

CITIZENS FOR EAST SHORE PARKS

www.eastshorepark.org

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December 1, 2020

To: City of Richmond, Mayor and Members of the City Council

From: Shirley Dean, President, Board of Directors, Citizens for East Shore Parks

Re: PUBLIC COMMENT: A public hearing to adopt a resolution adopting the Addendum to the Richmond Bay Specific Plan Environmental Impact Report (SCH#2014092082), including a Mitigation Monitoring and Reporting Program (MMRP); a Vesting Tentative Map; and a Use Permit for residential uses in the SD:R&D and T5MS-O transect zones of the Richmond Bay Specific Plan and a Shoreline Park use in the -S, Shoreline Overlay Zone; and introduce an ordinance approving a Development Agreement between the City and the applicant.

Via: E-Mail

Dear Mayor Butt and Council Members Bates, Choi, Johnson, Martinez, Myrick and Willis,

You have before you tonight a recommendation from the Planning Commission to approve adopting an Addendum to the Richmond Bay Specific Plan (RBSP) Environmental Impact Report (EIR) and to take several other actions that allow development of the Campus Bay Project in which 89.6 acres in Sub Area 4 are to be used for 50,000 square feet of retail/business service uses, including a 20,000 to 25,000 sq ft grocery store, and the construction of not less than 2,000 nor more than 4,000 residential uses. In addition, there would be 30.7 acres of parks and open spaces, existing habitat area and construction of a trailhead with parking and restroom facilities for the San Francisco Bay Trail. This proposed project would be located on top of a documented toxic waste dump that has been identified as one of the most contaminated in the State of California. Is this really what you want the City of Richmond to be noted for?

There is no disagreement from any jurisdiction that this site is highly dangerous to health. First known as the Stauffer Chemical, then Zeneca site, the area was used for 100 years (1897-1997) for the manufacture of sulfuric acid and pesticides and other heavy industrial operations, including use as a dumping site. Those operations resulted in extensive and deep contamination of the soil, groundwater and soil vapor. Over 100 chemicals of concern are present, many of which are known as the "dirty dozen" that have been determined to cause cancer, reproductive damage and other serious health problems. To name just a few, these include arsenic, lead, mercury, radium, uranium, DDT, volatile organic compounds (VOCs) such as benzene, and PCBs. Over the years, the mixing of everything together has created a chemical stew that has a synergistic effect greater than the damage that would be caused by a single chemical. As stated by the Canadian Center for Occupational Health and Safety, <https://www.ccohs.ca/oshanswers/chemical/synrgism.html>

“In toxicology, synergism refers to the effect caused when exposure to two or more chemicals at one time results in health effects that are greater than the sum of the effects of the individual chemicals.” And

“When chemicals are synergistic, the potential hazards of the chemicals should be re-evaluated, taking their synergistic properties into consideration.”

Given the proposal to proceed with the proposed Campus Bay Project on top of this toxic waste dump location, Citizens for East Shore Parks (CESP), along with Golden Gate Audubon, Sunflower Alliance, Richmond Shoreline Alliance, San Francisco Baykeeper, and the Richmond Southeast Shoreline Area Community Advisory Group (CAG) that has studied the area for two decades, and numerous other organizations and individuals, strongly urge you not to take the actions before you tonight until the site is decontaminated.

The health risk to thousands of people is too high and the revenue risk to the City, already in deep financial trouble, is too great not to step back and take the time that is essential for careful and thoughtful study and action, and for a robust democratic public participation in the decisions that must occur. To do less than this is malfeasance of your authority as you cannot disregard your sworn duty to protect health and safety. Nor can you ignore history’s 1970s lessons learned from The Love Canal neighborhood in Niagara Falls which was contaminated by benzene, then capped and the homes built on a toxic waste site became “a national symbol of a failure to exercise a sense of concern for future generations.”

CESP’s concerns fall within three major areas: A public process that is seriously flawed; significant changes that have occurred since the 2016 Richmond Bay Specific Plan (RBSP) was approved; and an unclear and questionable remediation plan for the land.

A Seriously Flawed Public Process:

On November 19, 2020, the date of the Planning Commission meeting on the Campus Bay Project, there had been no prior notice of the Addendum that gave the public an opportunity to post comments and receive some response prior to a public meeting on a proposed project that was different from the one considered under a prior EIR. The 116 page-Addendum regarding the proposed Campus Bay Plan was posted for the public to consider along with the agenda and staff report for the November 19 Planning Commission meeting. The documents for that meeting included a proposed Development Agreement (DA) and Community Benefits package. Staff stated that the public comments received at the meeting plus those provided to the Council on November 10 would provide the “public input” concerning those documents.

As was determined after the Planning Commission meeting, many members of the public were excluded from participating. You have received statements from members of the public who were excluded in the following ways. An incorrect connection number was provided by the City to members of the public who tried to participate via telephone. Some members of the public simply could not connect to the Zoom meeting at all. While the City indicated there would be different points in the meeting where members of the public who raised their hand

would be recognized, that did not happen. Representative speakers for and against the project were given equal time, but then representatives for the project were given additional time to respond to public comments, but a representative speaker opposing the project was denied an equal opportunity to rebut. This is not an acceptable example of democracy in action. Most particularly when it is occurring at a time when members of the public have been exhausted mentally, physically and financially by 10 months of dealing with a Global Pandemic that today is giving every indication of worsening in the months ahead as cases of infection and death increase across the country.

The documents before you indicate that the developer is seeking protection from potentially future fee increases and process requirements. Each of you must base your decision on what is in the best interests of the people, not the developer. Some of the proposed Community Benefits being offered include such items as paying prevailing wages to construction workers, hiring under Richmond First policies and funding for the Apprentice Program and anticipated revenue to the City which would hopefully lessen negative impacts on City employee salaries, particularly for police and fire employees. These are appropriate and good Community Benefits from any project, but at the time of the Planning Commission meeting a complete financial analysis was unavailable and remediation plans untested. Can you ensure that the construction workers, in particular, will be performing their duties in a safe working environment? Are the Community Benefits being offered inadvertently serving as a payoff for increased health risk? It cannot be ignored and is highly disturbing to find that the Mayor stated in a recent issue of a Richmond newspaper that he wants the project to be approved before the new Council Members take their seats on January 12 presumably because he feels they will object. By approving documents before all the facts are known is neither good planning nor good government.

Significant Changes That Have Occurred Since Approval of the 2016 RBSP:

The use of an Addendum instead of undertaking a full EIR regarding this project is based on the extent of changes that have occurred since the approval of the RBSP. To assume that few if any significant changes have occurred since that time is surprising to say the least. Anyone who reads or hears current news must certainly be aware that the world is currently experiencing significant changes in sea level rise with continuing higher levels anticipated in future years.

The Campus Bay Project is mostly based on a 3-foot sea level rise, yet in recognition of reality, the State of California recommends that shoreline communities plan for a 7 to 10-foot worst-case scenario. The Addendum states that the proposed project will be protected by a natural elevation and that this elevation along with the Bay Trail and Stege Marsh provides a substantial buffer for the project site from waves. A mitigation measure states that sea level rise over 3 feet will be addressed by “adaptive” measures up to 5.5 feet prior to certification of occupancy. Additionally, another mitigation measure directed to areas affected by over 3 feet of sea level rise including the 100-year flood event shall submit and implement an Adaptive Flood Risk Management Plan (AFRMP) which could include development setbacks, regrading, construction of raised berms or a wall or other measures to prevent and include financing

mechanisms for sea level rise adaptations, *prior to the approval of entitlements* and/or building permits. (Emphasis added.)

These mitigations defy common sense as they occur way too late for consideration of such matters as the uses, design and costs of a proposed project. Not only does it appear that such a AFRMP is not based on current scientific understanding of sea level rise but any entitlements that you might approve would have to be removed or restructured before proceeding with the project because such a plan is absent from what is before you for approval. What is the cost of approving entitlements that you have been warned will have to be removed or adjusted in the future?

The message of sea level rise is clear. You have been warned in the letter you received on November 10 from Stephen Linsley, former City of Richmond laboratory supervisor for 23 years. Mr. Linsley wrote

“when sea water from the Bay enters the soil on this site by liquefaction in a future earthquake or sea level rise, the toxic arsenic, mercury, and lead in the cinders there will be liberated as the salts and oxygen in that Bay Water turn the cinders into sulfuric acid. The pesticides that were created on this site will also get released by Bay Water intrusion, adding another source of poison to this underground soup. Instead clean it all up now. Don’t leave it as a ticking time bomb.”

In another letter dated November 18, 2020, Matt Hagemann, P.G., C.Hg, a technical consultant, stated that the remediation of this specific site is complicated by its low elevation and relatively high groundwater level, its proximity to the Bay and the effects of sea level rise. He notes that while the 2016 EIR addresses sea level rise, it does so in the context of protecting the project area from surface flooding in accordance with policies in the Richmond General Plan. “The 2016 EIR does not appear to address the potential impact of sea level rise on subsurface contaminants of the site.” Further, “Since 2016, however, estimates of future sea level rise have risen significantly. For example, the recent California Sea Level Rise Principles, published on May 1, 2020, identify sea level rise targets of 1 foot by 2030, 3.5 feet by 2050, and 7.6 feet by 2100. Other measurements of trends in sea level rise indicate that even these may be underestimates.”

Further, the Addendum does not address drainage from the lands along and above Meade Avenue which runs adjacent to I-580 north of the project. The Addendum description of the Site Development, section 2.6, simply states that “During periods of heavy runoff, excess flows will drain by gravity into San Francisco Bay.” However, actual groundwater experience indicates groundwater will be blocked by the rising sea level and the back-up will result in cracks in the toxic waste cap, flooding basements and overwhelming storm drains and other underground infrastructure. This is exactly what happened at The Love Canal. Snow fall (in our case sea level rise) caused an increase in groundwater that broke through the cap and exposed hundreds of new homes that had been constructed over the toxic waste. The level of the resultant misery cannot be adequately expressed about how the resultant health of hundreds of residents was

affected, millions of dollars in lawsuits filed, and property values and hopes destroyed. You must decide why the Campus Bay Project would be different. Once again, we ask what is the City's liability for knowingly proceeding with a plan that carries such high risks and uncertainty?

An additional issue that would require CEQA re-evaluation under the proposed Campus Bay Project has to do with traffic. Prior to the COVID-19 pandemic, traffic congestion with its resultant greenhouse gas emissions (GHG) had substantially increased. Seven previously-identified Sub-Area 4 Project traffic impacts in the RBSP EIR are listed in the Addendum. All seven were labeled as "significant and unavoidable." These are:

- TRF-4.SA4 Intersection ops at WB I-580 ramp/Juliga Woods St
Installation of a traffic signal outside of the City's jurisdiction
- TRF-5.SA4 Intersection ops at Meade St/Regatta Blvd/ EB 580 ramps
Worsen already unacceptable level of service (LOS) F conditions
- TRF-7.SA4 Intersection ops at Bayview Ave/51st St/Seaport/EB 580 ramps
Worsen already unacceptable LOS F conditions and installation of a traffic signal
- TRF-8.SA4 Intersection ops at Bayview Ave/Carlson Blvd
Worsen already unacceptable LOS due to traffic
- TRF-9.SA4 Intersection ops at Carlson Blvd/WB I-80 ramps
Worsen already unacceptable LOS F conditions
- TRF10-SA4 Intersection ops at Carlson Blvd/EB I-80 ramps
Worsen already unacceptable LOS condition due to traffic
- TRF-11-SA4 Intersection ops I-80 between Central Ave and I-80 during
both am and pm peak hours and EB I-580 between I-80 and Central Ave. during
pm peak hour.

The Addendum states that no new significant impacts or substantial increases in the previously identified traffic impacts with the Campus Bay Project would occur beyond those already identified for the Sub-Area 4 addressed in the RBSP EIR.

In other words, analyzing previously identified environmental impacts that would contribute GHG emissions to our already unhealthy air has been established, and you need not be concerned. This is wrong. In the past few years, we should have learned the lesson that science matters and that we can and must do better. The Campus Bay Project is being described as "near transit." The project proposed to be placed on top of this toxic waste dump has shifted from heavy manufacturing uses to heavy residential uses. The "nearby transit" in this proposed heavy residential use is identified as the Richmond Ferry Terminal and the Richmond and El Cerrito BART Stations – both at distances that will require many of the project's residents to use cars. Staff reports and the Addendum state that it is unknown how Traffic Management Demand plans will result in reduced car usage and vehicle miles traveled. This is not acceptable planning at a time when needed housing can easily be built in other areas in Richmond that are served by existing transit and services that are sought and needed by residents and that can be constructed and lived-in without enduring such dangerous health conditions.

These concerns also cannot be swept away since overriding considerations are being swapped for increased revenues that are hoped to be gained from the Campus Bay Project's future residents. Each of you must consider who might purchase or rent a structure located on top of a well-known toxic waste dump?

An Unclear and Questionable Remediation Plan:

Section 2.7 of the Addendum concerns Site Remediation. While the City states clearly that it does not have the authority to approve or modify a Feasibility Study/Remedial Action Plan (FS/RAP) which can be done only by the Department of Toxic Substance Control (DTSC), it avoids the issue that the City has the authority and bears the responsibility to determine what uses are acceptable on the site.

An FS/RAP which includes some soil excavation, in situ treatment of VOCs and metals in groundwater and treatment of arsenic, soil vapor extraction, treatment and monitoring of target areas, installation of a low permeability cap over a large part of the area and installation of a barrier cap over the area not covered by the low permeability cap, continued monitoring and maintenance of the existing biologically active permeable barrier, monitored natural attenuation in ground water, long-term monitoring of the site and institutional controls was approved in 2019. Following approval of the FS/RAP a Pre-Design Investigation (PDI) was undertaken and *is still underway during preparation of the Addendum.* (Emphasis added.)

The property owner was to begin implementation of Phase I of the FS/RAP, but according to the Addendum, there were undescribed delays in the starting date and “implementation of approved remedial designs is expected to be completed in late 2021.”

It is unclear what this means. What are remedial designs and how are they being implemented? On November 19, the public was told by a representative of the developer who was described as having a 17-year career in remediating contaminated sites, that the developer would use an in situ method of injecting bacteria into the site that would clean it up. There is no information available to know what this means. Exactly what bacteria would be used, how does it cleanup so many different chemicals at once and where has such a process been successfully used? The public is entitled to a full explanation of what cleanup will be done and when it will be effective. Although there is a map of what will be done, it does not include “injection of bacteria” specifically, nor are there indications of ‘remedial designs’ and there is no indication of dates for when projected cleanup is to occur.

This raises a social justice question. The developer is committed to building an economically diverse community. Existing ordinances require a certain percentage of affordable units can be on site or provided in another location or in a combination of both approaches. The Addendum or other reports are not clear what percentage will be built on site and there is no commitment that some of these affordable units will be provided in the upper floors of the 8-story buildings contemplated under the RBSP where Bay views will ensure a greater level of revenue and marketability for the developer. The RBSP indicates that retail units would be

located on the first floor with residential units above. However, the Campus Bay Project locates residential units on the first floor. Will this somehow result in the affordable units being on the ground floor where the exposure to the contaminated waste is the greatest while the market rate units will be located at the higher locations for ownership or rental?

For years the City of Richmond supported a complete clean-up of the site as indicated in alternative 6 on the list examined by the DTSC. City policies regarding what would be constructed on top of this toxic waste dump site during and after approval of the RBSP in 2016 were expressed in a letter dated August 28, 2018, from then City Manager William A. Lindsay to Lynn Nakashima, DTSC. Mr. Lindsay stated his appreciation for DTSC's efforts to ensure that the Campus Bay site will be cleaned up in a manner protective of human health and the environment and allowing ground-level residences. He specifically indicated a City preference for Alternative 6. That position was reversed on September 24, 2019 on a split vote by the Council.

Then on December 3, 2019, Gabriele Windgasse, MS, DrPH sent an email to Lynn Nakashima at DTSC. In that e-mail she stated that the California Department of Public Health (CDPH) wrote a Public Health Assessment (PHA) for this site in 2009 stating that the CDPH and ATSDR (federal Agency for Toxic Substances and Disease Registry) recommended that the Zeneca site be cleaned up to levels consistent with residential standards if the land use changes from industrial to residential or recreational (page 47 of the 2009 PHA). But with the 2019 DTSC choosing Alternative 3 over 6, she wrote that Alternative 3 "will leave substantial contamination in place." Among her concerns and various requests was that DTSC consider that the soil gas cleanup goals should be re-calculated to ensure that they are health-protective and that the most recent guidance on attenuation factors and toxicity values of the chemicals of concern should be used. She also suggested that the proposed 5-year review time-frame may not be sufficient and recommends that DTSC review site conditions at least annually to ensure that the land use restrictions are followed, and that the mitigation measures are working (cap, vapor barriers, passive or active venting, etc.), and are adjusted as necessary and making these data sets available in a timely manner to the public.

In reviewing the recommendations for approval at this time, it seems highly questionable to take action before the issues raised by the CDPH are completely understood and all the other questions have been answered. What has been implemented? What is planned to be implemented and when? Various individuals have recently indicated that they are experiencing contaminated plumes coming from the site onto their properties. Is this evidence of the contamination being carried by groundwater? Is this contamination currently flowing into the Bay? If so how can this be stopped and when will this happen? What would happen if the Project goes forward and it is found in an annual review, or at the point of occupancy of a residential unit, that a mitigation measure was not working? Who would bear the responsibility to clear up the situation, the City, the developer or DTSC? These are serious questions that decision makers and the public are entitled to know about. We believe this would best be

addressed by a study session held by the City Council and DTSC before any action on a proposed project is taken.

Finally, we repeat what we have said to the Council on November 10, 2020: It is unclear whether this project will be structured so that if it goes financially bad, the developer can declare bankruptcy and just walk away without involving the parent company. This question was asked on November 19, but the developer did not answer it. He only stated he had plenty of cash available. Not only is this an important issue, it becomes even more so in these uncertain times when there are deep concerns about the future of the state and national economies, let alone the City of Richmond's already compromised financial condition.

After all is said and considered, CESP urges that the City Council take no action at this time until the questions that have been raised are addressed.

Thank you,

A handwritten signature in black ink that reads "Shirley Dean". The signature is written in a cursive, flowing style.

Shirley Dean, President,
Citizens for East Shore Parks
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