

1 DANIEL A. MULLER, CSB #169935
2 Gagen, McCoy, McMahon, Koss, Markowitz & Raines
3 279 Front Street
4 P.O. Box 218
5 Danville, CA 94526
6 Telephone: (925) 837-0585
7 Facsimile: (925) 838-5985

8 Attorneys for Petitioners/Plaintiffs,
9 BRICKYARD COVE ALLIANCE FOR RESPONSIBLE
10 DEVELOPMENT, BRIAN LEWIS, SUSAN HUBBARD,
11 JEFFREY VINES, GENE SCOTT, AND C. MICHAEL LEDERER

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF CONTRA COSTA

FILED

2015 AUG 19 P 3:16

CLERK OF SUPERIOR COURT
CONTRA COSTA COUNTY
A.J. CAMBO

2015 AUG 19 P 4:43

RECEIVED
CITY ATTORNEY'S OFFICE
CITY OF RICHMOND

N 16 - 1 5 2 4

14 BRICKYARD COVE ALLIANCE FOR
15 RESPONSIBLE DEVELOPMENT, an
16 unincorporated association; BRIAN LEWIS;
17 SUSAN HUBBARD, JEFFREY VINES,
18 GENE SCOTT, AND C. MICHAEL
19 LEDERER,

20 Petitioners and Plaintiffs,

21 vs.

22 CITY OF RICHMOND; RICHMOND CITY
23 COUNCIL; and DOES 1-25

24 Respondents and Defendants.

25 _____
26 TERMINAL ONE DEVELOPMENT LLC

27 Real Party in Interest.
28 _____

Case No.:

VERIFIED PETITION FOR WRIT
OF MANDATE, AND COMPLAINT
FOR INJUNCTIVE RELIEF
[Code Civ. Proc. §§ 526, 527, 1085,
1088.5, 1094, 1094.5; Pub. Res. Code
§§ 21167, 21168, 21168.5]

PER LOCAL RULE 5 THIS
CASE IS ASSIGNED TO
DEPT CEQA

BY THIS PETITION AND COMPLAINT, petitioners and plaintiffs allege:

INTRODUCTION & SUMMARY

1. Petitioner and plaintiff BRICKYARD COVE ALLIANCE FOR
RESPONSIBLE DEVELOPMENT ("BCARD") is an unincorporated neighborhood
association comprised of several hundred members who reside in and near, and are thus

Law Offices of
GAGEN,
McCOY,
McMAHON,
KOSS,
MARKOWITZ
& RAINES
A Professional
Corporation
279 Front Street
P.O. Box 218
Danville, CA
94526
(925) 837-0585

1 affected by proposed development in and around, the Point Richmond neighborhood in
2 the City of Richmond, Contra Costa County, California.

3 2. Petitioners and plaintiffs BRIAN LEWIS, SUSAN HUBBARD, JEFFREY
4 VINES, GENE SCOTT, AND C. MICHAEL LEDERER are all members and/or
5 founders of BCARD, who live in or near the Point Richmond neighborhood and are thus
6 affected by proposed development therein. (BCARD and its above-named
7 members/founders are collectively referred to as "Petitioners".)

8 3. Petitioners bring this combined Petition and Complaint in the public
9 interest, against respondents the CITY OF RICHMOND ("City") and its CITY
10 COUNCIL ("Council") (collectively, "Respondents"), and naming as Real Party in
11 Interest developer TERMINAL ONE DEVELOPMENT LLC ("Real Party"), for
12 violations of and to enforce:

13 (A) the state's environmental and public disclosure laws, including the
14 California Environmental Quality Act, or "CEQA" (Pub. Res. Code §21000, et seq.),
15 its implementing regulations known as the CEQA Guidelines ("Guidelines") (14 Cal.
16 Code. Regs. §15000 et seq.), and the City's own local CEQA requirements; and

17 (B) the City's General Plan, zoning ordinance, and related planning, land use
18 and environmental laws, including California's Planning and Zoning Law, or "PZL"
19 (Gov't Code §65000, et seq.), and the laws governing the sale, transfer, and
20 disposition of real property owned by the City.

21 4. Specifically, by this action Petitioners are seeking to ensure, on the public's
22 behalf, the proper application, implementation, and enforcement of the above laws as
23 they pertain and apply to Respondents' review and recent approvals of Real Party's
24 proposed Terminal One Project, in the Point Richmond neighborhood ("Project").

25 5. The Project site is approximately 13.8 acres in size, situated on the San
26 Francisco Bay at 1500 Dornan Drive within the City. The site is generally bounded by
27 the Richmond Yacht Club on the east, the San Francisco Bay on the south, Brickyard
28

Law Offices of
GAGEN,
McCOY,
McMAHON,
KOSS,
MARKOWITZ
& RAINES
A Professional
Corporation
279 Front Street
P.O. Box 218
Danville, CA
94526
(925) 837-0585

1 Cove Road on the north, and Dornan Drive to the west. Also, Miller-Knox Shoreline
2 Park is just west and north of the Project site.

3 6. In summary, and depending on the stage of Respondents' below-described
4 administrative review process, the Project involves developing the 13.8-acre shoreline
5 site with approximately five (5) very tall, large multi-story (podium configured)
6 condominium buildings containing a total of approximately 310 residential/condominium
7 units; approximately 26 attached residential townhomes or detached single family homes;
8 some commercial space; a public shoreline park; and various other, related
9 improvements, infrastructure, and facilities.

10 7. The Project site is owned by the City, which has agreed or committed to
11 transfer 11.9 acres of it to Real Party, and retain the 1.9-acre balance along the shoreline
12 containing an old dock, piers, and warehouses, which as part of the Project Real Party is
13 to improve into a public shoreline park.

14 8. On or about February 26, 2016, Respondents released for public review and
15 comment a Draft Environmental Impact Report ("DEIR") for the proposed Project.

16 9. Thereafter, Respondents released the Project's Final Environmental Impact
17 Report ("FEIR", or "EIR").

18 10. On or about June 16, 2016, the City's Planning Commission conducted a
19 public hearing regarding the proposed Project. Among other things, the Planning
20 Commission expressed grave concerns and reservations regarding various aspects of the
21 Project, including the overall size, massing, and density of the proposed buildings, and
22 inadequacies in the analysis of the Project's likely environmental impacts.

23 11. On Friday, July 1, 2016, Respondents released a supplemental
24 memorandum regarding various aspects of the proposed Project, prepared by consulting
25 firm ESA ("ESA Memo").

26 12. On Tuesday, July 5, 2016, the Council held a public hearing regarding the
27 proposed Project, and thereafter adopted a resolution approving Real Party's Vesting
28 Tentative Map for the Project (the "VTM"), and took the first of two steps needed to

Law Offices of
GAGEN,
McCOY,
McMAHON,
KOSS,
MARKOWITZ
& RAINES
A Professional
Corporation
279 Front Street
P.O. Box 218
Danville, CA
94526
(925) 837-0585

1 approve Real Party's related rezoning application, to amend (by way of ordinance) the
2 Project site's zoning from CC-Coastline Commercial, to Planned Area (PA) Development
3 (the "Rezoning").

4 13. Before approving the VTM and taking the first step on the Rezoning, at its
5 July 5th meeting the Council adopted a resolution purporting to certify the Project's EIR
6 as legally adequate under CEQA.

7 14. At its meeting of July 19, 2016, the Council made its second and final
8 approval of the Rezoning.

9 15. Before and throughout the above-described administrative proceedings,
10 Petitioners, numerous other concerned citizens, neighbors, groups, and agencies appeared
11 at Respondents' Project-related meetings and hearings, and provided testimony and
12 written comments outlining their numerous concerns and objections regarding the
13 proposed Project, including the EIR's numerous defects and inadequacies.

14 16. In sum, for the reasons explained further below, Petitioners allege
15 Respondents' actions regarding the Project are legally invalid, and must be voided,
16 because Respondents failed to comply with the above-noted laws, requirements, and
17 regulations.

18 PARTIES

19 17. Petitioners incorporate all paragraphs of this combined Petition and
20 Complaint.

21 18. As noted, BCARD is an unincorporated association of individuals whose
22 membership includes local residents of the City and other members of the public who are
23 concerned about the potentially significant, adverse environmental effects of the Project.
24 BCARD's mission includes, without limitation, the protection of the health, safety, and
25 general welfare of the citizens of the City by sustaining, enhancing, and protecting the
26 quality of the environment in the City. As noted, BCARD participated throughout
27 Respondents' consideration of the Project, and objected to the Project on various grounds
28 prior to Respondents' approvals of the Project.

Law Offices of
GAGEN,
McCOY,
McMAHON,
KOSS,
MARKOWITZ
& RAINES
A Professional
Corporation
279 Front Street
P.O. Box 218
Danville, CA
94526
(925) 837-0585

1 19. The above-named individual petitioners/plaintiffs BRIAN LEWIS, et al. are
2 members and/or founding members of BCARD, who reside in the City, and are likewise
3 concerned about, and directly affected by, the Project's potentially significant, adverse
4 environmental effects. Said individuals participated throughout Respondents'
5 consideration of the Project, and objected to the Project on various grounds prior to
6 Respondents' approvals of the Project.

7 20. Respondent/defendant RICHMOND CITY COUNCIL is the legislative
8 body entrusted with the duty and authority to manage the affairs and act on behalf of
9 respondent/defendant CITY OF RICHMOND. The RICHMOND CITY COUNCIL is
10 also the elected decision-making body that adopted or certified the Project's EIR, and
11 approved the Project, on behalf of the CITY OF RICHMOND. For purposes of this
12 Petition and Complaint, these entities are collectively referred to as the "City". The City
13 is named as a respondent in this action because it is the legislative body that made or
14 issued the challenged approvals. The City is named as a defendant in this action because
15 Petitioners may seek injunctive relief if the City proceeds with the Project prior to a final
16 decision on the merits of the Petition for Writ of Mandate.

17 21. Petitioners do not know the true names and capacities of the respondents
18 and defendants fictitiously named herein as DOES 1 through 25 inclusive. Petitioners are
19 informed and believe, and thereon allege, that such fictitiously named
20 respondents/defendants are responsible in some manner for the acts or omissions
21 complained of or pending herein. Petitioners will amend this Petition and Complaint to
22 allege the fictitiously named respondents/defendants' true names and capacities when
23 ascertained by Petitioners.

24 22. TERMINAL ONE DEVELOPMENT LLC is named herein as the Real
25 Party in Interest ("Real Party") because it is the applicant who sought, and has a
26 beneficial interest in, the Project approvals granted, issued or made by the City,
27 challenged herein.

28 /////

Law Offices of
GAGEN,
McCOY,
McMAHON,
KOSS,
MARKOWITZ
& RAINES
A Professional
Corporation
279 Front Street
P.O. Box 218
Danville, CA
94526
(925) 837-0585

1 **JURISDICTION AND VENUE**

2 23. Petitioners incorporate all paragraphs of this Petition and Complaint.

3 24. Petitioners bring this action as a Petition for Writ of Mandate (both
4 traditional and administrative mandamus) pursuant to Article IV, section 10 of the
5 California Constitution, sections 1085, 1088.5, 1094, and 1094.5 of the Code of Civil
6 Procedure, and sections 21167, 21168, and 21168.5 of the Public Resources Code.

7 25. Petitioners bring this action as a Complaint for Injunctive Relief pursuant to
8 Code of Civil Procedure section 526, et seq.

9 26. Venue is proper in this Court under section 393 of the Code of Civil
10 Procedure because the causes of action alleged in this Petition and Complaint arose in
11 Contra Costa County where the site of the Project is located.

12 **STANDING**

13 27. Petitioners incorporate all paragraphs of this Petition and Complaint.

14 28. Petitioners have a direct and beneficial interest in the City's full and
15 complete compliance with CEQA, and all other applicable laws, in considering and/or
16 approving the Project.

17 29. The City owed a mandatory duty to act within the boundaries of its legal
18 authority under CEQA and the other laws mentioned herein, before exercising its
19 discretion to approve the Project.

20 30. Petitioners have the right to enforce the duties CEQA and other
21 aforementioned laws impose on the City.

22 31. Petitioners have no other plain, speedy and adequate remedy in the ordinary
23 course of law and will suffer irreparable injury unless this Court issues or grants the relief
24 requested herein.

25 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

26 32. Petitioners incorporate all paragraphs of this Petition and Complaint.

27 33. Members of BCARD - including the above-named individual
28 plaintiffs/petitioners, and BCARD on behalf of its members, objected to the City's

Law Offices of
GAGEN,
McCOY,
McMAHON,
KOSS,
MARKOWITZ
& RAINES
A Professional
Corporation
279 Front Street
P.O. Box 218
Danville, CA
94526
(925) 837-0585

1 approvals of the Project prior to the close of the public hearings on the Project before the
2 City issued its final Project approvals, or caused to be posted its operative Notice of
3 Decision ("NOD") for the Project on July 20, 2016.

4 34. The grounds for noncompliance with CEQA and the other laws and
5 requirements as noted herein are consistent with the objections to the Project raised by
6 BCARD, the other plaintiffs/petitioners named herein, BCARD's other members, or other
7 members of the public and interested public agencies prior to the close of the public
8 hearings on the Project before the City issued its above-noted NOD for the Project.

9 35. If any grounds for noncompliance with the laws alleged in this Petition and
10 Complaint were, for some reason, not raised prior to the close of the public hearings on
11 the Project before the City issued its operative NOD, such failures or omissions were due
12 to the absence of any meaningful opportunity for the public to raise such objections orally
13 or in writing prior to the subject Project approvals because the City delayed release of
14 crucial information, misled the public, and/or failed to give the notice required by law,
15 and/or because raising such objections would have been futile and not changed the
16 outcomes of the City's Project-related proceedings.

17 36. Petitioners have exhausted their administrative remedies.

18 **CLAIMS FOR RELIEF**

19 **FIRST CAUSE OF ACTION/CLAIM FOR RELIEF -**
20 **VIOLATIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

21 37. Petitioners incorporate all paragraphs of this Petition and Complaint.

22 **A.**

23 **Failures to Comply With CEQA's Public Information, and Impact**
24 **Disclosure and Analysis Requirements**

25 38. In certifying the EIR as purportedly being legally adequate, and based
26 thereon proceeding to approve the Project-related VTM and Rezoning, the City failed to
27 uphold its mandatory, statutory, and related legal duties.

28
Law Offices of
GAGEN,
McCOY,
McMAHON,
KOSS,
MARKOWITZ
& RAINES
A Professional
Corporation
279 Front Street
P.O. Box 218
Danville, CA
94526
(925) 837-0585

1 39. Among other things, the City's legal errors include failing to comply with
2 CEQA's specific mandates to carefully identify, disclose, and analyze (and feasibly
3 mitigate, see below) all the proposed Project's potentially significant environmental
4 effects. Here, for example and as noted further below, the City failed to uphold such
5 mandates as to the Project's visual/viewshed/aesthetic impacts; wind-related impacts;
6 traffic impacts; air quality impacts, parking impacts; public safety and hazardous
7 substances impacts, sewer impacts, etc. Each of the above failures, standing alone,
8 renders invalid the City's CEQA-related analysis, findings, and conclusions regarding the
9 Project, and thus warrants invalidating and/or voiding the City's certification of the EIR,
10 and all subsequent Project approvals.

11 40. The following sections summarize how the City failed to give the public
12 legally adequate information regarding the proposed Project, and identify, disclose, and
13 analyze the Project's above-noted types of impacts.

14 **1) The City Failed to Adequately Disclose, Describe, or Analyze the**
15 **Project's Potentially Significant Visual, Viewshed, and Aesthetic**
16 **Impacts**

17 41. The City failed to adequately disclose, describe, and/or analyze the Project's
18 potentially significant impacts on visual, viewshed and aesthetic resources. While the
19 existence and severity of such impacts were repeatedly noted by Petitioners and others,
20 the City initially brushed such concerns under the rug, then sought to belatedly back-fill,
21 at the last minute, e.g., by relying on a hastily-prepared memoranda, bereft of supporting,
22 substantial evidence, which reached erroneous conclusions based on misguided, incorrect
23 assumptions.

24 42. For example and without limitation, despite admissions in the record
25 evidence (including in the ESA Memo, released less than one business day before the
26 Council's July 5th Project hearing) that the Project's very large condominium buildings
27 will, in fact, substantially block and impede the area's existing, expansive, scenic vistas
28 and views - of the San Francisco Bay, San Francisco city skyline, and Marin Hills

Law Offices of
GAGEN,
McCOY,
McMAHON,
KOSS,
MARKOWITZ
& RAINES
A Professional
Corporation
279 Front Street
P.O. Box 218
Danville, CA
94526
(925) 837-0585

1 including Mount Tamalpais - the City improperly claimed and concluded such impacts
2 were "less than significant". Specifically, the ESA Memo admits the Project's large
3 buildings will indeed negatively block and impede (if not obliterate) the existing scenic
4 views and vistas. However, it - and in turn the City's CEQA analysis, conclusions, and
5 findings - erroneously claimed all such impacts were "less than significant" - because the
6 subject views, as seen and enjoyed for example from Brickyard Cove's nearby roads and
7 paths, are purportedly "fleeting" or "transitory". The City's analysis relied entirely on the
8 false premise pedestrians, bicyclists, and others who frequent the area never stop - to take
9 in the above-noted rather grand vistas and views.

10 43. Such analysis and conclusions were not only bereft of any supporting
11 evidence, but wholly contradicted by the multitude of actually substantial evidence in the
12 record, submitted by Petitioners and others, showing, for example, that Brickyard Cove's
13 many residents (as well as others) indeed frequently walk, jog, and bike - *as well as*
14 *linger, and stop, to take in the above-noted scenic vistas and views* - along the subject
15 area's trails, paths, and roads.

16 44. For this and other reasons, by purporting to find or conclude the Project's
17 visual, viewshed, and aesthetic impacts were somehow "less than significant", the City
18 abused its discretion, acted arbitrarily and capriciously and without substantial evidence,
19 and thus failed to comply with its legal duties.

20 **2) The City Failed to Give the Public Clear Information Regarding or**
21 **Adequately Analyze the Project's Potentially Significant Traffic**
22 **Congestion, Safety, and Air Quality Impacts**

23 45. The EIR erroneously concludes without substantial, supporting evidence,
24 that the addition of "either" 3,704 or 2,470 daily vehicle trips to the Point Richmond area
25 - which is only served by two, 2 two-lane roads - will somehow cause no potentially
26 significant traffic-related impacts. Neither the DEIR or FEIR adequately or accurately
27 analyzes the significant traffic, safety, and related air quality issues at stake. For example,
28 the DEIR ambiguously bases its traffic analysis on two varying numbers - 3,704 daily

Law Offices of
GAGEN,
McCOY,
McMAHON,
KOSS,
MARKOWITZ
& RAINES
A Professional
Corporation
279 Front Street
P.O. Box 218
Danville, CA
94526
(925) 837-0585

1 trips and 2,470 daily trips. As a threshold matter, to serve its essential "impact
2 disclosure" and "public information" functions, the EIR must clarify such matters. The
3 public and City's decision-makers cannot be left wondering which of the above numbers
4 is, or reflects, the Project's additional daily trips. For these shortcomings alone, the
5 traffic analysis is grossly insufficient, and invalid.

6 46. The EIR also fails to reasonably address or respond to the numerous EIR
7 comments regarding traffic impacts.

8 47. The City's conclusions of "no significant traffic-related impacts" are also
9 contradicted by substantial evidence (including in the EIR, as well as elsewhere) that for
10 example and without limitation: SeaCliff Drive is a narrow, curving road with an 11%
11 grade, and a high accident rate, including one fatality. Despite its narrow Ferry Point
12 Tunnel, and southern blind intersection at Western Drive, which are admittedly very
13 hazardous, the Project's addition of literally thousands of new, daily traffic trips, and
14 resulting hazards and congestion, were erroneously deemed "not significant", or "less
15 than significant".

16 48. The analysis of cumulative traffic-related impacts is also fatally flawed,
17 including because it fails to include or address the area's newly approved and/or
18 reasonably foreseeable developments, including the Shea/Bottoms project at the base of
19 SeaCliff Drive. The Project's own impacts, along with those of the Shea/Bottoms project
20 and others, must be included and analyzed in order to disclose and assess their impacts on
21 Point Richmond's baseline conditions.

22 49. Further, the FEIR failed to include updated traffic analyses or studies of the
23 most busy traffic/commute times - i.e., weekends, and a.m. and p.m. rush hours. To
24 constitute meaningful, substantial evidence, traffic studies must address normal, typically
25 heavy commute flow and times. Instead, the DEIR's study was apparently only
26 conducted on a Friday, which typically involves lighter commute traffic. Consequently,
27 the impacts were significantly understated. There was also no study of traffic associated
28 with weekend and/or other peak times or events, such as Miller/Knox Park usage, major

Law Offices of
GAGEN,
McCOY,
McMAHON,
KOSS,
MARKOWITZ
& RAINES
A Professional
Corporation
279 Front Street
P.O. Box 218
Danville, CA
94526
(925) 837-0585

1 regattas at the adjacent Richmond Yacht Club, etc. The Richmond Yacht Club was also
2 given only marginal consideration in other critical areas. For example, the Project's
3 proposed Shoreline/Brickyard Cove Road interface was not adequately studied, in terms
4 of safe ingress/egress to/from the Richmond Yacht Club, especially for vehicles pulling
5 large boats and trailers, and during Yacht Club events when traffic is substantially higher
6 than otherwise.

7 50. The above failures also render invalid the EIR's analysis of air quality
8 impacts, particularly from the Project's above-noted, added traffic trips. The Project's
9 added traffic will undoubtedly result in significantly increased emissions of criteria air
10 pollutants that constitute significant impacts.

11 51. Among other things, the EIR's air quality analysis was not consistent with
12 its Transportation and Traffic analysis, which stated the Project will generate only 2,470
13 daily vehicle trips. The EIR's analysis of its calculated numbers is inadequate and simply
14 incorrect. The 3,704 projected daily trips cited in the DEIR's Air Quality chapter is
15 inconsistent with the 2,470 projected daily trips cited in the Transportation and Traffic
16 chapter. This inconsistency in and of itself fails to properly inform the public and City of
17 the potential significant impacts of the Project on air quality and traffic.

18 52. Taking the higher estimated daily trips, the DEIR indicates an estimated
19 3,704 additional daily vehicle trips, and concedes vehicle emissions from residential
20 traffic associated with commuting and other daily travel would be one of the major
21 sources of the Project's "operational" emissions. In addition to exhaust emissions,
22 vehicles would also generate P[articulate]M[atter]10 and PM2.5 from entrained road dust
23 and tire and brake wear.

24 53. The DEIR's analysis fails to analyze the traffic impacts of the Project,
25 although conceding that it will add over 3,700 daily vehicle trips to a semi-rural,
26 maritime area of the City.

27 54. In sum, by not disclosing, analyzing, addressing, and feasibly mitigating the
28 above impacts and effects, the EIR fell short of legal requirements. These and other errors

Law Offices of
GAGEN,
McCOY,
McMAHON,
KOSS,
MARKOWITZ
& RAINES
A Professional
Corporation
279 Front Street
P.O. Box 218
Danville, CA
94526
(925) 837-0585

1 render the EIR's traffic impact analysis, air quality impact analysis, and wind-impact
2 analysis, and thus the other Project approvals, legally flawed and invalid.

3 **3) The City Failed to Adequately Analyze the Project's Potentially**
4 **Significant Parking Impacts**

5 55. In contrast to all other projects and properties in the Brickyard Cove area
6 which must provide a minimum of two (2) parking spaces/residential unit, the City
7 somehow allowed the Project to provide only 1.6 spaces/unit. Substantial evidence in the
8 record showed such parking is insufficient, including because the area does not have
9 nearby public transportation or services within walking distance, and would thus cause
10 potentially significant parking impacts. The Project's visitor parking will spill over into
11 the limited parking available at Ferry Point's fishing pier. During weekends and holidays,
12 all available parking is already filled, and the situation will only be exacerbated by the
13 City's failure to ensure the Project provides adequate, on-site parking for its many new
14 residents, and their invitees/guests. Downtown Point Richmond will need additional
15 parking structures, as during the day and weekends there is limited to no parking
16 available. The Project is car-dependent. Additional parking will be needed on either City
17 land or land owned by the BNSF railway. However, contrary to CEQA, such impacts
18 were not sufficiently identified, disclosed or analyzed, much less mitigated.

19 **4) The City Failed to Adequately Analyze the Project's Potentially**
20 **Significant Impacts Relating to Hazardous Materials**

21 56. The EIR failed to meaningfully disclose, discuss, or analyze whether
22 additional environmental testing at the Project site is needed. This flaw is particularly
23 relevant since the last such tests showed the site contained hazardous Trichloroethylene
24 (TCE) and other cancer-causing chemicals, but was apparently conducted in 2004 - when
25 toxicity standards were less stringent compared to today. Since then, toxicity criteria,
26 values, risks, and/or screening levels for contaminants of concern have been updated. For
27 example, risk numbers/levels for TCE have been revised to approximately one to two
28

Law Offices of
GAGEN,
McCOY,
McMAHON,
KOSS,
MARKOWITZ
& RAINES
A Professional
Corporation
279 Front Street
P.O. Box 218
Danville, CA
94526
(925) 837-0585

1 orders of magnitude lower. Thus, the EIR needed to reexamine such known hazards, in
2 light of current toxicity, risk, screening criteria and levels. Updated soil vapor sampling
3 needed to be conducted at the site, as well. The EIR's failure to sufficiently disclose an
4 examine such potentially significant health-related issues fell short of legal requirements.

5 **5) The City Failed to Adequately Analyze the Project's Potentially**
6 **Significant Effects on Wind Patterns and Recreational Sailing**

7 57. While winds were briefly mentioned in the DEIR's Air Quality
8 introduction, there was no analysis of the wind impacts from the Project's multiple, tall
9 buildings, massed in the prevailing Northwest and West wind patterns upwind of the
10 adjacent Richmond Yacht Club, its large public-serving yacht harbor, and sailing basin.
11 Given the clearly dominant water/sailing-oriented nature of the immediately adjacent area
12 and community, including that all Brickyard Cove HOA-1 residences have private docks,
13 the absence of any analysis of the Project's likely wind blockage/turbulence effects
14 constitutes a serious legal deficiency, rendering the EIR invalid.

15 58. Such lack of analysis continued even after Petitioners submitted various,
16 relevant substantial evidence, including a detailed wind study prepared by qualified
17 experts, which demonstrated that the Project will very likely have significant effects on
18 the local wind patterns, which in turn will cause potentially significant safety hazards,
19 risks, and impacts to the many sailors (and novice sailing students) who have historically,
20 heavily used the immediate area for recreational purposes. It is beyond dispute that Point
21 Richmond's sailing amenities and community have for years been a major public-serving
22 recreational and environmental attraction. It is likewise undisputed that the EIR failed to
23 analyze any of the Project's likely significant impacts on wind, and thus public safety.

24 **6) The City Failed to Adequately Analyze the Project's Potentially**
25 **Significant Impacts From Seeking to Transform the Old, Industrial**
26 **Piers, Dock, and Warehouse into a New Public Park**

27 59. The EIR failed to adequately analyze or address the concerns raised by the
28 San Francisco Bay Conservation and Development Commission ("BCDC"), Petitioners,

Law Offices of
GAGEN,
McCOY,
McMAHON,
KOSS,
MARKOWITZ
& RAINES
A Professional
Corporation
279 Front Street
P.O. Box 218
Danville, CA
94526
(925) 837-0585

1 and others regarding the structural safety/risks posed by the existing, old pier(s), dock,
2 and warehouse - upon, within, and around which the Project's proposed new public park
3 (Shoreline Park) is to be constructed or located. Contrary to law, the environmental
4 effects and related public safety issues from using such structures as public parks were
5 never evaluated. As the belatedly-released ESA Memo admits, the DEIR solely and only
6 relied on a rather old 2005 "preliminary survey" of the pier(s).

7 60. Broadly speaking, what the EIR wholly failed to analyze is whether and
8 how building a public park on, through, or around the old pier(s), dock, and warehouse
9 may result in potentially significant environmental effects. Without any current, detailed
10 structural or engineering studies, no one knows if the existing pier(s), dock, and
11 warehouse must be repaired, remodeled, reconstructed, demolished, seismically
12 retrofitted - one or more of which seem virtually certain - and all the environmental
13 effects such work or changes may cause, including on the immediately adjacent,
14 underlying, sensitive San Francisco Bay wetlands, tideland habitat, and resources. By
15 law, such plans needed to be disclosed *prior* to approving the Project, in order to (1)
16 formulate whether and how the old structures would be used, refurbished, replaced,
17 demolished, or retrofitted; (2) identify and study the likely environmental effects of such
18 plans, work, and modifications; and (3) formulate and impose feasible mitigation
19 measures to avoid, lessen, reduce or compensate for such effects. Such utter dearth of
20 essential information, plans, and analysis completely thwarted CEQA's most fundamental
21 public disclosure purposes, and rendered it impossible to perform any of CEQA's key
22 impact disclosure, analysis, and mitigation functions. The public and the City's decision-
23 makers were left knowing nothing about whether anything further will be done or needed,
24 to make the old pier and dock-supported warehouse into a public park, and the resulting
25 environmental effects.

26 61. Additionally, as noted herein, the above-noted lack of information and
27 plans - and resulting postponement of such efforts to a later date - patently violate
28

Law Offices of
GAGEN,
McCOY,
McMAHON,
KOSS,
MARKOWITZ
& RAINES
A Professional
Corporation
279 Front Street
P.O. Box 218
Danville, CA
94526
(925) 837-0585

1 CEQA's prohibition against deferring impact analysis and/or mitigation, to a later date.
2 (See, e.g., *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296.)

3 62. In sum, the above failures render the EIR fatally flawed as an informational
4 document, and legally invalid.

5 63. Finally, the ill-conceived, utterly unstudied and unformed notion of using
6 the old pier(s), dock, and warehouse out over the Bay as the Project's required public
7 parkland underscores how excessively large and dense this Project is for the subject site.
8 Since Real Party proposes to develop most of the site (that lies on actual soil) with
9 densely-packed condominiums and townhouses, all that is left for public parkland is the
10 questionable, meager, risky old pier, dock, and warehouse, which are of unknown
11 structural integrity, and toxicity. Had the City undertaken the legally required study and
12 analysis, it would have likely scaled the Project back, not only for view-related and other
13 concerns, but also to ensure provision of truly suitable public parkland, on actual soil.

14 **7) The City Failed to Disclose or Analyze the Effects of Purportedly**
15 **Rezoning this 13-Acre Coastal Site to Planned Area Development**

16 64. The EIR fails to sufficiently identify or disclose - much less address,
17 analyze, or mitigate - the logical, predictable, significant effects of rezoning the Project
18 site from C-C Coastline Commercial, to Planned Area (PA) District. Without debating,
19 and merely accepting (for purposes of argument), the City's and/or Real Party's position
20 that "rezoning the [Project] site to PA District allows its existing 35-foot height limit to
21 be eliminated and replaced by a substantially increased limit" (but see below), the
22 problem is that the City utterly failed to acknowledge, much less study, analyze, or
23 address, anything regarding the obvious, significant environmental effects from so
24 dramatically increasing the site's existing height limit - on either the site itself, or the
25 surrounding environs and residents. Clearly, such effects are significant, since they
26 would allow virtually doubling the prior 35-foot height, on all of the site's almost
27 fourteen (14) coastal acres, adjacent to the San Francisco Bay.

28
Law Offices of
GAGEN,
McCOY,
McMAHON,
KOSS,
MARKOWITZ
& RAINES
A Professional
Corporation
279 Front Street
P.O. Box 218
Danville, CA
94526
(925) 837-0585

1 65. However, all the EIR says about this very dramatic, proposed change is that
2 (A) the site's existing height limit precludes buildings over 35 feet, and (B) upon being
3 rezoned (to PA District) it could be developed with buildings that “may exceed the 35-
4 height limit as part of an approved PA-Planned Area District for the site and adequate
5 environmental analysis.” (DEIR, p. 4.1-18; citing Richmond Municipal Code ("RMC") §
6 15.04.610.020(D).) Elsewhere, the record suggests the Rezoning would allow the 35-foot
7 limit to be increased almost twofold, to 61.5 feet - yet, as noted below, the City never
8 truly clarified or disclosed whether such new height limit included, or excluded, the
9 Project's large parking structures, to be built under the large condominium buildings.

10 66. Not only was the ESA Memo disclosed far too late to be of any use (under
11 CEQA, or otherwise), but it was also bereft of any relevant, further analysis of the effects
12 of essentially doubling the site's existing height limit (as ostensibly allowed by the
13 Rezoning). Like the EIR, the ESA Memo merely reiterates that (per the City's errant
14 interpretations of a previously approved General Plan Amendment, discussed further
15 below) a PA District rezoning would allow the site's 35-foot maximum height limit to be
16 increased by almost 100% (if not more).

17 67. in light of all the above, the City wholly ignored, and failed to discuss,
18 analyze, or address, the above-noted predictable changes, and likely significant impacts,
19 caused by virtually doubling the existing 35-foot limit, and thereby significantly
20 increasing the site's overall development massing, bulk, and profiles. Compared to
21 developing the site under its existing limit, the results would include, among other things,
22 likely significant changes to local wind patterns, sunlight and shadows, views, aesthetics,
23 traffic, congestion, air quality, public safety, parking, etc. However, such changes were
24 never analyzed, in the DEIR, FEIR, or anywhere else. What the law required, but EIR
25 omitted, were studies and photographic/visual simulations, showing prototypical projects
26 allowed under the existing 35-foot limit, and those like the proposed Project sans any
27 such limit. That would have reasonably allowed proper comparisons, and relevant
28 analysis of relative effects, of such very different scenarios.

Law Offices of
**GAGEN,
McCOY,
McMAHON,
KOSS,
MARKOWITZ
& RAINES**
A Professional
Corporation
279 Front Street
P.O. Box 218
Danville, CA
94526
(925) 837-0585