

RESOLUTION NO. 48-06a

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND CONDITIONALLY APPROVING THE FINAL DEVELOPMENT PLAN FOR THE WESTSHORE MARINA RESIDENTIAL CONDOMINIUM PROJECT AND TENTATIVE MAP (TM 1100835) FOR RESIDENTIAL CONDOMINIUM PURPOSES DIVIDING PARCELS A AND C, AS SHOWN ON PARCEL MAP M.S. 753-98, BOOK 176 (APN 560-181-096 AND 560-181-098), A 5.95-ACRE SITE LOCATED AT THE SOUTHERN TERMINUS OF MARINA WAY SOUTH IN THE MARINA BAY COMMUNITY

WHEREAS, in 1984, the City of Richmond (“City”) approved the Marina Bay Master Plan and Tentative Development Plan, which set forth land use regulations and development parameters for Marina Bay, a 362-acre planned community extending from south of I-580 to the San Francisco Bay. Accompanied by this action was the approval of the Marina Bay Development Agreement (“MBDA”), which set forth the rules, regulations and policies in effect for development in the Marina Bay Master Plan Area; and

WHEREAS, the Marina Bay Master Plan area is within Richmond Redevelopment Project Area 11-A (the Harbor Redevelopment Area). Plans for development within the Master Plan area must be consistent with the goals and objectives of the Richmond Redevelopment Agency (“Agency”); and

WHEREAS, in July 2004 the City and the Agency approved a Residential Development Commitment Agreement (“RDCA”), which confirmed that multiple-family residential use within the Marina Bay Master Plan Area would be consistent with and permitted by the C-2 zoning district adopted in 1984, and, therefore, multiple-family residential use would be consistent with the approved Marina Bay Master Plan and Tentative Development Plan; and

WHEREAS, on December 17, 2004, Toll Brothers, Inc. filed a Final Development Plan and Tentative Map applications requesting City approval of a 269-unit residential condominium complex (“Westshore Marina” or “Project”) and subdivision for residential condominium purposes for property identified as Parcels A and C, as shown on Parcel Map M.S. 753-98, Book 176 (APN 560-181-096 and 098). Approval of the Final Development Plan is required as a condition of the Marina Bay Development Agreement. Further, the purpose of the Tentative Map application is to request approval to subdivide the project site consistent with the provisions of the State Subdivision Map Act; and

WHEREAS, the Project site consists of 5.9+ acres of level, undeveloped land located at the southern terminus of Marina Way South and is a portion of Area B (“Westshore Parcel”) within the Marina Bay Master Plan community. Area B is designated for commercial, office and hotel development, but allows development of other land uses that are permitted by the C-2 zoning district adopted in 1984; and

WHEREAS, in May 2005, an addendum to the RDCA was approved by the City and the Agency, which confirmed that the residential units proposed for the project site would be within the total 3,103 residential units planned for the Marina Bay Master Plan area. Further, the addendum confirmed that residential development of the project site would be subject to the Development Standards for Residential Areas outlined in the approved Master Plan and Tentative Development Plan; and

WHEREAS, on November 21, 2005, the Marina Bay Design Review Board adopted Resolution No. 05-01 conditionally approving Design Review application DR 1100845 (5-0). This action granted design approval for the 269-unit Westshore Marina residential condominium complex; and

WHEREAS, on December 12, 2005, the Development Review Committee reviewed the report prepared by the Planning Director summarizing the comments of City departments and recommended Project approval subject to the conditions outlined in this resolution; and

WHEREAS, on January 5, 2006, in accordance with the California Environmental

Quality, the Planning Commission certified a Final Environmental Impact Report for the Project and adopted a Mitigation Monitoring and Reporting Program (“MMRP”) to ensure that all reasonably feasible mitigation measures will be implemented to address potentially significant adverse environmental impacts of 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 firm of Illingworth & Rodkin 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 whether construction diesel particulate matter emissions, including those from truck hauling trips would adversely affect existing sensitive receptors (e.g., residential land use). Further, 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, Principal at Moore Iacofano Goltsman, Inc., who served as mediator, and on April 27, 2006, the Project Sponsor met with the local union representative, and City staff. Project Sponsor and appellants have reached agreements to support the addition of certain mitigation measures and conditions of approval.

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/or conditions of approval.

WHEREAS, the City Council has reviewed and considered the Final Development Plan and Tentative Map, the activities contemplated by these applications, the applicable provisions of the Marina Bay Development Agreement, the applicable sections of the Subdivision and Zoning Ordinances of the City of Richmond, all oral and written comments presented to the City Council during or before public hearings related to the Project, and all other information related to the Project presented to the City Council.

NOW, THEREFORE, BE IT RESOLVED that the City Council makes the following findings (Section I) and approves the Project subject to the following conditions (Section II):

SECTION I: FINDINGS

- 1. As proposed, the Final Development Plan is consistent with the provisions and**

requirements of the Marina Bay Development Agreement and accompanying Marina Bay Tentative Development Plan Text and Development Guidelines approved by the City in 1984.

Statement: Requirement met. The 5.95-acre project site is located within the boundaries of the Marina Bay Master Plan, which was adopted by the City of Richmond in 1984. Adoption of this Master Plan was accompanied by the approval of the Marina Bay Tentative Development Plan and Development Agreement (MBDA). The provisions of these approvals require that a Final Development Plan be filed and approved for development on each site within the Marina Bay community. The purpose of the Final Development Plan action is to ensure that the development project that is proposed for the specific site is consistent with the approved Tentative Development Plan and is in compliance with the terms of the MBDA. As proposed, the Final Development Plan is consistent with the approved Tentative Development Plan and the terms and conditions of the MBDA in that:

- a. The approved Marina Bay Master Plan and Tentative Development Plan identify this site as a portion of Area “B” (referred to as the Westshore Parcel) and is designated for commercial/office/hotel land uses but permits other land uses, including multiple-family residential uses, consistent with the provisions set forth in the C-2 District of the Zoning Ordinance in effect on December 17, 1984. Therefore, the proposed multiple-family residential use is consistent with the uses allowed for the project site.
 - b. Through Agency and City approval of the RDCA and supplemental addendum, it has been confirmed that the 269 residential units proposed for the project site would be within the total 3,103 residential units that were planned for the Marina Bay Master Plan area.
 - c. The 1984 Richmond General Plan (amended January 21, 1985, Water-Related Commerce and Commercial Recreation/910 designation) coupled with the approved Tentative Development Plan regulations, permit a residential land use of the site and establish the applicable density restrictions for development, respectively. While the project would result in a net site density of 45+ dwelling units per acre, which would exceed the permitted density range of 9-21 dwelling units per acre under the Water-Related Commerce and Commercial Recreation/910 designation adopted for this site, the project density is within the allowed density range for the total area of parcels designated for residential development under the Marina Bay Planned Area (PA) District, which sets a maximum intensity allocation of 3,103 dwelling units. Per RMC Section 15.04.610.020(B), the regulations of the Marina Bay PA District and the Tentative Development Plan, the resulting density on the Westshore Parcels would be allowed to exceed the maximum density under the General Plan for these parcels, provided that the total density for all of the parcels designated for residential use in the Marina Bay planned community does not exceed the maximum density allowed under the General Plan. To date, and with the approval of the Westshore Marina project, the total number of residential units constructed, occupied and approved for development in the Marina Bay community is 2,375 units.
 - d. The project site is located within the Richmond Redevelopment Project Area 11-A, known as the Harbor Redevelopment Area. As proposed, the project would be consistent with the intent and goals and objectives of the Richmond Redevelopment Plan, which encourages residential development as part of area revitalization.
 - e. The project site fronts on, receives access and would be served by Marina Way South, a fully improved public street that was planned for and developed to serve the Marina Bay community.
- 2. The proposed subdivision presented in the Tentative Map, together with the provision of its design and improvements, is consistent with the 1984 Richmond General Plan in place at the time the Marina Bay Master Plan and Tentative Development Plan were approved.**

Statement: Criterion conditionally satisfied. The 5.95-acre project site is located within the boundaries of the Marina Bay Master Plan, which was adopted by the City of Richmond in 1984.

Adoption of this Master Plan was accompanied by the approval of the Marina Bay Tentative Development Plan and Development Agreement (MBDA). At the time of adoption of the Marina Bay Master Plan, Tentative Development Agreement and MBDA, it was determined that this action was consistent with the then adopted Richmond General Plan (1984). The approved MBDA permits development of properties within this area, subject to: 1) the land use regulations and development standards set forth in the Master Plan and Tentative Development Plan; and 2) the Richmond General Plan and pertinent Zoning Ordinance provisions in place at the time of approval (1984). As proposed and conditioned, the Tentative Map would be consistent with the 1984 Richmond General Plan in that:

- a. The Marina Bay Master Plan and Tentative Development Plan identifies this site as a portion of Area “B” (referred to as the Westshore Parcel) and is designated for commercial/office/hotel land uses but permits other land uses, including multiple-family residential uses, consistent with the provisions set forth in the C-2 District of the Zoning Ordinance in effect on December 17, 1984.
- b. The Tentative Map would authorize the subdivision of the property for residential development and sale of condominium units. As the residential use is consistent with the Marina Bay Master Plan and Tentative Development Plan, the approval of this Tentative Map would be consistent with the 1984 Richmond General Plan.
- c. Approval of this Tentative Map would be consistent with requirements for the dedication of a permanent, public access easement for shoreline public park purposes and the granting of easements for emergency service and utility improvement access, which would be consistent with the 1984 Richmond General Plan recreation and public safety goals and policies.

3. Approval of the Project is consistent with Government Code Section 66474:

(a) The proposed Tentative Map is consistent with applicable general plan.

Statement: Criterion conditionally satisfied. As proposed and as conditioned, the Tentative Map are consistent with the Marina Bay Master Plan, Tentative Development Plan and the terms of the MBDA, which in turn, would be consistent with the 1984 Richmond General Plan in that:

- a. The map would create Lot 1 for residential use, which would be consistent with the Master Plan and Tentative Development Plan. As proposed, Lot 1 would contain a podium and parking garage footprint and residential units. Residential units would be sold through the sale of ‘airspace’ within Lot 1.
- b. The map would create Lot A for dedication of a permanent, public access easement for shoreline public park use. This lot area and use would be consistent with the Master Plan, Tentative Development Plan, as well as the recreation and land use goals and policies set for in the 1984 Richmond General Plan.
- c. The map would create Lots B through H for ancillary uses including common area for residences, project access, parking, emergency vehicle access and utility improvements. These lots would be consistent with the land use they are intended for and would be consistent with the 1984 Richmond General Plan public safety goals and policies.
- d. The City previously found that development of the Marina Bay planned community, including the project site, in accordance with all conditions of approval of the Planned Development zoning, Tentative Development Plan and associated approvals, will provide orderly growth of the development of Marina Bay in accordance with the policies and goals set forth in the General Plan, together with the amendments thereto as Penterra made application for on November 1, 1984 and as approved by the City Council in January 1985.
- e. The Tentative Map would be consistent with the 1984 General Plan goals that encourage attractive, safe residential neighborhoods with a variety of dwelling types and facility amenities that will produce neighborhoods with distinct identities. The Westshore Marina project also encourages a thoroughfare system that will insure access to the

residential development. Further, the Westshore Marina project is designed to provide an attractive urban design to improve the aesthetic and economic values of the site, adjacent lots, the neighborhood and the entire City. Development of Marina Bay and the Westshore Marina project site specifically are designed to accomplish a “pleasant” transition between residential, industrial and commercial areas in accordance with the General Plan.

(b) The design or improvement of the proposed Tentative Map is consistent with applicable General Plan, the Marina Bay Master Plan and the City of Richmond Zoning Ordinance.

Statement: Criterion satisfied. The design and improvements of the proposed subdivision are consistent with the Marina Bay Master Plan, Tentative Development Plan and MBDA, which have been determined to be consistent with the 1984 Richmond General Plan. As noted, the design of the proposed lots are appropriate for their intended use and improvement, including improvements for public park, emergency access and utilities, which would be consistent with the recreation and public safety goals and policies of the 1984 Richmond General Plan. The number of residential units authorized through the sale of airspace as a result of this map approval would be within the total 3,103 residential units planned for development. Further, the project site fronts on and receives access from Marina Way South, a fully improved public street that was developed to serve the Marina Bay Master Plan community.

Moreover, although the Westshore Marina project is subject to the 1984 General Plan policies in effect at the time the Marina Bay Development Agreement became effective, it also generally is consistent with key 1994 General Plan policies regarding land use, transportation, visual and aesthetics, biological resources, cultural resources, geology and soils, hazards and hazardous materials, noise, emergency services, hydrology and water quality as further evaluated in the Westshore Marina Residential Condominium Project EIR incorporated herein by reference.

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

Statement: Criterion satisfied: The approval of this map would result in the creation of parcels that are of a sufficient size, are appropriate configuration, and are accessed by a fully improved public street, which would accommodate the proposed development and approved land uses. Secondly, the project site is level, generally free of constraints, and has shoreline frontage along the San Francisco Bay front, which make it appropriate for redevelopment and suitable for multiple-family residential use.

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

Statement: Criterion satisfied. The subdivision would approve the mapping that would permit the sale of 269 residential units, resulting in a project density of 45.4 dwelling units per acre (gross). This project density would permit the construction of a mid-rise building of up to 75 feet in height, which would be consistent with the Residential Area building height limit of 120 feet as set forth in the Marina Bay Master Plan and Tentative Development Plan. The subdivision and the accompanying development are suitable for the project site given that the property is level and generally free of constraints. Further, the project density and building height is suitable for the area and would be generally compatible with the massing and scale of existing buildings in the area.

(e) The design of the subdivision or the proposed improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

Statement: Criterion conditionally satisfied. As recommended by conditions of approval, the design of the subdivision and the type of improvements would not cause substantial environmental damage, nor would it substantially and avoidably injure fish or wildlife or their habitat. An analysis of potential biological resources was completed and incorporated in the Final Environmental Impact Report for the Westshore Marina Residential Condominium Project (FEIR: EID 1100845), November 2005. While the project site does not contain habitat for rare or endangered species, this report recommends a mitigation measure to address potential disruption to on-site nesting birds during grading and construction. This measure (Mitigation 6-

2) has been incorporated as a condition map approval.

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

Statement: Criterion satisfied. The FEIR prepared for the project assessed the potential for public health hazard impacts associated with the project site and development. The FEIR determined that the site does not contain any hazardous materials that would impact residential use of the property. Secondly, as concluded in the FEIR, the residential use, as proposed, would not pose a threat to nor would it impact public health.

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

Statement: Criterion conditionally satisfied. As designed, the Tentative Map will not conflict with presently recorded easements and the development is designed to conform to and front on an existing fully improved public street served by an existing public road network. As conditioned, the recordation of a Final Map/Parcel Map will require the dedication of easements for public access, emergency vehicle access and utilities.

- 4. The discharge of waste from the proposed subdivision into an existing community sewer system would not result in or add to violation of existing requirements prescribed by the San Francisco Bay Regional Water Quality Control Board.**

Statement: Criterion conditionally satisfied. The approval of this Tentative Map is conditioned to comply with City of Richmond and San Francisco Bay Regional Water Quality Board (RWQCB) requirements. The wastewater sewer system serving the area has adequate capacity to provide service to this project.

- 5. Approval of the Final Development Plan and Tentative Map, in conjunction with the Marina Bay Design Review Board approval of DR 1100845, which, jointly permit development of the Project site with a mid-rise, 269-unit residential condominium project, will provide public benefits that override the detrimental effects of potentially significant environmental impacts by the Project.**

Statement: As determined by the FEIR, the proposed Project may cause unavoidable potentially significant environmental impacts. For impacts that can be mitigated to a less-than-significant level, the City Council finds that the mitigation measures presented in the FEIR and the MMRP are adequate and have been incorporated as conditions of approval (listed below). Nonetheless, the traffic generated by this project, combined with existing traffic conditions and traffic that would be generated by other 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 (Impact 13-1). The mitigation for this impact 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). Secondly, the traffic generated by this project, combined with traffic projected for area wide build-out, would cause this intersection to fall to a LOS F condition during the AM and PM peak hours (Impact 13-2). The mitigation for this impact is the implementation of Mitigation 13-1 plus a reconfiguration of the intersection to provide a left-turn lane, 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 voluntary payment of the project's proportionate share of the cost to complete needed improvements at this intersection, as further described in Mitigation 13-1 and 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 have been established and approved by the City (traffic mitigation fee). Further, full implementation of these measures 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. The City Council finds that the benefits of this project outweigh significant, unavoidable Impacts 13-1 and 13-2 in that:

- a. 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.
- b. 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.
- c. As proposed and supported by the accompanying, approved Design Review application (DR 1100845), the project includes the dedication of 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.
- d. 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 sponsor 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.
- e. 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.
- f. By conditions of approval, the project sponsor has agreed to voluntarily contribute 25 percent of the total cost of the improvements (Condition f in Section II: Conditions of Approval) to implement the needed transportation improvements. The payment of this contribution will facilitate funding needed to complete the improvements.

SECTION II: CONDITIONS OF APPROVAL

The Final Development Plan and Tentative Map (TM 1100845) proposed for the Westshore Marina Residential Condominium Project (APN 56-181-096 and 56-181-098) are hereby approved subject to the following conditions:

- a. The Recorded Final Map, final grades, utilities, and drainage shall be in substantial compliance with the Tentative Map prepared by Civil Engineering Associates, dated December 9, 2004, date stamped Received December 17, 2004 Richmond Planning Department, on file in the City of Richmond Planning Department.

- b. This Tentative Map shall be valid for two (2) years from the date of this action. This action shall become null and void unless a Final Map is recorded within this period or a time extension to the approved Tentative Map is granted.
- c. The project sponsor shall be responsible for implementing all mitigation measures for this project in the Final Environmental Impact Report (“FEIR”) for the Westshore Marina Residential Condominium Project, dated November 2005, on file with the Planning Department and incorporated herein by reference; and the accompanying Mitigation Monitoring and Reporting Program (“MMRP”), which is attached herein (Exhibit A). See conditions of approval for Design Review #DR1100845 for conditions requiring the implementation of mitigation measures not included with this Tentative Map approval.
- d. The Final Map shall be prepared to include the following:
 - 1) A permanent, public access easement shall be offered to the City and BCDC over the portion of Lot A (shorefront parcel), which is to serve as a public park within the 100-foot shoreline band.
 - 2) An access easement shall be offered to the City over Lots F, G and H, to be developed with an emergency vehicle access road, as presented on the Tentative Map.
 - 3) The Final Map shall include the granting of all necessary easements to the City for purpose of accessing on-site utility service systems.
 - 4) The Final Map shall include a note, which indicates that 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, will be recorded with the deed for each residential unit. (Mitigation Measures 10-1, 11-1).
- e. The establishment of a homeowner’s association is required. The homeowner’s association shall be responsible for maintaining the on-site improvements, which shall be specified in Conditions, Covenants and Restrictions (CC&Rs) prepared and submitted with the Final Map. The CC&R’s shall be reviewed and approved by City Attorney and shall include the following:
 - 1) The maintenance and repair of all exterior building improvements, including but not limited to, exterior building surfaces and materials, landscaping, common grounds and recreation facilities and associated improvements.
 - 2) The permanent maintenance of the shoreline park area within Lot A.
 - 3) A program and schedule for the long-term maintenance of on-site storm water drainage facilities including, but not limited to catch basins, grease traps and natural filtration features such as bioswales (Mitigation Measure 14-2).
 - 4) The maintenance and repair of all common interior building improvements, including services and infrastructure (e.g., water system, utility rooms) and the parking garage.
 - 5) A provision informing the owner of each residential unit that the project site is located in an area that is developed with industrial uses and railroad operations that are permitted to operate and that such uses generate noise, light and glare and traffic conditions (delays at railroad crossings) that are typical of such uses (Mitigation Measures 10-1 and 11-1).
- f. Traffic generation from the proposed project and from estimated build-out in the area will result in unacceptable levels of service at the Harbour Way South/Wright Avenue intersection. To mitigate this impact, the intersection will require signalization, travel/turning lane improvements and railroad crossing improvements. The cost of these improvements has not been determined at this time but it is estimated that these improvements could range from \$500,000 to \$1.5 million. The project sponsor has voluntarily agreed to contribute 25% to the total cost of this improvement. Prior to issuance of a building permit, the project sponsor shall pay 25% of the actual, total cost of this improvement, based on a cost estimate prepared by a licensed engineer and approved by the City (Mitigation Measure 13-1 and 13-2).
- g. Prior to the approval of the Final Map by the City Engineer, the following shall be met or completed:
 - 1) Secure approval of all on-site and off-site improvement and utility plans.

- 2) Provide required security bonds for all improvements for the condominium project.
 - 3) Pay all applicable fees.
 - 4) Submit a complete package for the Final Condominium Map including all necessary documents for review and process approval of the map.
 - 5) The Final Map shall be prepared in compliance with the Subdivision Map Act and Richmond Municipal Code.
- h. The project shall comply with all site grading and construction-related requirements set forth in the conditions of approval for Design Review Permit #1100845.
- i. PUBLIC SERVICES DEPARTMENT CONDITIONS OF APPROVAL:
- 1) GENERAL – All public improvements shall be made in accordance with the latest adopted City Standard Drawings and Specifications. All work shall conform to the applicable City ordinances. Good housekeeping practices shall be observed at all times during the course of construction. Adjacent public right-of-way shall be kept clear at the end of each day of all job related dirt and debris. Dirt and debris shall not be washed into storm sewers. The storing of goods and materials on the sidewalk and/or street will not be allowed unless a special permit is issued therefore. The owner’s representative in charge shall be at the job site during all working hours. Failure to maintain the public right-of-way in accordance with this condition may result in the City performing the required maintenance at the project sponsor’s expense.
 - 2) INSPECTIONS – The project sponsor shall notify the Department of Public Services’ Inspection Division at least twenty-four (24) hours prior to starting any work pertaining to on-site drainage facilities, grading, or paving and all work in the City’s right-of-way. Failure to do so will result in rejection of work that proceeded without inspection.
 - 3) RESTORATION OF PUBLIC IMPROVEMENTS – The project sponsor shall repair or replace all existing improvements not designed for removal which are damaged or removed as a result of his operations. Improvements such as, but not limited to, curbs, gutters, sidewalks, driveways, signs, pavements, raised pavement markers, thermoplastic pavement markings, or signs shall be repaired and replaced to a condition equal to or better than the original condition. Existing improvements to be repaired or replaced shall be at the direction of the Public Services inspector. Project sponsor shall request a walk-through with the Public Works inspector prior to the start of construction to verify existing conditions.
 - 4) UNDERGROUND UTILITIES: The project sponsor shall install all utility services, including telephone, electric power, cable and other communication lines underground in accordance with City of Richmond policy.
 - 5) DRAINAGE – All storm drainage runoff shall be directed to the public street with a minimum grade of two (2) percent over landscaped areas and one-half (1/2) per cent over paved areas. Where necessary, sidewalk drains per City Standard Drawing 5-AA-1059 shall be provided to direct the water under the sidewalk and through the curb. In addition, discharge must conform to any non-point source permit issued by the Regional Water Quality Control Board. A detailed drainage plan shall be submitted for review and approval by the Public Works Department. The drainage plan shall be prepared by a registered civil engineer and shall include the following:
 - a) All storm drainage shall be designed to collect onsite and be conveyed underground to the public storm drain system. This requirement shall be shown on the construction plans.
 - b) Pretreatment of storm drainage water runoff is required. Storm drainage runoff shall be conveyed over landscaped areas, bioswales or similar natural filtration feature, before discharging into the public system.
 - c) The area within all refuse/trash enclosures shall drain to the sanitary sewer system. The outside perimeter of the enclosure shall be graded to prevent storm water from draining into the sanitary sewer system.

- d) All storm water catch basins within the parking garage shall be provided with oil traps and/or other filtering devices as per Department of Public Services specifications.
 - e) On-site and immediately adjacent off-site storm drain inlets shall be marked with signage indicating that the drains discharge to the bay and that dumping substances such as oil, paints and other contaminants is prohibited (Mitigation Measure 14-2).
- 6) **STORM WATER DISCHARGE PERMIT** – For all storm water discharges associated with construction activity which involved land disturbance of one or more acres, including clearing, grading, or excavation, the project sponsor shall submit a Notice of Intent (NOI) form with the applicable fees. A SWPP shall also be submitted that shall require the installation of gravel pads at all access points to prevent trackout during construction
 - 7) Any grading work done between the months of October 1st and April 15th require an erosion control plan.
 - 8) Any graded areas that will be left incomplete or un-landscaped by October 1st will require an erosion control plan which must be submitted for approval.
 - 9) All exposed slopes shall be re-vegetated for erosion and sediment control, refer to A.B.A.G. “Manual of Standards for Erosion and Sediment Control Measures.”
 - 10) **SIDEWALK REPAIR** – The project sponsor shall repair and replace to existing City standards, any sidewalk that is damaged now or during construction of this project. Sidewalk repair shall match existing color, texture and design. Limits of sidewalk repair will be determined by the Public Works Construction Inspector during the construction phase.
 - 11) **CURB AND GUTTER** – The project sponsor shall remove and replace to existing City standards any curb and gutter that are damaged now or during construction of this project. Limits of curb and gutter repair will be determined by the Public Services Construction Inspector during the construction phase.
 - 12) Existing driveway approaches that are to be abandoned shall be removed and replaced with curb, gutter, and sidewalk. Any existing commercial driveway approaches not equipped with curb ramps at the returns shall be modified to match current standards.
 - 13) **SEWERS** – The project sponsor shall install as a minimum a six (6) inch City Standard sewer lateral connection from the property line to the sewer main located in the street right-of-way to the satisfaction of the City Engineer. The installation shall be done in accordance with City Standard Drawing including a 6” property line clean-out.
 - 14) **SEWER CLEAN-OUT** – The project sponsor shall install a standard sewer lateral clean-out in accordance with City Standard Drawing No. 10-AA-1956.
 - 15) **GENERATION OF PARTICULATE MATTER DURING CONSTRUCTION**– During construction, 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.

- 16) GENERATION OF DIESEL EXHAUST - 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
- 17) CONSTRUCTION ACTIVITIES – Prior to the commencement of site grading, prepare and submit a Construction Noise Management Plan specifying hours of construction. The developer/project contractor shall comply with the following noise measures:
- a) Limiting noise generating construction activities to hours of 7am to 7pm, Monday through Friday and 8:30am to 6:00pm on Saturday, Sunday and on holidays.
 - b) Restrict vibration-generating activity (pile driving) to between the hours of 7:00am and 7:00pm, Monday through Friday (not permitted on weekends or holidays).
 - c) Pre-drilling of pile holes shall be investigated as an option, which would minimize the number of percussions required to 'seat' the pile.
 - d) Noise and vibration abatement measures such as mufflers, barriers or noise dampening devices shall be installed on construction equipment and vehicles.
 - e) Stationary, noise-generating equipment shall be located as far as possible from recreation uses (Bay Trail).
 - f) Quiet construction equipment, particularly air compressors shall be used whenever feasible.
 - g) A Noise Disturbance Coordinator shall be designated who is to be responsible for responding to local complaints.
 - h) All occupants of land uses located within 200 feet of the site shall be notified, in writing, of the project construction schedule, as well as the name and telephone number of the Noise Disturbance Coordinator. Proof of notification shall be submitted to the City.
 - i) All aggregate materials transported to and from the site shall be covered in accordance with Section 23114 of the California Vehicle code during transit to and from the site.
 - j) In authorizing activities under this Permit, the City has relied on the information and data which permittee has provided in connection with this permit application. If such information and data prove to be false, incomplete or inaccurate the activity may be disqualified from this permit and City may, in addition, institute appropriate legal proceedings (Mitigation Measures 11-2 and 11-3).
- 18) CONSTRUCTION WORKER PARKING – The project sponsor shall provide a construction parking plan that minimizes the effect of construction worker parking in the neighborhood and shall include an estimate of the number of workers that will be present on the site during the various phases of construction and indicate where sufficient off-street parking will be provided. Said plan shall be subject to the review and approval by the City Engineer prior to issuance of City permits and shall be enforced during construction. Failure to enforce the parking plan may result in suspension of the City permits.
- 19) STREET MARKINGS – The project sponsor shall install necessary street markings of a material and design approved by the City and replace any which are damaged during construction. These include but are not limited to all pavement markings, painted curbs and handicap markings. All permanent pavement markings shall be thermoplastic. Color and location of painted curbs shall be shown on the plans and subject to approval by the City Engineer. Any existing painted curb or pavement markings no longer required shall be removed by grinding if thermoplastic, sand blasting if in paint.
- 20) CHARGES FOR PUBLIC WORKS SERVICES – Prior to plan checking, the project sponsor shall deposit with the City, funds to pay for, at the adopted rate, all

engineering, inspection and survey services that may be required during plan check and construction of project. The amount of the deposit shall be determined by the City based on the amount of work estimated. The project sponsor shall be required to increase the deposit or be billed monthly at the discretion of the City for any costs in excess of the deposit. If billed monthly, invoices shall not become delinquent (must be paid within 30 days of receipt). Prior to final occupancy, the bill shall be paid in full. The City will refund any portion of the deposit not utilized.

- 21) PERMITS REQUIRED BY OTHER AGENCIES – The project sponsor is hereby informed that permits may be required by one (1) or more of the following: Corps of Engineers, Bay Conservation and Development Commission, Fish and Game, Contra Costa County Flood Control District, Environmental Protection Agency, County Health Department, and/or the State Lands Commission. If project is within jurisdiction of any of these agencies, verification of permit or waiver of permit must be given to the Public Services Department prior to issuance of any required City permits. Prior to issuance of a grading permit, the project sponsor shall demonstrate to the satisfaction of the City the following:
 - a) Request a site visit and jurisdictional determination by the U.S. Army Corps of Engineers (Corps) to confirm the extent of the area that is regulated by the Corps and determine the appropriate permit application, if any.
 - b) If Corps jurisdiction is confirmed and the project impacts their jurisdiction, a qualified biologist shall be retained to formulate and submit a wetland mitigation plan that demonstrates that jurisdictional wetlands have been avoided to the extent feasible, and mitigation for those areas that cannot be avoided (Mitigation Measure 6-1; Corps of Engineers jurisdiction confirmed in writing in November 2005).

- 22) STREET IMPROVEMENTS – The project sponsor shall have street improvement plans prepared for all work in the public right-of-way by a licensed civil engineer and obtain Department of Public Services written approval prior to the issuance of the encroachment permit.

- 23) ADDRESS PLAN – The project sponsor shall submit to the Public Works Department a proposed address plan. Said plan shall include the proposed address of each building and its relative location to other buildings, location of all streets, public or private and their names. Said submittal shall be approved by Building Regulations, Police Dept. and Fire Dept. prior to issuance of the Building Permit.

- 24) SUBDIVISION MAP – The project sponsor shall submit a Final Map (or Parcel Map), prepared by a person authorized to practice land surveying in California, delineating all parcels created or deleted and all changes in lot lines. The Final Subdivision Map shall be approved by the Department of Public Services and recorded by the County prior to the issuance of the Building Permit. It is the project sponsor's responsibility to check with their title company and the County to determine the time necessary to have the map recorded after City approval.

- 25) ENCROACHMENT PERMITS, BONDS, AND INSURANCE – Project sponsor shall obtain an encroachment permit, posting the required bonds and insurance, for all work to be done in the City's right-of-way. This encroachment permit shall be obtained prior to any work being done in the City's right-of-way.

- 26) GRADING PERMIT – Project sponsor shall submit a site grading and drainage plan with all supporting data, including hydraulic calculations, in accordance with requirements of the City's Subdivision Ordinance. No overloading of downstream drainage facilities will be allowed. A non-refundable fee and deposit in accordance with the City's most current fee schedule is required. Plan checking and inspection time will be charged to the above deposit. The project sponsor shall be required to increase the deposit or be billed monthly at the discretion of the City for any costs in excess of the deposit. If billed monthly, invoices shall not become delinquent (must be paid within 30 days of receipt). Prior to final occupancy, the bill shall be paid in full. The City will refund any portion of the deposit not utilized. Plan checking cannot proceed until fee and deposit are paid. A Permit shall not be issued until

plans are approved. The plan shall be prepared by a registered Civil Engineer and be approved by the Department of Public Services prior to the issuance of any City permits.

All grading and earth work performed under this permit shall be in accordance with the approved plans and soils report and shall be under the continuous supervision of Soils Engineer. Upon completion of the work, project sponsor shall submit a letter to the City, from its soils engineer, describing the work that had taken place and that the work authorized by this permit was performed in accordance with the approved plans and soils report recommendations.

Upon completion of the grading and excavation, project sponsor shall submit a letter to the City, from its soils engineer, verifying the adequacy of the foundation excavations along with describing the work that has taken place and that the work authorized by this permit was performed in accordance with the approved plans and soils report recommendations.

- 27) MATERIAL HAULING – 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.
- 28) CONTAMINATED SOIL – The Project Sponsor shall 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. The Project Sponsor shall obtain written certification from the Department of Toxic Substances Control that 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 confirmation samples required by the Final Soils Management Plan verify that the soils achieve cleanup levels established for Westshore 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.
- 29) AS-BUILT DRAWINGS – All design plans and final as-builts must be submitted in both hard copy version and electronic format. Electronic format should be on standard compact disk (CD-R/CD-R/W) and provided in one of the following acceptable formats:
- a) Acceptable formats include:
 - b) CAD (.dxf – preferred; .dwg – OK)
 - c) shapefile (.shp)
 - d) coverage
 - e) geodatabase (.mdb)
 - f) For all the above, attributes need to be stored as database fields and not simply as annotation.
 - g) Geographic Parameters:
 - h) Precision: Up to 10 digits
 - i) Coordinate system: State Plane Coordinate System (SPCS), Zone 3
 - j) Unit of measurement: Feet
 - k) Projection system: Lambert conformal conic
 - l) Horizontal Datum: NAD83
 - m) Vertical Datum: NAVD1988

- 30) SUBDIVISION AGREEMENT – The subdivider shall enter into a subdivision agreement with the City to guarantee the construction and installation of public and private improvements as required by Chapter 15.08.420 of the Municipal Code. Performance of the subdivision agreements shall be guaranteed by securities as specified in Chapter 5 of the Subdivision Map Act.
- 31) CULTURAL MATERIALS – To protect potential archaeological and historic resources encountered during site grading and excavation, the procedures presented in MMPR Measures 7-1 and 7-2 (attached Exhibit A) shall be implemented.
- 32) The Richmond Sanitary District shall approve the sewer layout prior to the issuance of grading permits.
- 33) The project sponsor shall secure an encroachment agreement from the Public Services Department prior to performance of any work in the public right-of-way.
- 34) All roof downspouts shall be piped to the gutter under sidewalk through curb.
- 35) Retaining wall design shall be approved by the Building Department prior to the issuance of building permits.
- 36) The project sponsor shall submit drainage calculations to the Public Services Department to demonstrate whether a catch-basin is needed.
- 37) The project sponsor shall strategically position the subdivisions' street lights in a manner that is made to the satisfaction of the City Engineer.

j. FIRE DEPARTMENT CONDITIONS OF APPROVAL:

- 1) Fire apparatus roadways shall have a minimum unobstructed width of 12 feet and unobstructed vertical clearance of not less than 13ft. 6inches (4m). Vertical clearances may be increased when in the opinion of the chief, vertical clearances or widths are not adequate to provide fire apparatus access. (UFC, 2001, Sec. 902.2.2.1)
- 2) Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be provided with a surface so as to provide all-weather driving capabilities. (UFC, 2001, Sec. 902.2.2.2)
- 3) (Dead-ends) Fire apparatus access roads in excess of 150ft. in length shall be provided with approved provisions for the turning around of fire apparatus. (UFC, 2001, Sec. 902.2.2.4)
- 4) (During Construction) When approved, temporary access roads of a width, vertical clearance and surface which provide access for fire department apparatus are allowed to be used until permanent roads are installed. (UFC, 2001, Sec. 8704.2 – exception)
- 5) See Design Review Permit DR 110835 conditions of approval for other related Fire Department requirements.

CLOSING STATEMENT: NOTHING IN THESE *STANDARD CONDITIONS* IS INTENDED TO AUTHORIZE OR APPROVE ANY ASPECTS OF THE DESIGN OR INSTALLATION WHICH DO NOT STRICTLY COMPLY WITH ALL APPLICABLE CODES AND STANDARDS. THE RICHMOND FIRE DEPARTMENT FIRE PREVENTION BUREAU IS NOT RESPONSIBLE FOR INADVERTENT ERRORS OR OMISSIONS PERTAINING TO THIS DOCUMENT AND OR SUBSEQUENT FIELD INSPECTION(S) I.E., ADDITIONAL COMMENTS MAY BE ADDED DURING SUBSEQUENT DRAWING OR FIELD INSPECTION. PLEASE CALL (510) 307-8031 IF THERE ARE ANY QUESTIONS OR CONCERNS.

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) approves the Tentative Vesting Map for the Westshore Marina Project; c) approves the Final Development Plan for the Westshore Marina Project; and d) adopts the conditions of approval described above.

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

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