

## RESOLUTION NO. 140-09

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND CERTIFYING THE MIRAFLORES HOUSING DEVELOPMENT PLAN ENVIRONMENTAL IMPACT REPORT (STATE CLEARINGHOUSE #2007082154), ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS, MITIGATION MONITORING AND REPORTING PROGRAM, AND APPROVING A GENERAL PLAN AMENDMENT (PLN 09-026), SUBJECT TO FINDINGS AND CONDITIONS HEREIN.**

---

### **I. GENERAL FINDINGS**

**A. Introduction.** The Richmond Community Redevelopment Agency (RCRA) is proposing to construct a mix of affordable and senior housing, (80 units of affordable senior housing, 150 market-rate units; 20 of which are second dwelling units), a tot lot/small park and a space for community gardening or agricultural cultivation, as well as to daylight Baxter Creek on an approximately 14-acre infill site in the City of Richmond, Contra Costa County, California ("Project"). As requested by the Planning Commission, the project may also include up to 3,600 square feet of commercial use consistent with the proposed General Plan designation. Required Project approvals include: (i) a General Plan amendment PLN 09-026 to change the land use designations from Low Density Residential/Preservation/Resource Areas (917/941) to Medium Density Residential (918) ("General Plan Amendment") and (ii) a Municipal Code amendment PLN 09-026 to rezone the site from Single Family Low Density Residential/Exclusive Agriculture (SFR-3/EA) to Planned Area (PA) ("Zoning Amendment") (collectively referred to as the "Project Approvals"). While additional approvals including a tentative subdivision map approval and design review approval are necessary in order to construct housing on-site, these approvals are not proposed at this time.

**B. Environmental Review Process.** In accordance with the requirements of California Environmental Quality Act ("CEQA") Sections 21000 through 21177 of the California Public Resources Code, and Sections 15000 through 15387 of the California Code of Regulations Title 14 ("CEQA Guidelines"), a Notice of Preparation ("NOP") of a Draft Environmental Impact Report ("Draft EIR") was filed for the Project with the State Clearinghouse ("SCH") Office of Planning and Research ("OPR") on August 28, 2007 (State Clearinghouse No. 2007082154). The NOP was distributed to public agencies and interested parties for a 30-day public review period which ended on September 26, 2007. In addition, the City held a public scoping meeting on September 25, 2007 to obtain public input on the proposed scope and content of the Draft EIR. In accordance with CEQA requirements, a Notice of Completion ("NOC") of the Draft EIR was filed with the SCH OPR on June 15, 2009. The Draft EIR was circulated for a 59 day public review period, which ended on August 12, 2009. During this public review period, the City received written comments on the Draft EIR. Section 15088 of the State CEQA Guidelines requires that the Lead Agency responsible for the preparation of an EIR evaluate comments on environmental issues received from parties who reviewed the Draft EIR and prepare a written response addressing each of the comments. A Final EIR was prepared for the Project and circulated to commenting agencies on October 6, 2009. The Final EIR assembles in one document all of the environmental information and analysis prepared for the Project, including comments on the information and analysis contained in the Draft EIR and responses by the City to those comments.

Pursuant to Section 15132 of the State CEQA Guidelines, the Final EIR consists of the following:

- (a) The Draft EIR, including all of its appendices;
- (b) A list of persons, organizations, and public agencies commenting on the Draft EIR;
- (c) Copies of all letters received by the City during the Draft EIR public review period and responses to significant environmental points concerning the Draft EIR raised in the review and consultation process;

- (d) Revisions to the Draft EIR;
- (e) Any other information added by the Lead Agency to respond to written comments on the Draft EIR.

**C. Administrative Record.** The administrative record, upon which all Findings related to the approval of the Project are based, includes the following:

- The EIR and all documents referenced in or relied upon by the EIR.
- All information (including written evidence and testimony) provided by City Staff to the Planning Commission and the City Council relating to the EIR, the approvals, and the project.
- All information (including written evidence and testimony) presented at or in preparation of any City public hearing or City workshop related to the Project and the EIR.
- For documentary and information purposes, all City-adopted land use plans and ordinances, including without limitation the general plan, specific plans and ordinances, together with environmental review documents, findings, mitigation monitoring programs and other documentation relevant to project site.
- The Mitigation Monitoring and Reporting Program (“MMRP”) for the Project.
- All other documents composing the record pursuant to Public Resources Code section 21167.6(e).

The custodian of the documents and other materials that constitute the record of the proceedings upon which the City’s decisions are based is the Director of Planning and Building Services or his or her designee. Such documents and other materials are located at City Hall, Planning Division, 450 Civic Center Plaza, Richmond, California, 94804.

**D. Findings.** On December 3, 2009, the Planning Commission conducted a duly noticed public hearing on the Project. After considering public testimony and materials in the staff report, including the Final EIR (State Clearinghouse #2007082154), the Statement of Overriding Considerations, the Mitigation Monitoring and Reporting Program, the Planning Commission recommended certification of the Final EIR, adoption of the Statement of Overriding Consideration and Mitigation, Monitoring, and Reporting Program, and approval of the General Plan amendment and rezoning. On December 15, 2009, the City Council held a duly noticed public hearing on the project. Based upon the public testimony and materials presented at or before the hearing, the City Council finds, in its independent and objective judgment, that the Final EIR is adequate and sufficient in all respects and the findings set forth below are appropriate and adequate to support the Certification of the EIR, adoption of the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program and adoption of the Project Approvals. These Findings and Statement of Overriding Considerations are made pursuant to CEQA and City of Richmond Municipal Code. These findings explain the potential environmental impacts of the Project, identify mitigation measures that have been adopted to mitigate those impacts, explain the alternatives that were evaluated and rejected, include the overriding considerations to support approval of the Project, include the findings to support the adoption of the Mitigation Monitoring and Reporting Program and include the findings to support the adoption of the General Plan Amendment and Zoning Amendment ("Findings").

## **II. CEQA FINDINGS.**

The City of Richmond is the Lead Agency with respect to the Project pursuant to Section 15367 of the CEQA Guidelines. The following findings of fact support the certification of the EIR:

(a) The City has complied with CEQA and CEQA Guidelines. The EIR is an accurate and objective statement that fully complies with CEQA and CEQA Guidelines.

(b) No evidence of new significant impacts, as defined by CEQA Guidelines Section 15088.5, has been received by the City after circulation of the Draft EIR which would require recirculation.

(c) The Project is consistent with the development analyzed in the EIR.

(d) The EIR was presented to the Planning Commission, which reviewed and considered the Final EIR and recommended to the Council certification of the EIR and approval of the General Plan Amendment and Zoning Amendment. The final EIR was presented to the City Council on December 15, 2009 for consideration of certification.

(e) Pursuant to Section 21082.1(c)(3) of the Public Resources Code, the City Council also finds that the EIR reflects the City's independent judgment as the Lead Agency for the Project.

(f) As noted above, Public Resources Code 21081 and Section 15091 of the State CEQA Guidelines require that the lead agency prepare written findings for identified significant impacts, accompanied by a brief explanation for the rationale for each finding. The EIR identified potentially significant effects that could result from Project implementation. The City finds that the mitigation measures in the EIR will reduce most, but not all, of those effects to less-than-significant levels. Those impacts that are not reduced to less-than-significant levels are identified and overridden due to specific Project benefits identified in the Statement of Overriding Considerations. In accordance with CEQA and the State CEQA Guidelines, the City adopts the following Findings.

### **III. FINDINGS RELATING TO ENVIRONMENTAL IMPACTS, MITIGATION MEASURES AND ALTERNATIVES**

#### **A. Environmental Impacts.**

The EIR evaluated the potential for the Project to result in significant impacts to the following environmental topics: aesthetics; agricultural resources; air quality; biological resources; cultural resources; geology, seismicity and soils; greenhouse gas emissions; hazards and hazardous materials; hydrology and water quality; land use; noise; population and housing; public services and recreation; traffic and circulation; and utilities and infrastructure. The EIR was prepared at the project level. All impacts were found to be less than significant or less than significant after incorporation of mitigation measures, as needed, with the exception of certain impacts relating to cultural resources which were found to be significant and unavoidable. The EIR presents a conservative analysis of environmental impacts, although the proposed Project has the same layout, it proposes fewer units than analyzed in the EIR. Specifically, the EIR analyzed impacts from development of up to 110 senior units and up to 220 market rate units. The proposed project includes only 80 senior units and 150 market-rate units (20 of which are second dwelling units). Based on the recommendation from the Planning Commission to consider inclusion of a commercial component, 3,600 square feet of commercial use is proposed to be included if determined to be feasible. This is consistent with the analysis underlying the EIR. Specifically, the air, noise, traffic and GHG reports all included 3,600 square feet of commercial use. No new or more severe significant impacts would result from the inclusion of this commercial component.

As provided by Public Resources Code Section 21081, the City must make certain findings for each significant impact identified in the EIR before adopting the environmental documents and Project Approvals. These findings include any or all of the following:

(1) Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the EIR.

These Findings summarize the determinations in the EIR relating to the potential environmental impacts before and after mitigation. Except with respect to cultural resources, which are addressed in the Statement of Overriding Considerations, the City finds that changes or alterations have been required, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the EIR. **Exhibit A** attached to this Resolution sets forth a summary description of each impact from the EIR, describes the recommended mitigation measures, and states whether or not the impact has been mitigated and if so, to what level. A full explanation of the conclusions relating to the impacts and mitigation measures can be found in the EIR. In making these Findings, the City is relying on all the information in the administrative record, including comments made before and during the public hearings on the Project, and in the EIR. With respect to the EIR, the City adopts and incorporates in these Findings all determinations and conclusions made in the EIR relating to the environmental impacts and mitigation measures, except to the extent that such determinations and conclusions are modified by these Findings.

### **B. Mitigation Measures.**

The City hereby adopts all mitigation measures set forth in **Exhibit B** of this Resolution which includes the Final EIR and MMRP for the Project, identifies each mitigation measure as adopted, an implementation schedule and method for verification of compliance. The MMRP will hereby be required to be incorporated in the conditions of approval to the Project in **Exhibit C**.

Based on the entire record, and having considered the unavoidable and significant impacts of the Project, the City hereby determines that all feasible mitigation measures within the responsibility and jurisdiction of the City have been adopted to reduce or avoid the potentially significant impacts identified in the EIR, and that no additional feasible mitigation is available to further reduce significant impacts.

### **C. Alternatives.**

The EIR evaluated four alternatives, in addition to the proposed Project: (1) No Project; (2) In Place/Low Density Alternative; (3) Increased Preservation Alternative; and (4) Increased Housing/High Density Alternative. These alternatives are discussed in further detail in Section 5 of the Draft EIR. The City's findings relating to these alternatives are set forth below:

**1. No Project.** CEQA requires that a "No Project" alternative be considered. A "No Project" alternative is generally considered to be equivalent to a "no development" alternative. Under this scenario, the Project would not be implemented. While the No Project Alternative would reduce some impacts, including cultural resources impacts, the No Project Alternative would not meet the objective of developing a mix of affordable and market rate housing, addressing soil and groundwater contamination and restoring Baxter Creek nor would it reuse the existing historic features on-site. For these reasons, the City finds that this alternative is "infeasible" as the term is used under CEQA and rejects this alternative.

**2. In-Place/Low-Density Alternative.** As explained in the EIR, this alternative would preserve the most historically significant buildings in place for adaptive reuse. It would preserve Greenhouses 7, 8, 9, 17 and 18 of the Oishi Nursery, and Greenhouse 20, the Sakai House and water tower of the Sakai nursery, in their historic locations for adaptive reuse. The site would be designated Low Density Residential/917, which would result in maximum of 99 units. While the In-Place/Low-Density Alternative would

reduce some impacts, impacts to cultural resources would remain significant and unavoidable.

However, this alternative would significantly reduce the amount of housing possible on the site, and would frustrate the purpose of restoring Baxter Creek since the Oishi Greenhouse lies in the path of the proposed daylighted creek. In addition, the street network would not be as integrated with the surrounding neighborhood as under the proposed Project. Finally, the preservation component of the In-Place/Low-Density Alternative would result in a substantial economic feasibility gap, while still resulting in a significant and unavoidable impact relating to cultural resources. The In-Place/Low-Density Alternative proposes to preserve eight structures in their historic locations for adaptive reuse. Based on the conclusions of the *Miraflores Historic Preservation Feasibility Assessment*, feasibility gaps for potential reuse scenarios would range from \$4.9 million to \$5.6 million. Thus, the In-Place/Low-Density Alternative would not be financially feasible. The City finds that this alternative is “infeasible” as the term is used under CEQA and rejects this alternative.

**3. Increased Preservation Alternative.** This alternative is designed to mitigate the proposed Project's potentially significant impacts. It would preserve all buildings recommended as historic by the historic architecture evaluation prepared for the site, by the Richmond Historic Preservation Advisory Committee, including the Sakai House, the Oishi House, 28 greenhouses, and several other structures. This alternative would substantially reduce the amount of housing development feasible on the Project site, including the affordable senior housing. Like the In-Place/Low Density Alternative, it would frustrate the purpose of restoring Baxter Creek, since the Oishi Greenhouse lies in the path of the proposed daylighted creek and would result in a disconnected site layout and circulation pattern. The *Miraflores Historic Preservation Feasibility Assessment* did not analyze this alternative; however, the report concluded that the In-Place/Low-Density Alternative, which would preserve fewer structures, would be financially infeasible. Based on that conclusion, it is reasonable to expect that the Increased Preservation Alternative would also be financially infeasible. As a result of these factors, the Increased Preservation Alternative was not deemed to be a viable alternative to the proposed Project. The City finds this alternative "infeasible" as the term is used under CEQA and rejects this alternative.

**4. Increased Housing/High Density Alternative.** This alternative would allow for significantly more housing on the site at a substantially higher density. The site would have the same layout as the proposed Project, but would be designated High Density Residential/944. As a result, a maximum of 471 units would be developable on the site, and buildings would be taller (up to four stories) to accommodate the increased number of units. This alternative has similar impacts to the proposed Project, but would result in more significant impacts to land use, in that the taller structures would be less compatible with surrounding neighborhoods, and, although less than significant, the intensity of impacts to public services and traffic would be proportionately more than the proposed Project. Accordingly, since this high density development would not be compatible with the surrounding neighborhoods, particularly due to the aesthetic character, higher-intensity land use and larger population living on the site and greater traffic and public services impacts, the City finds this alternative "infeasible" as the term is used under CEQA and rejects this alternative.

**5. Rejected Alternatives.** The EIR also considered additional alternatives but did not evaluate them in detail since the alternatives would not meet the Project objectives and were found to be infeasible for technical, environmental or social reasons as explained in the EIR. These rejected alternatives include (1) a previous site design that proposed that the Sakai House, Greenhouse 20, and water tower be restored and relocated to the open space along Interstate 80 to be used for community activities, (2) another previous site design that proposed that the Sakai House, Greenhouse 20, and the water tower be relocated to the north side of Sakai Avenue, right outside of the open space, and that the restored Oishi House would be relocated to the open space near Baxter Creek, and (3) same site layout as the proposed Project, but would have featured a small commercial use in the area near the relocated Sakai structures, park, and tot lot.

As discussed in Section 5(F) of the EIR, these alternatives would reduce the amount of housing possible on-site; would have reduced the area within the open space, diminishing the recreational and stormwater management benefits of having a continuous open space area; and would not be financially feasible, respectively. Based on the information in the record, the City finds that these alternatives are infeasible and rejects the alternatives.

**6. Environmentally Superior Alternative.** CEQA requires that an environmentally superior alternative be identified. While implementation of the proposed Project would result in biology, hydrology and traffic and circulation benefits and is considered to be the most environmentally sensitive alternative, the Project's impacts to cultural resources would be considered significant and unavoidable. Only the Increased Preservation Alternative would avoid the significant impact on cultural resources and in that respect is considered the environmentally superior alternative. This alternative would avoid a significant and unavoidable impact regarding cultural resources, but would have potentially significant impacts related to land use and traffic and circulation. As discussed above, this alternative would reduce the amount of housing, including affordable senior housing and would frustrate the purpose of restoring Baxter Creek, since the Oishi Greenhouse lies in the path of the proposed daylighted creek and would result in a disconnected site layout and circulation pattern. Further, while the *Miraflores Historic Preservation Feasibility Assessment* did not analyze this alternative, the report concluded that the In-Place/Low-Density Alternative, which would preserve fewer structures, would be financially infeasible. Based on that conclusion, it is reasonable to expect that the Increased Preservation Alternative would also be financially infeasible. As a result of these factors, the Increased Preservation Alternative was not deemed to be a viable alternative to the proposed Project.

#### **IV. STATEMENT OF OVERRIDING CONSIDERATIONS**

CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological or other benefits of a project against its unavoidable environmental risks when determining whether to approve a project. If the specific economic, legal, social, technological or other benefits of a project outweigh the unavoidable adverse environmental effects, those effects may be considered "acceptable." (CEQA Guidelines Section 15093(a)) CEQA requires the agency to state, in writing, the specific reasons for considering a project acceptable when significant impacts are not avoided or substantially lessened.

In accordance with the requirements of CEQA and the CEQA Guidelines, the City finds that the mitigation measures identified in the Final EIR, Conditions of Approval, and MMRP, when implemented, will avoid or substantially lessen most of the significant effects of the Project. However, certain impacts of the Project are unavoidable even after incorporation of all feasible mitigation measures. The Project would result in significant and unavoidable impacts on cultural resources. Although the most significant structures from the Sakai Nursery and two structures from the Oishi Nursery would be retained on-site, implementation of the proposed Project would result in demolition of other contributing structures on-site, and therefore, would cause a significant adverse impact to cultural resources. The EIR provides detailed information regarding these impacts.

The City has adopted all the mitigation measures and finds that all mitigation measures identified in **Exhibit B** will be implemented with the Project. The City further finds that the remaining significant and unavoidable effects are outweighed and are found to be acceptable due to the following specific overriding economic, legal, social, technological, or other benefits based upon the facts set forth above in the Findings, the Draft and Final EIR, and the record, as follows:

- (a) The Project would provide a mix of affordable and market-rate housing, on a vacant and deteriorated infill site near transit opportunities;
- (b) The Project would provide approximately four acres of maintained open space along Interstate 80, and would provide a small park and tot lot in the center of the site for use by residents as an amenity;

(c) The Project would restore a portion of Baxter Creek and provide active and passive recreational space and trail along the creek corridor;

(d) The Project would rehabilitate and reuse five historical resources on site and provide for an interpretive exhibit regarding the site's history and cultural value to the community;

(e) The Project would remediate soil contamination, including the removal of source material affecting groundwater, on-site to a level safe for human occupancy;

(f) The Project would create living wage jobs in hazard remediation, abatement and construction.

Considering all factors, the City Council finds that these specific economic, legal, social, technological and other considerations associated with the Project outweigh the Project's significant and unavoidable effects, and the adverse effects are, therefore, considered acceptable.

## **V. FINDINGS WITH RESPECT TO ADOPTION OF MITIGATION MONITORING AND REPORTING PLAN ("MMRP")**

Section 21081.6 of the Public Resources Code requires the City to adopt a monitoring or compliance program regarding the changes in the project and mitigation measures imposed to lessen or avoid significant effects on the environment. The Mitigation and Monitoring and Reporting Plan (MMRP) for the proposed Project is hereby included in **Exhibit B**. The MMRP fulfills the CEQA mitigation monitoring requirements, as follows:

- The MMRP is designed to ensure compliance with the changes in the project and mitigation measures imposed on the Project during project implementation; and
- Measures to mitigate or avoid significant effects on the environment as set forth in the MMRP are fully enforceable through conditions of approval, permit conditions, agreements or other measures.

## **VI. GENERAL PLAN AMENDMENT FINDINGS**

The City Council has considered the General Plan Amendment, attached as **Exhibit D**, and makes the following findings:

(a) The proposed amendment is consistent with the rest of the general plan and appropriate changes have been made to maintain consistency. As discussed in Page 4.10-13 of the Draft EIR, the proposed Project includes a General Plan Amendment to change the land use designation of the site to Medium Density Residential/918 from Low Density Residential/917 and Low Density Residential/Preservation/Resource Area/917/941. Therefore, the proposed Project would be consistent with the General Plan upon adoption of the General Plan Amendment. Further, as urban infill development, the Project would be consistent with General Plan Goal LU-K of meeting future housing needs within city limits through infill development in areas already served by community facilities, utilities and transportation systems. The project would also further General Plan Policy LU-A.5 by preserving and rehabilitating specific cultural resources on the site for adaptive reuse. In addition, the project would create recreation and open space areas on the project site that would be useable to all segments of the community, including people with disabilities thereby further General Plan Policy CF-B.1. The project also furthers General Plan Policy HG-A.1 by promoting of affordable infill housing development where it is compatible with the neighborhood. The proposed mix of housing types and sizes within the project also reflects General Plan Policy HG-B.7 that discourages the formation of new neighborhoods with uniform housing types and sizes. Finally, Policy OSC-R.1 of the Open Space and Conservation Element encourages the continuation of commercial nurseries as an agricultural use in the Planning Area as an interim use. Nursery operations on the proposed Project site have ceased, all nursery-related structures have deteriorated beyond a useful state for agricultural purposes, and

the site is surrounded by urbanization. Additionally, the site is not in a location specifically identified in Policy OSC-R.1. Therefore, there is no present nursery or agricultural use on the site; however, the proposed project would provide for community gardening uses in a portion of the open space. Accordingly, the proposed Project is consistent with the General Plan.

(b) The proposed General Plan Amendment is in the public interest of the people of Richmond. The benefits of the Project that would be facilitated by the General Plan Amendment are discussed in Section IV, above.

## **VII. SEVERABILITY**

Should any provision, section, paragraph, sentence, or word of this Resolution be rendered or declared invalid by any court of competent jurisdiction, or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences and words of this Resolution shall remain in full force and effect.

## **VIII. APPROVALS**

The City Council hereby certifies the Final EIR (State Clearinghouse #2007082154), adopts the Statement of Overriding Considerations, the Mitigation Monitoring and Reporting Program, and approves the General Plan Amendment, subject to conditions of approval.

Exhibit A: Environmental Impacts Summary

Exhibit B: Final EIR and Mitigation Monitoring and Reporting Program

Exhibit C: Conditions of Approval

Exhibit D: General Plan Amendment Map

-----

I certify that the foregoing resolution was passed and adopted by the members of the Richmond City Council at a regular meeting held on Tuesday, December 15, 2009, by the following vote:

AYES: Councilmembers Bates, Butt, Ritterman, Rogers, Viramontes, and Vice Mayor Lopez.

NOES: Mayor McLaughlin.

ABSTENTIONS: None.

ABSENT: None

DIANE HOLMES  
Clerk of the City of Richmond

[SEAL]

Approved:

GAYLE MCLAUGHLIN  
Mayor

Approved as to form:

RANDY RIDDLE  
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. 140-09**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on December 15, 2009.