

RESOLUTION NO. 48-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND CERTIFYING THE ENVIRONMENTAL IMPACT REPORT AND ADOPTING THE MITIGATION MONITORING AND REPORTING PROGRAM PREPARED FOR THE WESTSHORE MARINA RESIDENTIAL CONDOMINIUM DEVELOPMENT PROJECT (EID 1100835)

WHEREAS, on December 17, 2004, Toll Brothers, Inc. (the "Project Sponsor") filed Final Development Plan, Design Review Permit and Tentative Map applications requesting City of Richmond (the "City") approval for the Westshore Marina Residential Development Condominium project (the "Project") proposed for a vacant, 5.95-acre site located at the southern terminus of Marina Way South, in the Marina Bay Master Plan community. The Project proposes the development of 269 residential condominium units contained within three, 5-story buildings that would be constructed over a podium and parking garage. The applications were deemed complete by the City in January 2005; and

WHEREAS, the proposed Project site is identified as a portion of Area B, referred to as the Westshore Parcel in the Marina Bay Master Plan and Marina Bay Tentative Development Plan. Area B is designated for commercial/office and hotel land uses, in addition to other land uses permitted within the C-2 District; and

WHEREAS, a Notice of Preparation ("NOP") of an Environmental Impact Report for the Project was published and filed with the State of California Office of Planning and Research on May 21, 2005. The NOP, along with an Initial Study, was circulated for public comment, from May 21, 2005 to June 21, 2005; and

WHEREAS, a Draft Environmental Impact Report ("DEIR") was prepared to serve as a "Project EIR" for action on the Westshore Marina Residential Condominium Development Project (SCH# 20050512108). On August 26, 2005, a Notice of Completion ("NOC") was published commencing a forty-five (45) day public review period for the DEIR. On October 6, 2005, the Planning Commission (the "Commission") held a public hearing to receive comments on the DEIR. Public review period for comment on the DEIR closed on October 11, 2005; and

WHEREAS, following closure of the public review period on the DEIR, the document was supplemented to incorporate comments submitted to the City on the DEIR and the City's responses to said comments. The comments resulted in some minor changes to the DEIR text, however, the clarifications and revisions to do not constitute significant new information as defined in CEQA Guidelines, Section 15088.5 nor warrant recirculation pursuant to said section; and

WHEREAS, pursuant to the responsibility given to the Planning Director of the City of Richmond by City Council Resolution No. 125-03 for the general administration of the California Environmental Quality Act (the City of Richmond's Guidelines and Procedures for Implementation of the California Environmental Quality Act), and the State CEQA Guidelines, and in accordance with the California Environmental Quality Act of 1970, as amended, a Final Environmental Impact Report ("FEIR") was prepared for this project; and

WHEREAS, on November 12, 2005, the FEIR was published and made available for review. The FEIR includes minor edits to the DEIR text and a response to all comments on the DEIR. As required by CEQA, a separate Mitigation Monitoring and Reporting Program ("MMRP") has been prepared to ensure implementation of mitigation measures presented in the FEIR; and

WHEREAS, the Planning Commission reviewed and considered all information presented in the FEIR, including but not limited to the DEIR, comments on the DEIR, and responses to comments on the DEIR, as well as all oral and written comments submitted at or before the duly noticed public hearing on January 5, 2006; and

WHEREAS, on January 5, 2006, the Planning Commission certified the FEIR, adopted MMRP and conditionally approved Tentative Map and Final Development Plan for the Project; and

WHEREAS, on January 13, 2006 two appellants, Sims/Hugo Neu (“Sims”) and the International Brotherhood of Electrical Workers, Local 302, Plumbers and Steamfitters, Local 159, Sheet Metal Works, Local 104, Donald H. Brown and Javier Compos (collectively “Unions”) filed timely appeals of the Planning Commission’s decisions to the City Council of the City of Richmond. Both appellants raised concerns regarding the adequacy of the FEIR and the merits of the Project; and

WHEREAS, notice of the time and place of the City Council public hearing to consider the appeals of the Planning Commission’s decisions was given pursuant to state law and local ordinances by publication in the *West County Times* and by mailing to all residents and businesses within a three-hundred feet radius of the proposed project; and

WHEREAS, the City Council opened the duly noticed public hearing regarding the two appeals on March 7, 2006 and continued its hearing on the appeals until May 2, 2006, directing City staff and environmental consultants to address EIR adequacy, and directing staff to meet with the Project Sponsor and appellants to discuss their concerns about the EIR and Project; and

WHEREAS, in response to the City Council’s request, environmental consultant Wagstaff & Associates, prepared a memorandum, dated March 24, 2006, describing the adequacy of the EIR with respect to the environmental issues highlighted by the City Council. The memorandum provides a general response to the key environmental issues as well as an index indicating where each issue is addressed in the CEQA documentation, including a reference as to where these environmental issues are addressed in: a) the Draft Environmental Impact Report; b) the Final Environmental Impact Report; c) the January Planning Commission Staff Report; and d) the January 4, 2006 memorandum from Wagstaff & Associates responding to letters from Sims and the Unions; and

WHEREAS, in response to City Council concerns regarding adequate EIR assessment of air quality impacts, the firm of Illingworth & Rodkin (acoustical and air quality specialists) prepared a letter dated March 24, 2006 addressing their findings concerning the adequacy of the EIR’s treatment of air quality impacts from diesel particulate matter emissions associated with the neighboring Port of Richmond activities. Illingworth & Rodkin evaluated and whether construction diesel particulate matter emissions, including those from truck hauling trips would adversely affect existing sensitive receptors (e.g., residential land use); and

WHEREAS, on April 24, 2006, the Department of Toxic Substances Control’s (“DTSC”) approved the Soils Management Plan (“SMP”) and Health & Safety Plan (“HSP”); and

WHEREAS, the Project Sponsor met four times with the Council of Industries (COI), Sims, City representatives, and with Dan Iacofano, from Moore Iacofano Goltsman, Inc., who served as mediator, and on April 27, 2006, the Project Sponsor met with the local union representatives, and City staff. Project Sponsor and appellants have reached agreements to support the addition of certain mitigation measures and conditions of approval; and

WHEREAS, on May 2, 2006, the City Council, having reviewed and considered all information presented in the FEIR, including but not limited to the DEIR, comments on the DEIR, and responses to comments on the DEIR, as well as all oral and written comments and all reports by City consultants regarding the Project submitted at or before the duly noticed public hearing on May 2, 2006, and information provided by the City staff indicating the Project Sponsor and appellants resolved the issues raised in the appeals, voted to deny

the appeals, certify the FEIR, adopt the MMRP, and to adopt certain additional mitigation measures and conditions of approval,

NOW, THEREFORE, the City Council finds and determines as follows:

A. CEQA FINDINGS

1. The City Council finds that the Final Environmental Impact Report for the Westshore Marina Residential Condominium Development Project, which consists of the DEIR, Response to Comments and Text Revisions volumes, has been completed in accordance with the requirements of the California Environmental Quality Act (CEQA), and the State CEQA Guidelines (14 Cal. Code Regs. Section 15000 et seq).
2. The City Council certifies that the FEIR was prepared, published, circulated and reviewed in accordance with the requirements of CEQA, and the State CEQA Guidelines, and constitutes an adequate, accurate, objective and complete FEIR in accordance with the requirements of CEQA, and the State CEQA Guidelines.
3. The City Council certifies that it has reviewed and considered all information contained in the FEIR, including the DEIR and all comments and responses to comments thereto, as well as oral and written comments and submittals by City staff and consultants presented at or before the duly noticed public hearing on May 2, 2006, prior to acting on the proposed project.
4. Pursuant to CEQA Guidelines Sections 15091 and 15093, and in support of its certification of the Final Environmental Impact Report for the Marina Bay Residential Condominium Development Project, the City Council hereby makes the Findings of Fact and Statement of Overriding Considerations contained in Section C of this Resolution.

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 of Richmond's findings and determinations consists of the following documents and testimony, at a minimum:

- The Final EIR for the Marina Bay Planned Community and all reports, documents, studies, memoranda, and maps related thereto.
- The Notice of Preparation and other public notices issued by the City regarding environmental review of the Project.
- The Draft EIR for the Project, all comments and responses to comments thereto.

- All written and oral comments submitted during the public review period for the DEIR (August 26 through October 10, 2005) and at or before any public hearings or meetings regarding the Project and environmental review of the Project.
- All written and oral comments submitted to the Planning Commission concerning the Project and environmental review of the Project at or before its January 5, 2006 hearing.
- Wagstaff and Associates February 24, 2006 memorandum responding to the January 13, 2006 letter from Sabrina Teller, from Remy, Thomas, Moose and Manley, LLP and the January 13, 2006 letter from Tanya A. Gulesserian of Adams Bradwell Joseph & Cardozo.
- Wagstaff and Associates April 27, 2006 memorandum with March 24, 2006 attachment from Illingworth & Rodkin, Inc. responding to the April 7, 2006 letter from Sabrina Teller, from Remy, Thomas, Moose and Manley, LLP.
- Wagstaff and Associates April 5, 2006 memorandum with March 24, 2006 attachment from Illingworth & Rodkin, Inc. responding to the April 7, 2006 letter from Sabrina Teller, from Remy, Thomas, Moose and Manley, LLP.
- Barbara J. Cook, P.E., Chief, Department of Toxic Substance Control April 24, 2006 letter to Mr. Benjamin C. Helber.
- All written and oral comments submitted to the City Council concerning the Project and environmental review of the Project at or before its May 2, 2006 hearing.
- All other public reports, documents, studies, memoranda, maps, or other planning documents related to the Project or the Final EIR and the DEIR, prepared by the City, consultants to the City, or responsible or trustee agencies with respect to the City's compliance with the requirements of CEQA and the Project Entitlements.
- The City of Richmond General Plan, as amended, and all environmental review documents, findings and statements of overriding considerations made pursuant to Section 21081 of the Public Resources Code related thereto.
- The Marina Bay Master Plan, as amended, and all environmental review documents, findings and statements of overriding considerations made pursuant to Section 21081 of the Public Resources Code related thereto.
- 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) information regarding the City's fiscal status, (4) applicable City policies and regulations, (5) reports, projections, and documentation regarding development within and surrounding the City, and (6) 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 Department, City of Richmond; 1401 Marina Way South; Richmond, CA 94804. The custodian of these documents is the Community Development Director or his designee.

C. FINDINGS OF FACT REGARDING THE ENVIRONMENTAL IMPACT REPORT FOR THE PROPOSED WESTSHORE MARINA RESIDENTIAL DEVELOPMENT PROJECT.

The FEIR, prepared in compliance with the California Environmental Quality Act, evaluates the potentially significant and significant adverse environmental impacts that could result from approval of the Westshore Marina Residential Condominium Project, which proposes the development of a 5.95-acre vacant parcel with a 269-unit residential condominium complex. The project is designed to construct a 5-story building complex over a raised

podium, with a parking garage placed below the podium level. The project site would be accessed and served by Marina Way South, a fully-improved public street.

As the FEIR concludes that implementation of the project (or project alternatives) would result in certain adverse impacts, the City is required to make certain findings with respect to these impacts. The required findings appear below, in the discussion of the following issues: 1) potential impacts determined to be less-than-significant in the FEIR; 2) significant impacts that can be avoided, minimized, mitigated, or substantially lessened with the implementation of the listed mitigation measures; 3) impacts determined to be insignificant or less-than-significant in the Initial Study Checklist; and 4) significant impacts that cannot be avoided. These findings are supported by substantial evidence in the record of proceedings before the City as stated below.

1. IMPACTS FOUND TO BE LESS-THAN-SIGNIFICANT IN THE FEIR

a. Project Impacts on Scenic Vistas

Facts in Support of Finding

As presented in and determined by the analysis contained on pages 4-18 and 4-19 of the FEIR, the proposed project structures and landscaping would not substantially eliminate, block, or obscure a unique, existing view or scenic vista through the site from surrounding vantage points. Secondly, the existing Bay Trail segment and BCDC Shoreline Band would be preserved and would continue to provide public views. Thirdly, the nearest port-related crane and tower lighting facilities, which are located approximately 0.25 miles from the project site, could be expected to be particularly noticeable and distracting in views from the project units that are oriented toward and closest to these facilities (75 residential units). However, the affected views from these project units would not represent a “scenic vista.” Therefore, the project would not result in significant impacts to scenic resources and no mitigation is required.

b. Project Impacts on Scenic Resources

Facts in Support of Finding

As presented in and determined by the analysis contained on page 4-19 of the FEIR, the project site is relatively level and does not include any visually distinctive ridgelines, rock outcroppings, or other special features. While the proposed project would reduce and obscure existing views from the site and through the site, but would not impact any significant on-site visual amenities. In addition, the project site does not contain any historic structures, rock outcroppings, topographic features, or other scenic resources. Therefore, the project would not result in a significant impact to scenic resources and no mitigation is required.

c. Project Views of Existing Marina Bay Port and Industrial Activities

Facts in Support of Finding

As presented in and determined by the analysis contained on pages 4-19 through 4-24 of the FEIR, the project would introduce residential unit views toward existing Marina Bay port and industrial operations. It is estimated that approximately 48 of the 269 residential units would have intermediate and distant views toward the north and northeast. With such views, there is the potential for possible, future nuisance complaints from project residents about the visibility, noise and light and glare of the existing industrial and port uses. Such adverse effects due to exposure to the existing industrial activities do not represent a significant environmental effect under CEQA in that it would not have a direct correlation to a physical environmental impact such as resulting physical blight. Therefore, no mitigation is required. The Project Sponsor will record a disclosure statement in accordance with the Vesting Tentative Map Condition D4.

d. Project Impacts on the Visual Character or Quality of the Project Site and Vicinity

Facts in Support of Finding

As presented and demonstrated in the analysis contained on pages 4-24 through 4-25 of the FEIR, the project, as designed would not be out of scale nor inconsistent with the massing of the existing, large-scale massing of the adjacent former Ford Assembly Plant building. Secondly, the project would have a building-to-lot coverage of 47%, which is similar to the contiguous office and light industrial buildings, which have a building-to-lot coverage of approximately 40%. Lastly, the project site is one of the last, undeveloped parcels in the area representing urban infill. Therefore, the project would not impact the visual character or quality of the project site and vicinity and no mitigation is required.

e. Project Light and Glare Impacts

Facts in Support of Finding

The future project residents may be exposed to lighting and glare conditions from existing port and industrial operations near the Harbor Channel, located northwest of the site, as described in the analysis contained on pages 4-25 through 4-26 of the FEIR. However, the port tower lighting, which is the most prominent and intense evening light source in the area (located 0.25 miles from the site) is directed downward and toward the dock, and is shielded. Intermittent port lighting operations require increases in the intensity of lighting during nighttime hours. The lighting effects on future residents would be intermittent and therefore, less-than-significant.

Thus, no mitigation is required. Nonetheless, the lighting effects can be controlled through the resident's ability to close window coverings.

f. Project Consistency with Applicable City Aesthetic Policies and Design Guidelines

Facts in Support of Finding

As presented in and determined by the analysis contained on page 4-26 of the FEIR, the proposed project would not substantially eliminate, block or obscure a unique scenic view or vista through the site from surrounding vantage points in that: 1) the existing Bay Trail segment and BCDC Shoreline Band would be preserved; and 2) the view toward the bay and Brooks Island at the terminus of Marina Way South would be preserved and would not be obstructed by the proposed podium or building. Therefore, the project would result in less-than-significant impacts to scenic views in accordance with the applicable City aesthetic policies and design guidelines and no mitigation is required.

g. Long-Term Increase in Local and Regional "Criteria" Pollutant Emissions

Facts in Support of Finding

As presented in and determined by the analysis contained on pages 5-4 through 5-5 of the FEIR, the project size does not meet the minimum threshold warranted to prepare a quantitative air quality analysis (500 residential units). Furthermore, since the project is consistent with the allowed land uses and within the residential development cap set forth in the Marina Bay Development Agreement, which is consistent with the 1984 Richmond General Plan, the project, is therefore consistent with the Bay Area Air Quality Management District Air Quality Plan. The air quality projections for the City of Richmond assumed in the Air Quality Plan are based on the build-out projections of the Richmond General Plan. Consequently, the project would result in a less-than-significant regional air quality impact, and no mitigation is required.

h. Project Impacts on Special Status Plant or Animal Species

Facts in Support of Finding

As presented in and determined by the analysis contained on page 6-11 of the FEIR, a biological assessment was prepared concluding that the project site does not contain habitat for special status plant or animal species. Therefore, no mitigation is required.

i. Jurisdictional Waters

Facts in Support of Finding

The analysis contained on pages 6-11 through 6-13 of the DEIR concluded that the project had the potential to impact jurisdictional waters (wetlands). **Measure 6-1** was recommended, which required an assessment of the site to determine the presence of jurisdictional wetlands and confirmation by the US Army Corps of Engineers. Prior to the publication of the FEIR, an assessment of the site was completed by a biologist and a determination was made by the US Army Corps of Engineers (October 25, 2005) confirming that the upland portions of the project site do not contain jurisdictional wetlands. Therefore, as discussed on page 6-11 of the FEIR, there would be no impact on jurisdictional wetlands and Mitigation 6-1 is no longer required.

j. Potential Impacts on Historic Resources

Facts in Support of Finding

As presented in and determined by the analysis contained on page 7-5 of the FEIR, no portion of the project site or any on-site elements is currently listed in the California Register of Historic Resources or National Register of Historic Places Inventory. The project would not result in the removal of any historic materials or alterations or features associated with the adjacent former Ford Assembly Plant structure. Therefore, no mitigation is required.

k. Project-Related Use of Hazardous Materials

Facts in Support of Finding

As presented in and determined by the analysis contained on page 9-6 of the FEIR, the project proposes a residential use on a vacant site that would not involve the transport, use, or disposal of hazardous materials other than the typical household chemicals that are common to residential use. While small amounts of hazardous materials may be encountered during site grading and construction, such an occurrence is routine and would be subject to existing local, state and federal regulations and protocols. Consequently, the project would result in less-than-significant impacts associated with the use of and exposure to hazardous materials. Therefore, no mitigation is required.

l. Compatibility with Adjacent Land Uses

Facts in Support of Finding

As presented in and determined by the analysis contained on page 10-12 of the FEIR, the project is designed to create its own internal land use coherence. The project would not be located immediately adjacent to existing industrial or railroad operations, which may be cause for conflict or incompatibility. Heavy industrial and port-related land uses, as well as railroad operations are located well northwest of the site (from 0.25 miles to 1.0 mile) and the intervening and immediate land uses consist of low intensity office and light industrial uses. The proposed multiple-family residential land use would be generally compatible with the adjacent office and light industrial land uses. Therefore, no mitigation is required.

m. On-Going Project Generated Noise

Facts in Support of Finding

As presented in and determined by the analysis contained on page 11-9 of the FEIR, the project is expected to generate noise that is typical of a multiple-family residential land use. It is estimated that the project would increase noise levels by less than 5 dBA Ldn, which represents a less-than-significant impact. Therefore, no mitigation is required.

n. Project Impacts on the Demand for Fire Protection Services

Facts in Support of Finding

As presented in and determined by the analysis contained on pages 12-4 through 12-5 of the FEIR, the project would introduce new residents to the area that will necessitate fire and emergency services. While due to current City budget constraints fire and emergency services are financially strained, the project, in addition to projected, cumulative development in the area would not significantly increase this financial strain, or require the provision of new or physically altered fire facilities (e.g., fire station). Secondly, while the project could add to the financial strain of service operations, the project would be required to be equipped with an automotive fire sprinkler system and other structural fire suppression provisions, which are significant fire prevention measures that assist in reducing service needs.

Consequently, the project would result in a less-than-significant and, no mitigation is required.

o. Fire Department Response Times to Project

Facts in Support of Finding

As presented in and determined by the analysis contained on pages 12-5 through 12-8 of the FEIR, the project site is located in an area where fire service response times are compromised by: 1) rotating fire station closures; and 2) street blockage from railroad traffic at local railroad crossings (for periods in excess of 15 minutes). The Fire Department has concluded that 85% of the time response time to the project site would be within the Richmond General Plan performance standard of six (6) minutes, an increase in frequency and length of blockage at local railroad crossings can be expected as a result of increased Port of Richmond activities. Nonetheless, emergency response time is not considered a significant, physical, environmental effect under the CEQA Guidelines, and the introduction of this project would not increase the need for additional fire services or facilities in this area. Therefore, no mitigation is required.

p. Project Impacts on Demands for Police Services

Facts in Support of Finding

As presented in and determined by the analysis contained on pages 12-8 through 12-9 of the FEIR, the project would increase the number of emergency calls to the Richmond Police Department. However, as determined by Police Department staff, the increase in emergency calls is not expected to impact existing service in that: 1) the project site is located in a relatively low-crime area and the anticipated increase in emergency calls would not adversely affect the department's current ability to provide police protection services; 2) the project design is designed to include secured resident parking (gated parking garage) and secured grounds; and 3) the project would result in a less-than-significant impact and, no mitigation is required.

q. Police Department Response Times to Project

Facts in Support of Finding

As presented in and determined by the analysis contained on page 12-9 of the FEIR, the project site is located in an area where response times are compromised by frequent street blockage from railroad traffic at local railroad crossings (for

periods in excess of 15 minutes). An increase in frequency and length of blockage at local railroad crossings can be expected as a result of increased Port of Richmond activities. Nonetheless, emergency response time is not considered a significant, physical, environmental effect under the CEQA Guidelines, and the introduction of this project would not increase the need for additional fire services or facilities in this area. Therefore, no mitigation is required.

2. SIGNIFICANT IMPACTS WHICH CAN BE AVOIDED OR REDUCED WITH MITIGATION

In this section of the Findings of Fact, the City, as authorized by Public Resources Code Section 21081 and Title 14, California Code of Regulations Sections 15091, 15092, and 15093, identifies the significant impacts that can be eliminated or reduced to a less-than-significant level with the implementation of mitigation measures recommended in the FEIR. These mitigation measures are hereby incorporated into the description of the project and their implementation will be tracked through the Mitigation Monitoring and Reporting Program.

a. Impact 5-1 Construction Period Emissions

Significant Impact

As described on pages 5-3 through 5-4 of the FEIR, the proposed project may generate construction-period exhaust emissions and fugitive dust that could temporarily but noticeably affect local air quality.

Finding

Based upon the FEIR and the entire record before this City, this City finds that, as authorized by Public Resources Code Section 21081 and Title 14, California Code of Regulations Section 15091(a)(1), that the project can be conditioned to incorporate mitigation measures or practices to substantially lessen this impact to a less-than-significant level. The imposition of such measures is within the jurisdiction of the City to require, and is appropriate and feasible.

Facts in Support of Finding

The significant impact listed above would be reduced to a less-than-significant level with the **Measure 5-1**, as presented on page 5-4 of the FEIR. This measure recommends that the project sponsor be required to comply with all City and Bay Area Air Quality Management District (BAAQMD) engineering and building standards for air quality. Among the standards is a list of dust control measures, which are presented in Mitigation 5-1. It is recommended that these measures be implemented during all phases of construction.

The City Council imposed the following additional mitigation measures and clarifications regarding construction period emissions:

The Stormwater Pollution Prevention Plan for the Project shall require the installation of gravel pads at all access points to prevent trackout during construction.

The Project Sponsor shall submit a proposed material hauling route, disposal areas, stockpile sites and schedule. Said submittal shall be approved by the Department of Public Works prior to issuance of a Grading Permit. All material hauling activities, including but not limited to adherence to approved route, hours of operation, dust control and street maintenance shall be the responsibility of the Developer. Tracking of dirt onto City streets and walks will not be allowed. Prior to issuance of a Grading Permit and prior to removal of contaminated soil, the Project Sponsor shall provide to the City an approved method of cleaning tires and trimming loads on-site. Any job-related dirt and/or debris deposited on the public right-of-way shall be removed immediately. All material hauling activities shall be done in accordance with applicable City ordinances and conditions of approval. Violation of such may be cause for suspension of work and/or fine.

During construction, the Project Sponsor shall suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 miles per hour.

The Project Sponsor shall designate a “Disturbance Coordinator,” who may also be the Noise Disturbance Coordinator required by Mitigation Measure 11-2(6) and will be responsible for responding to any complaints regarding disturbances around the Project Area during construction. The Disturbance Coordinator will determine the cause of the complaint and institute reasonable measures to correct the problem. This person shall respond and take corrective action within 24 hours. During construction, the Project Sponsor shall conspicuously post a publicly visible sign with the telephone number to contact the Disturbance Coordinator regarding complaints. The Project Sponsor shall include the telephone number for the Disturbance Coordinator in the notice sent to neighbors regarding the construction schedule.

All on-site diesel-powered construction equipment shall use ultra-low-sulfur diesel fuel, not to exceed 15 ppm sulfur content, if commercially available within 25 miles of the Project Site.

Except for startup operations, the idling time of all construction equipment shall not exceed five minutes.

All construction equipment shall be properly tuned and maintained in accordance with the manufacturer’s specifications.

b. Impact 6-2 Potential Disruption of On-Site Nesting Birds

Significant Impact

As described on pages 6-13 through 6-14 of the FEIR, project construction may result in the disturbance of bird nesting sites in close proximity to construction activities. The project site contains acacia trees and shrubs which have the potential to provide nesting opportunities for some bird species. Removal of trees and shrubs for construction and grading in the vicinity of the bird nests could result in nest abandonment, nest failure or premature fledging.

Finding

Based upon the FEIR and the entire record before this City, this City finds that, as authorized by Public Resources Code Section 21081 and Title 14, California Code of Regulations Section 15091(a)(1), that the project can be conditioned to incorporate mitigation measures or practices to substantially lessen this impact to a less-than-significant level. The imposition of such measures is within the jurisdiction of the City to require, and is appropriate and feasible.

Facts in Support of Finding

The significant impact listed above would be reduced to a less-than-significant level with the implementation of **Measure 6-2**, as presented on pages 6-14 and 6-15 of the FEIR. This measure recommends that prior to the issuance of a grading permit for the project, the project sponsor consult with the California Department of Fish and Game and US Fish and Wildlife Service to determine the need to conduct pre-construction protocol spring nesting surveys for one or more nesting species. If it is determined to be necessary for assessing one or more nesting species, it will be required that a biologist be retained to conduct the nesting surveys and prepare and implement a mitigation plan, if necessary.

c. Impact 6-3 Possible Erosion and Sedimentation Impacts on Surface Water Values

Significant Impact

As described on page 6-15 of the FEIR, project construction activities could result in temporary indirect effects on adjacent creek Ford Channel/Richmond Inner Harbor biological values due to construction-related erosion and sedimentation.

Finding

Based upon the FEIR and the entire record before this City, this City finds that, as authorized by Public Resources Code Section 21081 and Title 14, California Code of Regulations Section 15091(a)(1), that the project can be conditioned to incorporate mitigation measures or practices to substantially lessen this impact to a less-than-significant level. The imposition of such measures is within the jurisdiction of the City to require, and is appropriate and feasible.

Facts in Support of Finding

The significant impact listed above would be reduced to a less-than-significant level with the implementation of **Measure 6-3**, as presented on page 6-16 of the FEIR. This measure recommends that an erosion and sediment control plan be prepared and implemented through all phases of construction. This measure also recommends that a Storm Water Pollution Prevention Plan (SWPPP) be prepared and implemented, consistent with the requirements of the NPDES General Construction Permit requirements (Mitigation 14-1).

d. Impact 7-1 Project Impacts on On-Site Prehistoric or Historic Archaeological Resources

Significant Impact

As described on pages 7-3 and 7-4 of the FEIR, implementation of the proposed grading plan, including grading for the podium residential development, subsurface parking, and project utility infrastructure, could disturb or destroy unknown sensitive, on-site prehistoric (Native American) or historic archaeological resource.

Finding

Based upon the FEIR and the entire record before this City, this City finds that, as authorized by Public Resources Code Section 21081 and Title 14, California Code of Regulations Section 15091(a)(1), that the project can be conditioned to incorporate mitigation measures or practices to substantially lessen this impact to a less-than-significant level. The imposition of such measures is within the jurisdiction of the City to require, and is appropriate and feasible.

Facts in Support of Finding

The significant impact listed above would be reduced to a less-than-significant level with the implementation of **Mitigation 7-1**, as presented on page 7-4 of the FEIR. This measure recommends that specific steps and procedures in the event archaeological or historic resources are encountered during site grading and construction. The procedures of this measure require that in the event a resource is encountered, all ground-disturbing work within 150 feet of the discovery is to cease until an appropriate mitigation program is implemented.

e. Impact 7-2 General Potential for Disturbance of Paleontological Resources

Significant Impact

As described on page 7-4 of the FEIR, while no resources have been found on the project site, there is the potential to discover and impact a unique paleontological resource during grading activity.

Finding

Based upon the FEIR and the entire record before this City, this City finds that, as authorized by Public Resources Code Section 21081 and Title 14, California Code of Regulations Section 15091(a)(1), that the project can be conditioned to

incorporate mitigation measures or practices to substantially lessen this impact to a less-than-significant level. The imposition of such measures is within the jurisdiction of the City to require, and is appropriate and feasible.

Facts in Support of Finding

The significant impact listed above would be reduced to a less-than-significant level with the implementation of **Mitigation 7-2**, presented on page 7-5 of the FEIR. This measure recommends that in the event paleontological resources are encountered during site grading and construction, all work be halted until a qualified paleontologist is retained to identify the discovery, evaluate the resource, and if necessary, recommend mitigation measures to document and prevent effects on the resource.

f. Impact 8-1 Potential Erosion and Ground Instability Impacts

Potentially Significant Impact

As described on page 8-6 of the FEIR, the project site could experience strong seismic ground shaking and related effects in the event of a moderate to high magnitude earthquake on one of the identified active or potentially active faults. The degree of ground shaking combined with the site soil conditions could result in significant damage to the proposed buildings and improvements unless the project foundation, grading and building design are not properly engineered.

Finding

Based upon the FEIR and the entire record before this City, this City finds that, as authorized by Public Resources Code Section 21081 and Title 14, California Code of Regulations Section 15091(a)(1), that the project can be conditioned to incorporate mitigation measures or practices to substantially lessen this impact to a less-than-significant level. The imposition of such measures is within the jurisdiction of the City to require, and is appropriate and feasible.

Facts in Support of Finding

The significant impact listed above would be reduced to a less-than-significant level with the implementation of **Mitigation 8-1**, as presented on pages 8-7 and 8-8 of the FEIR. This measure recommends that all project grading and construction be designed to comply with the Geotechnical Summary Report prepared by Engeo Incorporated, dated February 18, 2004, and the Geotechnical Investigation – Office and Warehouse Buildings prepared by Treadway & Rollo, dated June 12, 1998, which are on file with the Planning Department. This mitigation measure initially recommended the formation of a Geologic Hazard Abatement District (GHAD) in the DEIR. However, during the preparation of the FEIR, it was confirmed by the geotechnical engineer, that the formation of a GHAD was not necessary based on the geologic characteristics and soil conditions of the site.

g. Impact 9-1 Potential Exposure to Existing On-Site Hazardous Materials Contamination

Significant Impact

As described on page 9-6 of the FEIR, studies prepared to date have indicated that soil and ground water contaminants have been treated to acceptable levels for residential re-use of the project site. Nonetheless, until project compliance with the remediation and closure requirements of the regulatory agencies with hazardous materials jurisdiction is determined, it is concluded, based on the documentation of previous on-site soil and ground water contamination, that project construction could expose construction workers and future project residents to contaminated soil and possibly contaminated surface water or ground water.

Finding

Based upon the FEIR and the entire record before this City, this City finds that, as authorized by Public Resources Code Section 21081 and Title 14, California Code of Regulations Section 15091(a)(1), that the project can be conditioned to

incorporate mitigation measures or practices to substantially lessen this impact to a less-than-significant level. The imposition of such measures is within the jurisdiction of the City to require, and is appropriate and feasible.

Facts in Support of Finding

The significant impact listed above would be reduced to a less-than-significant level with the implementation of **Mitigation 9-1**, as presented on page 9-7 of the FEIR. This measure recommends that, prior to the issuance of a grading permit the applicant will be required to demonstrate that all regulatory agency approvals (Department of Toxic Substance Control, Regional Water Quality Control Board, etc.) have been granted to confirm the completion of soil and groundwater remediation to acceptable standards. Further, this measure recommends the preparation, submittal and implementation of a Health and Safety Plan and a Soil Risk Management Plan.

The City Council imposed the following additional mitigation measures and clarifications regarding potential exposure to on-site hazardous materials contamination:

Implement all measures in the Final Soil Management Plan and Health and Safety Plan for the Project, as approved by the Department of Toxic Substances Control.

Obtain written certification from the Department of Toxic Substances Control that (i) post-excavation sampling has been conducted in accordance with the Final Soil Management Plan for the Project, as approved by the Department of Toxic Substances Control, and (ii) confirmation samples required by the Final Soils Management Plan verify that the soils achieve cleanup levels established for the Project Site by the Department of Toxic Substances Control. Submit the results of post-excavation sampling of the site to the City. Certification from the Department of Toxic Substances Control shall be submitted to the City prior to issuance of any Certificate Of Occupancy.

h. Impact 10-1 Compatibility with Existing Nearby Port and Industrial Land Uses and Associated Railroad Operations

Significant Impact

As discussed on page 10-13 of the FEIR, the proposed project would be part of the Marina Bay Master Plan community. As proposed, the project would continue a pattern of existing and pending multiple-family residential in-fill development located south of I-580. While the project would be generally consistent with the established community pattern and would not physically divide the community, the project residential use would be in close proximity to Marina Bay area port and industrial land uses, as well as associated railroad operations. However, the distance and separation between the proposed project and the neighboring port, industrial and railroad operations is sufficient to minimize potential land use conflicts related to aesthetics and views, light and glare, truck traffic, health and safety, noise and/or air quality. Nonetheless, the potential exists for associated future nuisance complaints from project residents. Such nuisance complaints could represent land use incompatibility with the existing land uses in the vicinity.

Finding

Based upon the FEIR and the entire record before this City, this City finds that, as authorized by Public Resources Code Section 21081 and Title 14, California Code of Regulations Section 15091(a)(1), that the project can be conditioned to incorporate mitigation measures or practices to substantially lessen this impact to a less-than-significant level. The imposition of such measures is within the jurisdiction of the City to require, and is appropriate and feasible.

Facts in Support of Finding

The significant impact listed above would be reduced to a less-than-significant level

with the implementation of **Mitigation 10-1**, as presented on page 10-14 of the FEIR. This measure recommends that the City require as a condition of project approval, the recording of a disclosure statement with the deed of each residential unit that is sold within this project. The disclosure statement is intended to inform future residents and property owners of the existing, nearby port/maritime, industrial and railroad operations in the vicinity of the project site.

The City Council imposed the following additional mitigation measures and clarifications regarding compatibility with existing nearby port and industrial land uses and associated railroad operations:

The Project Sponsor shall (i) record a Disclosure, Notice, Acknowledgment and Limited Waiver Regarding Nearby Port/Maritime Activities, Industrial Uses and Railroad Operations with provisions as agreed to on May 2, 2006 by the Project Sponsor, Sims/Hugo Neu, Levin Richmond Terminal Corporation and the Council of Industries of West Contra Costa County, and (ii) forward a copy of the recorded document to Sims/Hugo Neu, Levin Richmond Terminal Corporation, and the Council of Industries of West Contra Costa County prior the City's issuance of a Certificate Of Occupancy or transfer of any portion of the Project by the Project Sponsor.

i. Impact 11-1 Potential Project Exposure to Excessive Environmental Noise Significant Impact

As discussed on page 11-8 of the FEIR, the project would introduce a noise-sensitive land use at a location that could be exposed to noise levels exceeding state-adopted noise and land use compatibility standards.

Finding

Based upon the FEIR and the entire record before this City, this City finds that, as authorized by Public Resources Code Section 21081 and Title 14, California Code of Regulations Section 15091(a)(1), that the project can be conditioned to incorporate mitigation measures or practices to substantially lessen this impact to a less-than-significant level. The imposition of such measures is within the jurisdiction of the City to require, and is appropriate and feasible.

Facts in Support of Finding

The significant impact listed above would be reduced to a less-than-significant level with the implementation of **Mitigation 11-1**, as presented on page 11-9 of the FEIR. This measure recommends that, prior to the issuance of a building permit, an acoustical assessment be prepared and submitted to confirm the appropriate noise control measures that would be implemented to ensure that all residential units comply with the 45 Ldn interior noise standards.

j. Impact 11-2 Project Construction Period Noise

Significant Impact

As discussed on page 11-10 of the FEIR, project construction activities, particularly pile driving activities that are required to building foundation design, could be impacting to other noise-sensitive land uses located in the vicinity.

Finding

Based upon the FEIR and the entire record before this City, this City finds that, as authorized by Public Resources Code Section 21081 and Title 14, California Code of Regulations Section 15091(a)(1), that the project can be conditioned to incorporate mitigation measures or practices to substantially lessen this impact to a less-than-significant level. The imposition of such measures is within the jurisdiction of the City to require, and is appropriate and feasible.

Facts in Support of Finding

The significant impact listed above would be reduced to a less-than-significant level

with the implementation of **Mitigation 11-2**, as presented on page 11-11 of the FEIR. Mitigation 11-2 recommends that all construction activities comply with specific construction measures including a construction schedule (permitted hours of operation), the muffling of construction equipment, siting noise-generating activities as far as possible from residences and recreation uses, and management of construction traffic and truck routes.

k. Impact 11-3 Project Construction Period Groundborne Vibration

Significant Impact

As discussed on pages 11-12 and 11-13 of the FEIR, project construction activities propose the driving of up to 700 piles at depths of 85 feet below the ground surface.

The estimated time frame for this activity is two (2) months. This activity could generate substantial, temporary intermittent vibration in the project vicinity, which would be impacting to workers and residents in the area, as well as users of the Bay Trail.

Finding

Based upon the FEIR and the entire record before this City, this City finds that, as authorized by Public Resources Code Section 21081 and Title 14, California Code of Regulations Section 15091(a)(1), that the project can be conditioned to incorporate mitigation measures or practices to substantially lessen this impact to a less-than-significant level. The imposition of such measures is within the jurisdiction of the City to require, and is appropriate and feasible.

Facts in Support of Finding

The significant impact listed above would be reduced to a less-than-significant level with the implementation of **Mitigation 11-3**, as presented on page 11-13 of the FEIR. Mitigation 11-3 recommends specific measures for reducing groundborne vibration and the effects of pile driving, such as restriction on the hours of pile driving activities, notification to neighboring residents and completing pre-drilled pile holes.

l. Impact 14-1 Construction Period Water Quality Impacts

Significant Impact

As discussed on page 14-6 of the FEIR, during project construction, there would be an increased likelihood of sediment from soil erosion as well as an on-going risk of construction-related equipment leaks and fuel spills that have the potential of being discharged into the San Francisco Bay.

Finding

Based upon the FEIR and the entire record before this City, this City finds that, as authorized by Public Resources Code Section 21081 and Title 14, California Code of Regulations Section 15091(a)(1), that the project can be conditioned to incorporate mitigation measures or practices to substantially lessen this impact to a less-than-significant level. The imposition of such measures is within the jurisdiction of the City to require, and is appropriate and feasible.

Facts in Support of Finding

The significant impact listed above would be reduced to a less-than-significant level with the implementation of **Mitigation 14-1**, as presented on page 14-7 of the FEIR.

This measure recommends that, the project sponsor obtain a General Construction Activity Storm Water Permit, which would include the preparation, approval and implementation of an erosion and sediment control plan.

m. Impact 14-2 On-Going Non-Point Source Pollutants

Significant Impact

As discussed on page 14-8 of the FEIR, the project could increase the discharge of non-point source pollutants into the local storm water drainage system and into the

San Francisco Bay, which could contribute to the cumulatively significant degradation of water quality.

Finding

Based upon the FEIR and the entire record before this City, this City finds that, as authorized by Public Resources Code Section 21081 and Title 14, California Code of Regulations Section 15091(a)(1), that the project can be conditioned to incorporate mitigation measures or practices to substantially lessen this impact to a less-than-significant level. The imposition of such measures is within the jurisdiction of the City to require, and is appropriate and feasible.

Facts in Support of Finding

The significant impact listed above would be reduced to a less-than-significant level with the implementation of **Mitigation 14-2**, as presented on pages 14-8 and 14-9 of the FEIR. Mitigation 14-2 recommends that the final drainage plan prepared and submitted for this project include measures to manage long-term non-point source pollutants. Such measures would include but not be limited to the installation of oil or grease traps in the parking areas of the project, controlled use of fertilizers, pesticides and herbicides, marking the storm water drain inlets to reinforce “No Dumping” policy, and directing storm water runoff from the building roof and parking areas into bioswales for natural filtration.

3. IMPACTS DETERMINED TO BE INSIGNIFICANT OR LESS-THAN-SIGNIFICANT IN THE INITIAL STUDY CHECKLIST

During the preparation of the Initial Study Checklist, it was determined that a number of possible environmental effects of the project would be insignificant, less-than-significant or would be adequately addressed through the City of Richmond development review process. For these topics, no need for further environmental assessment was required for the preparation of the FEIR.

Finding

Consistent with CEQA Guidelines 15128, Section 17.5 of the FEIR contains a statement as to why such effects were determined to be insignificant or less-than-significant.

Facts in Support of Finding

The Initial Study Checklist prepared on May 19, 2005 determined that the project would result in insignificant environmental affects related to the following Initial Study topics:

- The project will not cause the conversion of farmland or conflicts with agricultural use zoning (e.g., Williamson Act contract)
- The project will not conflict with or obstruction of the Bay Area Air Quality Plan
- The project will not conflict with any local policies or ordinance protecting biological resources, such as a tree preservation policy or ordinance
- The project will not conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan or other approved local, regional, or state habitat conservation plan
- The project would not be located on a site which is included on a list of hazardous material sites compiled pursuant to Government Code Section 65962.5, and as a result, would it create a significant hazard to the public or the environment
- The project site is not within the boundaries of an adopted airport land use plan, nor within 2 miles of a public airport
- The project would not conflict with a land use plan, policy or regulation under the 1984 Richmond General Plan and the 1984 City Zoning Ordinance
- The project would not use of mineral resources or impacts to a designated, known mineral resource or resource recovery site

- The project would not displace people or housing
- The project would not impact public and quasi-public facilities and services including school services, park and recreation facilities, water supply, emergency access and solid waste

These topics related to the proposed project were determined to be insignificant or less-than-significant for the following reasons:

- a. The project site is level, relatively free of constraints and is vacant.
- b. The project site represents urban infill as it is bordered on three sides by developed properties and is served by a fully improved public street (Marina Way South).
- c. The project site is part of the Marina Bay Master Plan area. This Master Plan, together with the approved Marina Bay Tentative Development Plan designates the project site as being a part of Area B, which permits development of the project site with multiple-family residential use. Further, the basic infrastructure needed to serve the Marina Bay Master Plan area has been installed or implemented to serve the planned development of this area including, but not limited to, the needed street network, water and wastewater infrastructure, as well as park land and open space.
- d. The Marina Bay Tentative Development Plan area incorporates a residential development cap of 3,103 residential units. The residential portions of Marina Bay have been built-out with approximately 2,102 residential units, including the recently approved Anchor Bay residential development. The proposed additional of 269 residential units would be well within the residential development cap.

4. SIGNIFICANT IMPACTS WHICH CANNOT BE AVOIDED

In this section of the Findings of Fact for the proposed Westshore Marina Residential Condominium Project, the City, as authorized by Public Resources Code Section 21081 and Title 14, California Code of Regulations Sections 15091, 15092, and 15093, identifies the significant impacts that cannot be reduced to a less-than-significant level through mitigation measures. These impacts are considered significant and unavoidable.

Finding

As authorized by Public Resources Code Section 21081 and Title 14, California Code of Regulations Section 15091(a)(1), the City finds that changes or alterations have been required in, or incorporated into, the Project, and the City further finds that this change or alteration in the project is within the jurisdiction of the City to require, and that this measure is appropriate and feasible. However, these changes would not mitigate or avoid the significant environmental impacts as identified in the FEIR.

a. Impact 13-1 Approved Plus Project Intersection Impacts

Significant Unavoidable Impact

As discussed on page 13-10 of the FEIR, development of the project, combined with existing traffic conditions and traffic that would be generated by approved but yet to be constructed development projects, would result in a PM peak hour level of service (LOS) E condition at the Harbour Way South/Wright Avenue intersection.

Facts in Support of Finding

As discussed on pages 13-10 and 13-11 of the FEIR, the mitigation for Impact 13-1 is the installation of a traffic signal, plus coordinated signalization and traffic control for railroad service that crosses Harbour Way South near this intersection (**Mitigation 13-1**). While the project impacts can be mitigated through the required

payment of a fair share contribution to future improvements to fully implement the recommendations of Mitigation 13-1, the mitigation cannot be guaranteed until the full cost of implementing these measures has been determined and that a mechanism for funding these improvements has been established and approved by the City (traffic mitigation fee). Further, full implementation of Mitigation 13-1 by the proposed project alone would be inequitable and considered infeasible for one project to bear. Therefore, impacts to this intersection have been determined to be significant and unavoidable.

b. Impact 13-2 Cumulative Plus Project Intersection Impacts

Significant Unavoidable Impact

As discussed on page 13-11 of the FEIR, development of this project, combined for traffic projected for area wide build-out, would cause the Harbour Way South/Wright Avenue intersection to fall to LOS F in the AM and PM peak periods.

Facts in Support of Finding

As discussed on page 13-16 of the FEIR, the mitigation for Impact 13-2 is the implementation of **Mitigation 13-1** plus a reconfiguration of this intersection to provide a left-turn and a shared right-turn through lane on the northbound and southbound approaches on Harbour Way South (**Mitigation 13-2**). While the project impacts can be mitigated through the required payment of a fair share contribution to future improvements to fully implement the recommendations of Mitigation 13-2, the mitigation cannot be guaranteed until the full cost of implementing these measures has been determined and that a mechanism for funding these improvements has been established and approved by the City (traffic mitigation fee). Further, full implementation of Measure 13-2 by the proposed project alone would be inequitable and considered infeasible for one project to bear.

Lastly, implementation of these improvements would occur, in part, outside the jurisdiction of the City of Richmond, as they would be subject to the approval of another agency (California Public Utilities Commission). Therefore, impacts to this intersection have been determined to be significant and unavoidable.

c. Statement of Overriding Considerations

The City Council finds that the benefits of this Project outweigh significant, unavoidable Impacts 13-1 and 13-2 in that:

- 1) As proposed, the project is consistent with and would further the completion of the Marina Bay Master Plan community. The residential use and density would be within the residential build-out estimates planned for Marina Bay. Specifically, the Marina Bay Master Plan and Tentative Development Plan estimate a build-out of 3,102 residential units. With the approval and construction of the proposed project, the Marina Bay community would be developed with approximately 2,375 residential units over a 362 gross acre area. Lastly, the project site represents one of the few remaining undeveloped sites in the Marina Bay Master Plan community. Approval of the project would facilitate the completion of this planned community, which has been in the planning and development process since 1984.
- 2) As proposed, the project is consistent with and would implement the goals and policies of the Richmond Redevelopment Plan. The Richmond Redevelopment Plan encourages the development of residential uses, particularly for-sale, higher density housing in the Redevelopment Area near the bay front. Secondly, the project would increase the housing stock in the City and assist in meeting the regional housing needs. Lastly, the project would generate tax increment, which would assist in funding public improvements throughout all of the Redevelopment Areas, with approximately 20% of this increment earmarked for the production of low- and moderate-income housing.

- 3) As proposed, the project includes the dedication a permanent, public access easement along the San Francisco Bay front for the purpose of completing the shoreline band improvements. This dedication could not be accomplished without allowing development on the project site.
- 4) Under approved project conditions, the Harbour Way South/Wright Avenue intersection would operate at LOS E in the PM peak hour, experiencing a delay of approximately 37.9 seconds. Traffic from the proposed project would contribute 3.5 seconds of additional delay at this intersection. The addition of project traffic represents a 10% increase in the existing delay, which may be noticeable but not significant enough to warrant sole implementation of Mitigation 13-1 by the proposed project to address the impacts caused by the project in conjunction with past, present and reasonably foreseeable future development. The mitigation required for the project must be proportional to the project impacts.
- 5) The project would contribute a small percent of traffic at the Harbour Way South/Wright Avenue intersection (2.0-2.3%) under “cumulative” (build-out) conditions. While this increase exceeds the threshold for a significant cumulative impact (more than 1% increase in peak hour traffic volume), the project traffic contributed to this intersection would be 43 trips during the PM peak hour, which would be less than one trip per minute through this intersection. This contribution would not be noticeable.
- 6) By conditions of approval, the project sponsor has agreed to voluntarily contribute funds to implement the needed transportation improvements. The payment of this contribution will facilitate funding needed to complete the improvements.

5. REVIEW AND REJECTION OF ALTERNATIVES

CEQA mandates that every FEIR evaluate a no-project alternative, plus a range of alternatives to the project or its location. Alternatives provide a basis of comparison to the project in terms of beneficial, significant, and unavoidable impacts. This comparative analysis is used to consider reasonable feasible options for minimizing environmental consequences of a project. For the reasons documented in the FEIR and summarized below, the City Council finds that approval and implementation of the project as approved is appropriate, and rejects each one and any combination of project alternatives. The evidence supporting these findings is presented in Chapter 16 of the Draft FEIR, pages 16-1 through 16-21.

a. **Alternative 1: No Project Alternative**

This alternative assumes that the applicant-proposed project would not occur and that the project site would remain in its present, undeveloped condition.

Finding

Specific economic and other considerations make infeasible the No Project Alternative identified in the FEIR and described above.

Facts in Support of Finding

- 1) The No Project Alternative would not meet the project objectives as no development would occur on the project site.
- 2) The No Project Alternative would not be consistent with the Richmond Redevelopment Plan in that it would not result in new residential development within the redevelopment area and would not yield any tax increment benefits to the City at large.

- 3) Potentially significant effects of the proposed project are acceptable when balanced against this alternative and the facts set forth in the FEIR. Under this alternative, the long-term, unavoidable traffic impacts that are projected for the Harbour Way South/Wright Avenue intersection would still be realized.

b. Alternative 2: Lower and Smaller Residential Project

This alternative assumes that the project site would be developed with a residential project that is smaller in size and height to the proposed project. This alternative assesses the development of 160 residential units with a reduction in the building height by 20 feet (55-foot building height). Under this alternative, the on-site parking would be proportionately reduced to 345 spaces.

Finding

Specific economic and other considerations make the Lower and Smaller Residential Project Alternative, identified in the FEIR and described above, a less desirable alternative for the project applicant and the City.

Facts in Support of Finding

- 1) Project Alternative 2 represents the least impacting of the project alternatives that have been assessed (less the No Project Alternative) and is considered the environmentally superior alternative, since it would have either the same degree of fewer environmental impacts in all areas. However, this alternative would not fully meet the project sponsor objectives.
- 2) Alternative 2 would be consistent with the terms and the conditions of the Marina Bay Development Agreement and the approved Tentative Development Plan. Further, this alternative would be consistent with the City and Redevelopment Agency-approved Residential Development Commitment Agreement (RDCA), which acknowledges that residential use of the site is acceptable and desirable at this location.
- 3) Alternative 2 would be consistent with the Richmond Redevelopment Plan in that it would result in the introduction of new residential development within the redevelopment area and would yield any tax increment benefits to the City at large. However, being a smaller project, it would not yield the same fiscal benefits to the City as the proposed project.
- 4) Significant effects of the proposed project are acceptable when balanced against this alternative and the facts set forth in the FEIR. While this alternative would result in fewer environmental impacts than the proposed project, it would not result in the elimination or reduction of impacts to a less-than-significant level for those impacts that would be realized by the proposed project. Furthermore, as is the case with the proposed project, this alternative would result in a significant, unavoidable traffic impact at the Harbour Way South/Wright Avenue intersection under existing approved plus project approved conditions and under cumulative development conditions (area build-out). Consequently, this alternative would not substantially lessen the significant environmental impact of the project.

c. Alternative 3: Industrial/Office Flex Project

This alternative assumes that the project site would be developed with an industrial/office complex. This alternative assesses the development of a 220,000 square-foot building with a maximum height of 35 feet.

Finding

Specific economic and other considerations make the Industrial/Office Alternative, identified in the FEIR and described above, a less desirable alternative for the project applicant and the City.

Facts in Support of Finding

- 1) Alternative 3 would be consistent with the Area B designation in the Marina

Bay Master Plan and Tentative Development Plan, which permits commercial, office and hotel land uses. However, this alternative would not meet several of the project sponsor's objectives to develop the project site with residential land use.

- 2) Alternative 3 would be consistent with the terms and the conditions of the Marina Bay Development Agreement and the approved Tentative Development Plan. However, this alternative would not be consistent with the City and Redevelopment Agency-approved Residential Development Commitment Agreement (RDCA), which acknowledges that residential use of the site is acceptable and desirable at this location.
- 3) Alternative 3 would be consistent with the Richmond Redevelopment Plan in that it would facilitate redevelopment and build-out of the Marina Bay Master Plan. However, this alternative would not yield the extent of tax increment benefits to the City as the proposed project.
- 4) Significant effects of the proposed project are acceptable when balanced against this Alternative and the facts set forth in the FEIR. However, this alternative would result in more severe traffic impacts than the proposed project (46% more average daily traffic). As is the case with the proposed project, this alternative would result in a significant, unavoidable traffic impact at the Harbour Way South/Wright Avenue intersection under existing approved plus project approved conditions and under cumulative development conditions (area build-out). Thus, this alternative would not substantially lessen the traffic impacts.

d. Alternative 4: Mixed Use Project

This alternative assumes that the project site would be developed with a mixed-use of office and residential condominiums. This alternative assesses the development of a 257,000 square-foot office building on the northern portion of the property, consistent with the 2.0 floor area ratio limit set by General Commercial/922 land use designation in the Richmond General Plan. Under this alternative, the southern half of the site would be developed with 110 residential condominium units contained within a 5-story building (75 feet in height).

Finding

Specific economic and other considerations make the Mixed Use Alternative, identified in the FEIR and described above, a less desirable alternative for the project applicant and the City.

Facts in Support of Finding

- 1) Alternative 4 would be consistent with the Area B designation in the Marina Bay Master Plan and Tentative Development Plan, which permits commercial, office and hotel land uses. The residential component would be consistent with the City and Redevelopment Agency-approved Residential Development Commitment Agreement (RDCA). However, this alternative only partially meets the objective to develop the project site with residential land use.
- 2) Alternative 4 would be consistent with the terms and the conditions of the Marina Bay Development Agreement and the approved Tentative Development Plan.
- 3) Alternative 4 would be consistent with the Richmond Redevelopment Plan in that it would facilitate redevelopment and build-out of the Marina Bay Master Plan. However, this alternative would not yield the extent of tax increment benefits to the City as the proposed project.
- 4) Significant effects of the proposed project are acceptable when balanced against this Alternative and the facts set forth in the FEIR. However, this alternative would result in more severe traffic impacts than the proposed project (more than twice as many daily trips, on average). As is the case with the proposed project, this alternative would result in a significant, unavoidable traffic impact at the Harbour Way South/Wright Avenue intersection under existing approved plus project approved conditions and under cumulative

development conditions (area build-out). Consequently, this alternative would not substantially lessen the traffic impacts associated with the project.

e. Alternative 5: Alternative Site

This alternative assumes that the project site would not be developed as proposed but that the project would be developed at an alternative, off-site location.

Finding

Specific economic and other considerations make the Off-site Alternative, identified in the FEIR and described above, as an infeasible alternative for the project applicant and the City.

Facts in Support of Finding

Consistent with CEQA Guidelines Section 15126.6, the FEIR has considered the potential for and feasibility of an alternative site for proposed project. The provisions require that only locations that would avoid or substantially lessen any of the significant impacts need be considered for inclusion in the FEIR. As considered and disclosed in the FEIR, the development of the proposed project on an alternative site is considered infeasible for the following reasons:

- 1) The project is consistent with the current zoning and the land use designation established in the Richmond General Plan and Redevelopment Plan. Typically, alternative, off-site locations for development are considered if the project necessitates an amendment to the General Plan or zoning.
- 2) No alternative site has been identified in the City's jurisdiction that: a) the project sponsor can reasonably acquire, control or otherwise have access to; and b) that could successfully accomplish such a project in an expeditious or reasonable period of time.
- 3) The availability or probability of other sites in Richmond for development of such a residential condominium project with environmental benefits over the proposed project site is speculative.

NOW, THEREFORE, BE IT RESOLVED, that the City Council hereby: a) denies the appeals of the Final Environmental Impact Report for the Westshore Marina Residential Condominium Project; b) certifies the Final Environmental Impact Report for the Westshore Marina Residential Condominium Project; sc) adopts the Mitigation Monitoring and Reporting Program (MMRP), dated November 2005, attached hereto as Exhibit A, which requires implementation of reasonably feasible mitigation measures; and d) adopts the additional mitigation measures described above.

I certify that the foregoing resolution was passed and adopted by the City Council of the City of Richmond, California at a regular meeting held on June 20 2006, by the following vote:

Ayes: Councilmembers Bates, Marquez, Rogers, Thurmond, Viramontes, and Mayor Anderson

Noes: Councilmember Butt and McLaughlin

Abstentions: None

Absent: Councilmember Griffin

DIANE HOLMES
Clerk of the City of Richmond

(SEAL)

Approved:

IRMA L. ANDERSON
Irma Anderson, Mayor

Approved as to Form:

JOHN EASTMAN
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. 48-06, finally passed and adopted by the Council of the City of Richmond at a regular meeting held on June 20, 2006.