

RESOLUTION NO. 38- 08b

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND UPHOLDING THE PLANNING COMMISSION APPROVAL OF TENTATIVE PARCEL MAP MS-1103631 TO SUBDIVIDE A ± 24,479 SQUARE FOOT PARCEL INTO THREE (3) STANDARD SINGLE FAMILY RESIDENTIAL LOTS WITH REVISED MODIFIED CONDITIONS OF APPROVAL, AND ADOPTION OF A MITIGATED NEGATIVE DECLARATION AND MITIGATION AND MONITORING REPORT FOR 125 THROUGH 127 WESTERN DRIVE, FOR PROJECT SITE KNOWN AS KOZY KOVE

WHEREAS, Paige Poulos Woolley and John Woolley, owners, in their application of December 2006, requested the City of Richmond (the "City") to approve a Tentative Parcel Map, hereinafter called "Request for Approval of Tentative Parcel Map," and attached as Exhibit B, for the purpose of subdividing a ±24,479 square foot (SF) parcel, Assessor Parcel No. 558-020-007, into three (3) standard minimum 6,000 square foot lots, under the provisions of the State Subdivision Map Act; and

WHEREAS, the Planning Commission of the City of Richmond, California (the "Commission"), reviewed and considered the Request for Approval of Tentative Parcel Map, the activities contemplated by the Tentative Parcel Map, applicable sections of the Subdivision and Zoning Ordinances of the City of Richmond, and any related information, including correspondence related to the project and additional environmental information prepared by Commissioner Harris, presented to the Commission during duly noticed public hearings held on July 12, 2007, August 2, 2007, and September 06, 2007; and

WHEREAS, pursuant to the responsibility given to the Planning Commission of the City of Richmond by City Council Resolution No. 125-03 for the general administration of the California Environmental Quality Act (CEQA) and the State EIR Statutes and Guidelines, the project was reviewed with a Mitigated Negative Declaration (MND), accompanied by a Mitigation Monitoring Reporting Program (MMRP), has been prepared and distributed for public review, analyzing all phases of the minor Subdivision and eventual development of the property to accommodate three (3) single family residences, in compliance with the requirements of CEQA, as amended, including the revisions to the negative declaration proposed by Commissioner Harris in a letter to the Planning Department (August 30, 2007), attached to Exhibit A of this Resolution. These revisions (a) clarify, amplify, or make insignificant modifications to the negative declaration, and (b) impose new mitigation measures that are equivalent or more effective in mitigating or avoiding potential significant effects than those measures set forth in the original negative declaration, and the new mitigation measures will not cause any potentially significant effect on the environment; and

WHEREAS, the MND was distributed and circulated for public review on April 17, 2007, for a review period of 30 days as required by CEQA. The 30-day comment period was extended to May 23, 2007 at the request of other State and local agencies to allow sufficient time for their review. During the public review period, several letters and e-mails were received on the environmental document, proposed minor subdivision, and subsequent single family development. The comments were fully responded to by the City in the Responses to Comments attached to the MND and published in June 2007, and copies were distributed to those parties that commented on the document during the review period; and

WHEREAS, the potential development of the property has also been reviewed by the Bay Area Conservation and Development Commission, which has commented that no public beach access will be necessary on the property. Additionally, no significant environmental impact will occur as a result of the project with implementation of the proposed mitigation measures; and

WHEREAS, at a duly noticed public hearing on July 12, 2007 and August 2, 2007, and continued to September 6, 2007, the City of Richmond Planning Commission (the "Commission") heard public comment on the Mitigated Negative Declaration and proposed parcel map. After reviewing and considering all oral and written information regarding the Mitigated Negative Declaration and proposed parcel map presented at or before the public hearing, the Commission approved the Tentative Parcel Map and adopted the associated Mitigated Negative Declaration on September 6, 2007; and

WHEREAS, on September 17, 2007, an appeal of the Planning Commission's approval of the project was filed with the City Clerk by Nancy Foss stating that the purpose of the appeal was "to redress serious errors and the lack of proper study and mitigation of this subdivision," the parcel map should have been denied based on the fact that there were many neighbors opposing the project, and the Point Richmond Neighborhood Council's recommended conditions and "mitigation measures" should have been imposed on the parcel map by the Planning Commission; and

WHEREAS, the City Council conducted a duly noticed public hearing on the appeal of the Planning Commission decision to approve the Tentative Parcel Map and minor subdivision, MS-1103631, and adoption of the associated Mitigated Negative Declaration on October 30, 2007, and March 4, 2008. The City Council public hearing on the appeal of the Planning Commission's approval of the minor subdivision was closed on March 4, 2008. The City Council continued discussions of the item at their regularly scheduled meetings on April 1, 2008 and April 15, 2008; and

WHEREAS, after consideration of the Tentative Parcel Map for the project, the appeal, and hearing public testimony, the City Council determined it appropriate to uphold the Planning Commission's decision to approve the Tentative Parcel Map in Exhibit A, as attached, and the associated Mitigated Negative Declaration with Mitigation Monitoring Plan and Supplemental Information in Exhibit B, as attached and incorporated herein, for 125 through 127 Western Drive (APN: 558-020-007), with revised modified conditions of approval of the City Council on April 15, 2008, and contained in the approval below.

A. CEQA FINDINGS

1. The Commission found that the Kozy Kove Mitigated Negative Declaration, which consists of the Draft Initial Study/Proposed Mitigated Negative Declaration, Comments and Responses to the Mitigated Negative Declaration, and the Mitigation Monitoring and Report Program, was completed in accordance with the requirements of the CEQA, and the CEQA Guidelines.
2. The Commission certified that the Mitigated Negative Declaration was prepared, published, circulated and reviewed in accordance with the requirements of CEQA, and the CEQA Guidelines, and constituted an adequate, accurate, objective and complete document addressing all issues relevant to the approval of the Project.
3. The Commission certified that it reviewed and considered the information contained within the Mitigated Negative Declaration prior to acting on the proposed Project, and that the Mitigated Negative Declaration reflects the independent judgment and analysis of the City.
4. The Commission recognized that the Mitigated Negative Declaration contains certain additions, clarifications, modifications or other revisions (as the result of the public review and comments on the Draft Initial Study/Proposed Mitigated Negative Declaration, public agency responses to those comments, and refinements to the Project descriptions), but that such work does not present substantial revisions or significant new information requiring recirculation of the Mitigated Negative Declaration.
5. The Mitigated Negative Declaration identified all potentially

significant adverse environmental impacts and feasible mitigation measures or standard conditions of approval that would reduce these impacts to a less-than-significant level. All of the mitigation measures identified in the Mitigated Negative Declaration, including those in the Mitigation Monitoring and Reporting Program, will be adopted and implemented as Conditions of Approval for the project. The Commission finds that on the basis of the whole record before it, there is no substantial evidence that the Project, as mitigated in the Mitigated Negative Declaration will have a significant impact on the environment.

6. The monitoring and reporting of CEQA mitigation measures in connection with the Project will be conducted in accordance with the attached Mitigation Monitoring and Reporting Program incorporated into the Conditions of Approval for the Project. Adoption of the Mitigation Monitoring and Reporting Program will constitute fulfillment of the CEQA monitoring and/or reporting requirement set forth in Section 21081.6 of CEQA. All proposed mitigation measures are capable of being fully implemented by the Project Sponsor.

B. RECORD OF PROCEEDINGS AND CUSTODIAN OF RECORD

For purposes of CEQA and the findings set forth herein, the record of proceedings for the City's findings and determinations consists of the following documents and testimony, at a minimum:

- Planning Commission agenda report prepared for the project dated July 12, 2007.
- Planning Commission agenda report prepared for the project dated August 2, 2007.
- Planning Commission agenda report prepared for the project dated September 6, 2007.
- City Council agenda report prepared for the project dated October 30, 2007.
- City Council agenda report prepared for the project dated March 4, 2008.
- City Council agenda report prepared for the project dated April 1, 2008.
- City Council agenda report prepared for the project dated April 15, 2008.
- Historical Resource Evaluation Report of the Alexander Kaun Beach House, 125-127 Western Drive, Richmond, CA, prepared by Carey & Co., Inc. dated March 2, 2007, with updated information from Charlie Duncan of Carey & Co., Inc., in e-mail dated September 6, 2007.
- Soils & Geotechnical Investigation Report prepared by Earth Science Consultants dated August 23, 2006 for 125-127 Western Drive, Pt. Richmond, CA.
- All written and oral comments submitted during the public review period for the Mitigated Negative Declaration and all records pertaining to public hearings or meetings regarding Project review.
- All other public reports, documents, studies, memoranda, maps, or other planning documents related to the project and the Mitigated Negative Declaration, prepared by the City, consultants to the City, or responsible or trustee agencies.
- The City of Richmond General Plan, as amended, and all environmental review documents for the General Plan, including findings and statements of overriding considerations related thereto.
- The Richmond Zoning Ordinance.
- All matters of common knowledge to this City Council, including, but not limited to (1) the Richmond General Plan and other applicable policies, (2) the Richmond Zoning Ordinance and other applicable ordinances, (3) applicable City policies and regulations, (4) reports, projections, and documentation regarding development within and surrounding the City, and (5) federal, state, and county laws, regulations, guidelines, and publications.

The documents described above comprising the record of proceedings are located in the offices of the Planning and Building Department, Planning Division, City of Richmond, 1401 South Marina Way, Richmond, CA 94804. The custodian of these documents is the Planning Director or his designee.

C. FINDINGS OF FACT REGARDING THE KOZY KOVE MITIGATED NEGATIVE DECLARATION.

1. The Mitigated Negative Declaration, prepared in compliance with CEQA, evaluates the potentially significant environmental impacts that could result from approval of the Project.

2. The Mitigated Negative Declaration concludes that the Project would not result in any significant impacts if the required mitigation measures are fully implemented. Substantial evidence supports the Mitigated Negative Declaration's conclusion.

3. During the preparation of the Initial Study Checklist, it was determined that the Project would have no impact or have less-than-significant impact on the following environmental factors: Air Quality, Agricultural Resources, Cultural Resources, Hazards and Hazardous Materials, Hydrology and Water Quality, Mineral Resources, Population, Public Services, Recreation, Transportation/Traffic and Circulation, and Utilities and Service Systems,. Consistent with CEQA and CEQA Guidelines, the Mitigated Negative Declaration contains a full and complete explanation as to why the Project's effects on these environmental factors were determined to have no impact or less-than-significant impact.

4. During the preparation of the Initial Study Checklist, it was determined that the Project would have a less-than-significant impact with mitigation on one or more of the following environmental factors: Aesthetics, Biological Resources, Geology and Soils, and Noise. No potentially significant impacts were found. Consistent with CEQA and CEQA Guidelines, the Mitigated Negative Declaration contains a full and complete explanation as to how the potentially less-than-significant impact on these environmental factors are reduced by the incorporation of the required mitigation measures set forth in the Mitigation Monitoring and Reporting Program attached hereto as Exhibit A and incorporated herein.

D. FINDINGS OF FACT REGARDING THE KOZY KOVE PARCEL MAP

1. **That in relation to Section 66473.5 of the Government Code, that the proposed subdivision involved in the Request for Approval of Tentative Parcel Map, together with the provisions of its design and improvements, is consistent with the applicable General Plan and Specific Plan of the City.**

Statement: *Criterion satisfied.* The General Plan designation for the parcel is 942/Very Low Density Residential, with a range of 0.0 to 5.0 dwelling units per acre. The proposed single family residential land use development of three (3) residences on the proposed three (3) lots is consistent with the land use designation, with the density of development allowable within the Very Low Density Residential General Plan designation, and is compatible with objectives, policies, general land uses and programs specified in both the General Plan and applicable Specific Plan. Design and improvement provisions are maintained through the Conditions of Approval for the Tentative Parcel Map and future development of the site.

2. **That in relation to Section 66474 of the Government Code,**

(a) That the proposed map is consistent with applicable general and specific plans.

Statement: *Criterion satisfied.* The proposed subdivision will create lots for single-family dwellings, the type of development anticipated by the Very Low Density Residential General Plan designation, and the existing land

use of the site which is low density single family residential. The proposed residential density is approximately four to five (4 to 5) dwelling units per acre, with the adopted upper limit of the range allowed by the Very Low Density Residential designation being five (5). The proposed subdivision is within the boundaries of and consistent with the West Shoreline Specific Plan and the land uses proposed therein, and has been reviewed by the Point Richmond Neighborhood Council.

b) That the design or improvement of the proposed subdivision is consistent with applicable general and specific plans.

Statement: *Criterion satisfied.* The existing site currently contains four to five residential buildings. The approval of this minor subdivision/parcel map will allow three (3) single-family residences to be built in compliance with the 942/Very Low Density Residential General Plan land use designation if the existing structures are removed or demolished. In actuality, less structures will be constructed on the lots than exist at the present time. Additionally, the proposed parcel map will eventually result in a higher quality of architectural design and newer construction on the proposed lots, consistent with the General Plan and Specific Plans of encouraging reinvestment and high quality development on sites with deteriorating structures. The applicants intend to build an open-style of metal fencing to allow views into the site which are presently hidden behind a solid wood fence, and access to the flag lots, shown as Parcel B and C on the map, will be provided by an improved shared accessway constructed to Fire Department requirements. The development of the parcels and design of the residences will be required to meet Design Review and development standards.

(c) That the site is physically suitable for the type of development.

Statement: *Criterion satisfied.* A soils and geotechnical analysis has been prepared for the project site, and the parcels will be built upon in accordance with the recommendations contained the analysis. The Point Richmond area where the property is located is hilly and has shoreline characteristics on most lots. The three lots have been developed with several residential structures in the past which may be demolished to construct three (3) new residences. The residences will be built in accordance with the recommendations of the geotechnical analysis and the project civil engineer. Single-family development can safely be constructed on this site at the proposed density, as is built on the surrounding lots in the area. The density of development proposed is within the established patterns of development in the immediate area, which contains lots varying in size from 3,000 square feet to 12,000 square feet per residence. The proposed lots will range in size from 6,000 square feet to approximately 9,000 square feet (excluding the access easement).

(d) The site is physically suitable for the proposed density of development.

Statement: *Criterion satisfied.* The density of development proposed is well within keeping the established densities and patterns of development in the immediate area, which contains lots varying in size from 3,000 square feet to 12,000 square feet per residence and within the density range of 0.0 to 5.0 dwelling units per acre. The proposed lots will range in size from 6,000 square feet to approximately 9,000 square feet (excluding the access easement) in accordance with the Richmond Zoning Ordinance. If developed with three single-family residences, there will be little that would distinguish this site from the single family development in the neighborhood and surroundings.

(e) The design of the subdivision or the proposed improvements

are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

Statement: *Criterion satisfied.* The proposed subdivision consists of infill lots within an existing urbanized area near the coast. The project has been reviewed for environmental adverse effects, and mitigation measures have been incorporated in the project and in the conditions of approval, to be implemented through the Mitigation Monitoring Reporting Program. With the mitigation measures suggested by the MND, and incorporated into the Mitigation Monitoring and Reporting Program and the project, plus the conditions of approval recommended for the parcel map by the City Engineer related to the extension of sewer laterals, and erosion control and drainage improvements, the project will have a less-than-significant impact on the environment. Additionally, in some instances, the environment may be improved through the quality of design of the three dwelling units, the upgrading of the site infrastructure, and the establishment of a view corridor through the project area. The potential development of the property has also been reviewed by the Bay Area Conservation and Development Commission (BCDC), which has commented that no public access will be necessary on the property. The buildable area of the three lots will be setback from the shoreline in accordance with the BCDC's determination of buildable area. No significant environmental impact injury to fish or wildlife or their habitat will occur as a result of the project with implementation of the proposed mitigation measures.

(f) The design of the subdivision or the type of improvements is not likely to cause serious public health problems.

Statement: *Criterion satisfied.* The design of the proposed minor subdivision or the type of improvements will not cause harmful or serious effects on public health based on the information contained in the Mitigated Negative Declaration and Initial Study, and additional information presented by Commissioner Harris, in Exhibit A. In actuality, the improvements to site access to the parcels will be improved, and provide improved access to and from the site for residents to Western Drive. Presently, there is direct roadway access on the site only to the residence closest to Western Drive, and it is not paved with an all weather surface. The other buildings on the site have no direct vehicular access. A private improved shared access easement will be provided on the property to access flag lots, Parcels B and C, from Western Drive with the parcel map. Parcel A will be directly accessed from Western Drive and improved with driveway access. The improved access to all of the parcels has been approved by the Richmond Fire Department. Until the time that the property is rebuilt or redeveloped, the existing residences and buildings will remain on the site with the current access.

(g) The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, or access through or use of, property within the proposed subdivision.

Statement: *Criterion conditionally satisfied.* There are no identified public easements on the property, prescribed or otherwise, nor is public access being required of the project by the BCDC. Shared access is provided to Parcels B and C with an easement on the Parcel Map, and Parcel A will have separate access from Western Drive. The accessways will be improved with all weather surfaces, and constructed in accordance with the requirements of the Fire Department and the City Engineer. Access to the shoreline will be provided for all parcels on the Parcel Map through a pedestrian accessway/easement between Parcels B and C, and properly maintained.

3. **That in relation to Section 66474.6 of the Government Code, that the discharge of waste from the proposed subdivision into an existing community sewer system would not result in or add to violation of existing requirements prescribed by the San Francisco Bay Regional Water Quality Control Board.**

Statement: *Criterion conditionally satisfied.* The City Engineering and Stege Sanitary District have reviewed the proposed subdivision and have determined that lateral sewer lines from the existing main lateral on the property should be provided for each created parcel to ensure adequate capacity of the waste water treatment facility and preserve water quality standards. Testing of the main lateral and existing laterals will be necessary prior to connection to interior plumbing. The existing sewer main closest to the shore will not be disturbed or used to provide direct service connections to the plumbing on the site.

NOW, THEREFORE, BE IT RESOLVED, that based on the Planning Commission's Findings of Facts, and adopted by the City Council, for the Kozy Kove project, the City Council hereby,

1. Adopts the Kozy Kove Project Mitigated Negative Declaration, which consists of the Draft Initial Study/Proposed Mitigated Negative Declaration, Comments and Responses to the Mitigated Negative Declaration, and the Mitigation Monitoring and Report Program, and certifies that the document has been completed in compliance with CEQA.

2. Certifies that the Mitigated Negative Declaration has been presented to the City Council, which reviewed and considered the information and analysis contained therein and all oral and written comments received at or before the public hearings on October 16, 2007, October 30, 2007, and April 15, 2008, before adopting the above findings made by the Planning Commission.

3. Certifies that the Mitigated Negative Declaration is adequate to support approval of the Project.

4. Finds, that the proposed mitigation measures described in the Mitigated Negative Declaration are feasible, and therefore will become binding upon the Project Sponsor and affected landowners and their assigns or successors in interest upon approval of the Project.

5. To the extent that these findings conclude that various proposed mitigation measures outlined in the Mitigated Negative Declaration are feasible and have not been modified, superseded, or withdrawn, the City Council hereby binds the Project Sponsor, its assigns and successors in interest to implement those measures. These findings are not merely informational but constitute a binding set of obligations that are now effective with the approval of the project by the City Council. The implementation of the mitigation measures hereby adopted shall occur both through implementation of the Mitigation Monitoring and Reporting Program adopted concurrently with the MND and by having them included as conditions of approval on subsequent discretionary entitlements granted for the Project.

6. Adopts, in compliance with the Public Resources Code Section 21080.6, the Mitigation Monitoring and Reporting Program as set forth in the Mitigated Negative Declaration, attached hereto and incorporated herein as Exhibit A. The Mitigation Monitoring and Reporting Program is designed to ensure that, during Project implementation, the Project Sponsor, affected landowners, their assigns and successors in interest, and any other responsible parties comply with the feasible mitigation measures identified below. The Mitigation Monitoring and Reporting Program identifies for each mitigation measure, the party responsible for implementation.

7. Finds that changes or alterations incorporated into the proposed Project,

together with the mitigation measures set forth in the Mitigation Monitoring and Reporting Program, mitigate or avoid all potentially significant environmental impacts.

8. The City Council finds that the Project is consistent with the City of Richmond General Plan and is an appropriate way to implement the goals and policies of the Plan.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council, in approving the project and upholding the Planning Commission approval of the Project, has reviewed and considered the Request for Approval of the Tentative Parcel Map, the Tentative Parcel Map, applicable sections of the Zoning and Subdivision Ordinances of the City of Richmond, the Subdivision Map Act, and such other related information as was presented to the Council, and hereby approves Tentative Parcel Map MS-1103631 for three residential lots located at 125 through 127 Western Drive in Point Richmond, subject to the following revised and modified conditions:

CONDITIONS OF APPROVAL

- a. All broken, missing or damaged sidewalk, driveway, curb or gutter during the course of the subsequent development of the parcels shall be installed, repaired or replaced as directed by the City Engineer.
- b. These Conditions of Project Approval include certain fees, dedication requirements, reservations requirements and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. The 90-day approval period in which these fees, dedications, reservations and other exactions, pursuant to Government Code Section 66020(a), commences upon adoption of this Resolution. Failure to file a protest within this 90-day period complying with all of the requirements of Section 66020, will legally bar later challenging such exactions.
- c. All parcels created by Minor Subdivision MS-1103631 at 125 through 127 Western Drive shall be incorporated into the title for each newly created parcel and the Parcel Map shall be filed with and recorded by the Contra Costa County Recorder.
- d. The design of the residences shall be subject to review by the Design Review agency of the City and requires approval of a Design Review Permit. To ensure preservation of a view corridor of the Bay, San Francisco, and Angel Island from certain viewpoints on Western Drive, the following height limits are established for the separate lots/parcels:
 - **Parcel A** – Any structure on Parcel A shall have a maximum height limitation of 27 feet above grade. The height of the structure shall be measured from existing grade to the highest point on the structure’s roofline.
 - **Parcel B** – Any structure on Parcel B shall have a maximum height limitation of 35 feet above grade. The height of the structure shall be measured from existing grade to the highest point on the structure’s roofline.
 - **Parcel C** – Any structure on Parcel C shall have a maximum height limitation of 27 feet above grade. The height of the structure shall be measured from existing grade to the highest point on the structure’s roofline.

In addition to the maximum height limitations set forth above, any portion of any structure on Parcels A, B and C shall not impede the view corridor shown on Figures 1 and 2 (attached) of the View Corridor Analysis prepared by Jonathan Livingston. The height limitations set forth in these figures are intended to establish and preserve view corridors from two viewpoints located on the parcels at, respectively, 204 Western Drive and 128 Western Drive.

The recorded parcel map shall include the following note on Parcels A, B and

C: "In approving this parcel map, the City of Richmond adopted conditions of approval establishing height limits and view corridors in City Council Resolution No.XX-08, dated April 15, 2008, on file with the City of Richmond (Planning file, MS-1103631). Please consult with the City of Richmond Planning and Building Services Department."

- e. A Conditional Use Permit approved by the Planning Commission is required prior to the development of any parcel within the minor subdivision. All Conditions of Approval for this Parcel Map, MS-1103631, shall be referenced and be applicable to the Conditional Use Permit.
- f. A combined stormwater and drainage improvement management plan (C.3) for the three parcel property shall be submitted to and approved by the City Engineer prior to the issuance of building permits. The high tide line to 6 feet shall be addressed by the plan.
- g. A biological survey of the property shall be conducted by a qualified wildlife biologist prior to the issuance of the initial grading or building permit for the construction of improvements or structures.
- h. An erosion control plan shall be prepared, submitted to, and approved by the City Engineer prior to the issuance of building permits.
- i. Each parcel shall have its own lateral sewer line connected to the main lateral running north and south through the property. The utility plan for a parcel or parcels shall include the location of the lateral sewer line on the properties which shall be subject to review and approval by the City Engineer and the Sanitary Sewer District. If applicant is permitted to use existing sewer lateral, it must be cleaned, CCTV'd and pass an air test prior to approval of its use.
- j. Access to the shoreline will be provided for Parcel A, B, and C on the Parcel Map through a pedestrian accessway/easement between Parcels B and C, as part of an overall development plan. The accessway/easement shall be maintained properly by the HOA. As reasonable shoreline access is provided on nearby park lands, public access through the property is not required.
- k. A Homeowners Association (HOA) shall be established for the three-lot development. The HOA shall only apply to this three-lot development. The HOA shall hold title to and shall maintain all common areas in the minor subdivision.
- l. Prior to development of the first parcel, permit approval shall be received from BCDC for the location of the residence(s), any improvements, easements or other conditions that may be required. In order to satisfy BCDC requirements, a deeded public view easement may be established. The preferred easement would extend along the northwestern edge of Parcels A and C, and provide for the creation and preservation of a continuous view from Western Drive to the shoreline. The easement should provide that (i) no permanent structures may be placed within this easement area, and (ii) any landscaping installed within this easement should be not more than three feet in height. The applicant shall provide a copy of the permit from BCDC to the Planning and Building Regulations Department for the project file.
- m. Evidence of the approval and/or permits shall be submitted to the Planning and Building Services Department prior to issuance of building permits for the first lot.
- n. Vehicular access to Parcels B and C from Western Drive shall be provided by a shared accessway/easement adjacent to Parcel A. The easement shall be recorded on the Parcel Map and properly maintained by the Home Owners Association.
- o. The area of the property encompassed by each parcel shall be in conformance with the City of Richmond Zoning Ordinance, and the residential development shall

be governed by the regulations of the Zoning Ordinance.

- p. To the fullest extent permitted by law, the subdivider shall defend, indemnify, and hold harmless the City of Richmond, its council, boards, commissions, agents, officers, employees, consultants, successors and assigns from and against any and all claims, demands, obligations, proceedings, actions, causes of action, suits, losses, judgments, fines, penalties, damages, liabilities, costs and expenses (including without limitation attorney’s fees, disbursements, and all other professional or expert fees and costs) (individually a “Claim,” collectively “Claims”) which may arise to attack, set aside, void, or annul the CEQA documents prepared for the Project, Project approvals, or any Project condition imposed by the City or any of its agencies, departments, commissions, boards, agents, officers, employees, or council concerning said Project, which Claim, is brought in accordance with all applicable laws related thereto and within the time period provided by law, including but not limited to any claim for private attorney general fees claimed by or awarded to any party from City. This condition is binding upon the subdivider only if the City promptly notifies the subdivider of any such Claim.

I certify that the foregoing resolution was adopted by the City Council of the City of Richmond, California at a meeting held April 15, 2008, by the following vote:

Ayes: Councilmembers Bates, Butt, Lopez, Marquez, Rogers, Sandhu, Thurmond, Viramontes, and Mayor McLaughlin

Noes: None

Absent: None

Abstain: None

DIANE HOLMES
Clerk of the City of Richmond

[SEAL]

APPROVED:

GAYLE MCLAUGHLIN
Mayor

Approved as to Form:

LOUISE RENNE, Interim
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. 38-08b, finally passed and adopted by the Council of the City of Richmond at a meeting held on April 15, 2008.

