new or renovated municipal buildings to seek California Green 2010 Tier 1 building standards or higher and require new development building design to be, at a minimum, compliant with California Green 2010 building standards. ii. Require all municipal fleet purchases to be fuel efficient vehicles for their intended use, based on the fuel type, design, size, and cost efficiency. iii. Require new development projects to implement a construction plan that demonstrates how activities will reduce waste through recycling and/or salvaging of nonhazardous construction and demolition debris at a minimum of 50%. 				

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Impact	Mitigation Measure(s)	Action(s)	Implementing Party	Timing	Monitoring and Enforcement
	<p>e. In order to establish a mechanism to monitor the Climate Action Plan's progress towards achieving the reduction targets and to require amendment if the Climate Action Plan is not achieving the reduction targets, the Climate Action Plan shall include an implementation chapter describing how the reduction measures are to be implemented, emissions monitored, and the Climate Action Plan updated. Emissions inventories shall be conducted at minimum intervals of five years in order to evaluate the progress of the Climate Action Plan. The Climate Action Plan shall be updated together with future General Plan Updates or as necessary to implement new statewide reduction thresholds.</p> <p>f. The Climate Action Plan, including all updates, is a project subject to public review and comment under the California Environmental Quality Act.</p>				
3.9 Hydrology and Water Quality					
<p>3.9-8 Development within the City could be subject to dam failure inundation and sea level rise flood hazards. Implementation of General Plan Policies and Implementing Actions, as well as the implementation of mitigation measures, would render this a <i>less-than-significant impact</i>.</p>	<p>3.9-8 a For all projects within the inundation zone for maximum sea level rise as identified in Map 8.1 of Chapter 8 of the General Plan, the project site shall be graded such that finished floor elevations are 3.5 feet above the Base Flood Elevation (BFE), and streets and pads are 3 feet above BFE to allow for future sea level rise, thereby elevating all structures above the existing and potential future flood hazard area.</p>	<p>Projects within the inundation zone for maximum sea level rise shall be graded such that finished floor elevations are 3.5 feet above the Base Flood Elevation (BFE), and streets and pads are 3 feet above BFE</p>	<p>Project applicant</p>	<p>On-going during grading and construction</p>	<p>Engineering Services Department/ Planning and Building Services</p>

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Impact	Mitigation Measure(s)	Action(s)	Implementing Party	Timing	Monitoring and Enforcement
	<p>b. For all projects within the inundation zone for maximum sea level rise as identified in Map 8.1 of the General Plan, shoreline and public access improvements shall be designed to allow future increases in elevation along the shoreline edge to keep up with higher sea level rise values, should they occur. Design elements shall include providing adequate setbacks to allow for future elevation increases of at least 3 feet from the existing elevation along the shoreline. Before a Small Lot Final Map is approved, the project Applicant must petition the appropriate governing body to form (or annex into if appropriate) and administer a special assessment district or other funding mechanism to finance and construct future improvements necessary to ensure that the shoreline, public facilities, and public access improvements will be protected should sea level rise exceed 16 inches at the perimeter of the project. Prior to the sale of the first residential unit or lease of the first commercial or industrial space, the legislative body shall have acted upon the petition to include the property within the district boundary. The newly formed district shall also administer a Monitoring and Adaptive Management Plan to monitor sea level and implement and maintain the protective improvements. All improvements shall be subject to approval by the City of Richmond planning and public works staff prior to issuance of building or grading permits. These improvements shall include, but are not limited, one or more of the following:</p>	<p>Projects within the inundation zone for maximum sea level rise, shall have shoreline and public access improvements designed to allow future increases in elevation along the shoreline edge to keep up with higher sea level rise values</p>	<p>Project applicant</p>	<p>On-going during grading and construction</p>	<p>Engineering Services Department/ Planning and Building Services</p>

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RICHMOND GENERAL PLAN UPDATE MITIGATION MONITORING AND REPORTING PROGRAM					
Impact	Mitigation Measure(s)	Action(s)	Implementing Party	Timing	Monitoring and Enforcement
	<ul style="list-style-type: none"> • Construction of a shoreline protection system that is initially built to accommodate a mid-term rise in sea level of 16 inches, with a design that is adaptable to meet higher than anticipated values in the mid-term, as well as for the long-term; • Construction of a storm drainage system that is initially built to accommodate a mid-term rise in sea levels of 16 inches, with a design that is adaptable to meet higher than anticipated sea level rise values (similar to the first bullet); and • Construction of buildings and vital transportation infrastructure at elevations that would not be exceeded by flood waters, even if the shoreline protection does not function, for existing conditions and over a longer-term as compared to the two above. 				
3.10 Noise					
<p>3.10-1 Construction activities associated with the future land use changes under the proposed General Plan could generate noise levels that temporarily exceed acceptable noise levels. Implementation of noise limits in the City of Richmond Municipal Code would limit the exposure of sensitive receptors to temporary or periodic increases in noise levels. However, because noise from construction activities could exceed allowable noise levels, this is considered a <i>significant and unavoidable impact</i>.</p>	<p>3.10-1 Future projects shall incorporate project-specific mitigation measures to reduce the impact of construction noise.</p>	<p>Comply with project-specific mitigation measures to reduce construction noise</p>	<p>Project applicant</p>	<p>During project design and development review</p>	<p>Planning & Building Services</p>

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RICHMOND GENERAL PLAN UPDATE MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure(s)	Action(s)	Implementing Party	Timing	Monitoring and Enforcement
3.10-2 Construction of future new land uses under the proposed General Plan could generate or expose persons or structures to temporary groundborne vibration. Though it is unlikely that vibration would exceed levels of mere annoyance for short periods, the potential for impacts on sensitive uses renders this impact <i>significant and unavoidable</i>.	3.10-2 Future projects shall incorporate project-specific mitigation measures to reduce the impact of construction-related groundborne vibration.	Comply with project-specific mitigation measures to reduce vibration	Project applicant	During project design and development review	Planning & Building Services
3.10-3 Implementation of the proposed General Plan could expose sensitive receptors to noise levels in excess of the existing noise standards established by the City. There are no known feasible measures to reduce train noise below a level of significance; this impact would be <i>significant and unavoidable</i>.	3.10-3 Future projects shall incorporate project-specific mitigation measures and maintain Quiet Zones to reduce the impact of train noise.	Comply with project-specific mitigation measures to maintain Quiet Zones	Project applicant	During project design and development review	Planning & Building Services

TABLE 5-1

RICHMOND GENERAL PLAN UPDATE MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation Measure(s)	Action(s)	Implementing Party	Timing	Monitoring and Enforcement
3.10-5 Operation of new land uses under the proposed General Plan would generate increased local traffic volumes that would cause a substantial permanent increase in ambient noise levels in the project vicinity. While implementation of General Plan policies would reduce impacts on sensitive receptors, the impact would remain <i>significant and unavoidable</i>.	3.10-5 Future projects shall incorporate project-specific mitigation measures to promote non-motorized transportation to reduce the impact of traffic noise.	Incorporate project-specific mitigation to promote non-motorized transportation	Project applicant	During project design and development review	Planning & Building Services
3.13 Public Utilities					
3.13-3 Implementation of the General Plan Update could require the construction or expansion of wastewater treatment facilities or collection systems that could cause significant environmental impacts, absent project-specific mitigation measures. Because it is not certain that project-specific mitigation would reduce all impacts to a less-than-significant level, this is considered a <i>significant impact</i>.	3.13-3 Future projects shall incorporate project-specific mitigation measures to reduce impacts from the construction of new wastewater collection and treatment facilities.	Incorporate project-specific mitigation to reduce impacts from the construction of new facilities	Project applicant	During project design and development review	Planning & Building Services

TABLE 5-1					
RICHMOND GENERAL PLAN UPDATE MITIGATION MONITORING AND REPORTING PROGRAM					
Impact	Mitigation Measure(s)	Action(s)	Implementing Party	Timing	Monitoring and Enforcement
3.14 Transportation and Circulation					
3.14-1 The proposed General Plan may result in traffic congestion that exceeds the previous City of Richmond traffic LOS standard of LOS D, as well as CCTA and WCCTAC LOS and MTOS standards. Because it is not certain that project-specific mitigation measures would reduce impacts to a less-than-significant level, this is a <i>significant and unavoidable impact</i> .	3.14-1 Future projects shall incorporate project-specific mitigation measures to reduce traffic impacts.	Comply with project-specific mitigation measures to reduce traffic impacts	Project applicant	During project design and development review	Planning and Building Services
3.15 Visual Resources					
3.15-2 The development of the proposed General Plan could create a new source of substantial of light or glare that would adversely affect day or nighttime views in the area. Though all available mitigation would be implemented, this remains a <i>significant and unavoidable impact</i> .	3.15-2 a All street lighting shall be directed downward and shielded to prevent light spill onto surrounding properties, sky glow, and glare. b. The City shall restrict the use of high level outdoor lighting for new homes, particularly along the hillside ridges. c. Landscaping shall be incorporated along internal roads and near off-site homes to reduce spill light emanating from vehicles and buildings. d. The City shall require design review of any project containing reflective glass or metal building materials that exceed 50 percent of any building surface or the first three floors.	Street lighting shall be directed downward Restrict the use of high level outdoor lighting Landscaping shall reduce spill light from vehicles and buildings Require design review if reflective glass or metal building materials exceed 50 percent of any building surface	Project applicant	During project design and development review	Planning and Building Services