



THIS SECTION TO BE COMPLETED BY THE CITY CLERK'S OFFICE
 STAMP OF RECEIPT:
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 CITY OF RICHMOND
 2026 MAR 12 AM 11:37
 FEE PAID: \$500⁰⁰ SL (CASH)
 DATE: 3/12/2024

TO THE RICHMOND CITY COUNCIL:

The undersigned hereby appeals decision: By the Historic Preservation Commission _____
 By the Planning Commission _____
 Denial _____ of: Approval of:
 _____ Variance (V) Tent Subd. Or Parcel Map (TM)
 Conditional Use Permit (CUP) _____ Rezoning (RZ)
 Design Review Permit (DRP) _____ EIR Decision (EIR)
 _____ Other _____

DESCRIBE ITEM AS PRINTED ON THE PLANNING COMMISSION or

HISTORIC PRESERVATION AGENDA:

A resolution of the Planning Commission of the City of Richmond considering the Design Review, Vesting Tentative Map, and Shoreline Overlay Conditional Use Permit (PLN23-117) for the Marina Point Residential Project, an approved development of 70 three-story single-family homes and 30 market rate junior accessory dwelling units (JADUs) located at the terminus of Marina Way South (APN 560-181-121)

STATE REASONS FOR APPEAL:

Please see attached letter explaining the basis for the appeal.

DELIVER OR MAIL TO:

City Clerk
 450 Civic Center Plaza, 3rd Floor
 Richmond, CA 94804

NAME Glen L. Powles
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HSW

Bryan Wenter
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March 13, 2026

VIA EMAIL

Pamela Christian, City Clerk
City of Richmond
450 Civic Center Plaza
Richmond, CA 94804
Email: cityclerkdept@ci.richmond.ca.us

**Re: Appeal to City Council
Marina Point Housing Development Project
APN 560-181-121 (PLN 23-117)**

Dear Ms. Christian:

On behalf of my client, Guardian Capital, we write to appeal certain Conditions of Approval of the Planning Commission's March 5, 2026, approval of the Marina Point Residential Project. This appeal includes the City's appeal form, an appeal fee in the amount of \$500, and a November 26, 2025 letter and exhibit explaining and showing the location of the affordable homes.

As you may know, Guardian applied via Preliminary Application filed on February 14, 2023 and Formal Application filed on April 27, 2023, to develop 70 new single-family homes (10% of which will be affordable) and 30 Junior Accessory Dwelling units with related roadway and infrastructure improvements ("Project" or "Marina Point") on approximately 4.92 gross (4.36 net) acres (APN 560-181-121) at the terminus of Marina Way in Richmond ("Project Site"). As you also know, the Project Application was deemed complete as a matter of law under the Permit Streamlining Act on July 12, 2023 (Gov. Code § 65943(a)) and subsequently deemed consistent with the City's land use regulations as a matter of law under the Housing Accountability Act (Gov. Code § 65589.5(j)(2)) on August 11, 2023.

The Planning Commission's 3-1 approval of the Project includes several conditions of approval that amount to an abuse of discretion and/or that are not supported by substantial evidence in the record and/or that run afoul of various provisions of state and/or federal law.

Among other things, we note the following:

Assessor Parcel Numbers

Planning Commission Resolution No. 24-06 approving the Project includes two APNs: 560-181-121 and 560-181-102. The Project has only one applicable APN—560-181-121—as APN 560-181-102 is removed from the Preliminary Title Report and a prior Development Agreement has expired and is not relevant. All references to APN 560-181-102 should be removed.

Shoreline Overlay District

Planning Commission Resolution No. 24-06 approving the Project includes ten open-ended Conditions of Approval (Nos. 49-58) regarding shoreline issue. First, as City staff know, the Project has been removed entirely from the Bay Conservation and Development Commission's 100-foot shoreline band jurisdiction, at the direction of BCDC and its staff. It is unclear if the Project is in the City's own Shoreline Overlay District, which also includes a vague provision

attempting to capture an area in a “public access zone” that extends from the ordinary high-water mark on the shoreline to the nearest public highway or arterial street.

With respect to these conditions, No. 49 should be removed as it requires a Shoreline Overlay use permit the Planning Commission already granted via Resolution No. 24-06. No. 50 should be removed as no part of the Project will be built in the shoreline band and the Shoreline Overlay use permit already confirms the Project meets these design and sensitive habitat provisions. No. 51 should be removed as it requires the preparation of a Shoreline Public Access Plan that is both not a requirement of the Shoreline Overlay District, the Shoreline Overlay use permit already confirms the Project meets these access and connectivity requirements, and the Project proposes no other development beyond what the Planning Commission already approved.

Please note that Guardian is willing to make commercially reasonable efforts to work with the City and BCDC to provide for reasonably landscaping and other improvements in the 100' shoreline area, subject to fee credits against the City's parks and open space impact fees.

Junior Accessory Dwelling Units

Planning Commission Resolution No. 24-06 approving the Project included the Design Review, Tentative Map, and Shoreline Overlay Conditional Use Permit for the Project. Planning Condition of Approval No. 3 includes the vague condition that 10% of the units in the Project will be sold to moderate-income households. The Project is meeting this requirement, but the condition must be clarified to reflect the reality of the fact that as the Project was originally proposed and as deemed consistent with the City's land use regulations the Project consists only of the following:

- 70 single-family homes and 30 accessory dwelling units, of which 63-single-family homes will be market-rate, 7 single family homes will be affordable, and all 30 ADU's will be market-rate.

The Project was always proposed to meet the City's inclusionary ordinance based on the foregoing and it was deemed consistent on that basis. The Project has never been designed to make any of the ADUs affordable, and therefore Planning Condition No. 3 should be modified accordingly.

Similarly, Recital No. 8 should be revised to state that the affordable units shall be limited to 7 single-family homes that are all subject to moderate-income deed restrictions as shown in the attached letter and exhibit and shall not include any of the units with ADUs.

Signalization of Hall Avenue and Marina Way South

Planning Commission Resolution No. 24-06 approving the Project includes an Engineering Condition No. 19 that Guardian must fund its “fair share” towards the signalization of Hall Avenue and Marina Way South as well as Richmond Wellness Trail Phase 2. The City has not demonstrated the need for this signal in general and given that the Project is the subject of a Class 32 infill exemption from CEQA the Project will not have any significant effects on traffic and this condition is thus plainly unwarranted and should be removed.

No Net Loss Study

Planning Commission Resolution No. 24-06 approving the Project includes a condition that Guardian “fund” a study to ensure the City complies with California's “Not Net Loss Law” (Gov. Code § 65863)¹, incorrectly assuming that the Project would “create a deficiency” under that

1

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=65863.

law. There are several independent reasons why the Project does not create a Not Net Loss Law deficiency and the City may not lawfully impose such a condition on Guardian.

1. The Not Net Loss Law does not trump other state laws such as the Housing Accountability Act (Gov. Code § 65589.5:’HAA”), and the City cannot lawfully disapprove the Project on the basis that it may cause the need for the City to identify other sites to accommodate the City’s remaining Regional Housing Needs Allocation (“RHNA”) for moderate-income housing.
2. The Project has vested rights from the date of its Preliminary Application, which vested rights pre-date the California Department of Housing and Community Development’s October 2023 certification of the City’s 6th Cycle Housing Element, and the City improperly and unrealistically assumed 197 units of moderate-income housing on a site with vested rights during the entitlement process.
3. The City can easily address any shortfall in moderate-income units it improperly and unrealistically assumed for the Project Site.

The purpose of the No Net Loss law is to ensure development opportunities remain available throughout the planning period to accommodate a jurisdiction’s RHNA. The No Net Loss law is focused on three main objectives, only the third of which is relevant here:

1. maintaining adequate sites;
2. jurisdiction actions to reduce a site’s development capacity; and
3. approval of specific projects at a lower density than contemplated in the relevant housing element.

There is nothing in the No Net Loss Law that states or implies that it trumps other state laws such as the Housing Accountability Act or that a jurisdiction may disapprove a given housing project if that project would cause the jurisdiction to have inadequate sites for a given income category. In fact, the No Net Loss Law makes clear that **it is a jurisdiction’s sole burden to comply with the law** (See Gov. Code § 65863(e); see also “HCD No Net Loss Law Memorandum,” dated October 2, 2019²). A jurisdiction may only require an applicant to comply with the No Net Loss Law if the applicant requests in its initial application a density that would result in the remaining sites in the housing element not being adequate to accommodate the jurisdiction’s share of the RHNA.

Here, the Preliminary Application was submitted in February of 2023, before the California Department of Housing and Community Development (“HCD”) certified the City’s 6th Cycle Housing Element in October of 2023 and made the Project Site an “identified site,” thus it remains the City’s sole obligation to comply with the No Net Loss Law and the City could not lawfully disapprove the Project even if it does not comply with the new housing element. The Project could not have “created a deficiency” under the No Net Loss Law before the 6th Cycle Housing Element was certified, improperly assuming 197 units of moderate-income housing when the City was already in receipt of a Preliminary Application for a project with vested rights containing 70 new market-rate single- family homes and 30 market-rate accessory dwelling units.³

² <chrome-extension://efaidnbnmnnibpcajpcgclclefindmkaj/https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/SB-166-final.pdf>.

³ We note that the 6th Cycle Housing Element probably should not have been certified given the status of the Project during the pendency of its consideration and eventual certification by HCD as it was neither accurate nor realistic to assume the Project Site would contain 197 units of moderate-income housing.

Moreover, we note that the Formal Application for the Project was deemed consistent with the City's regulations as a matter of law under the Housing Accountability Act on August 11, 2023, a date that is also before HCD certified the City's 6th Cycle Housing Element. The City did not raise this issue orally until September 3, 2025, and in writing on September 7, more than two years after this critical date. Furthermore, we note that the HAA establishes the only lawful way in which a city may disapprove a housing development project—by making the rarely occurring health and safety findings in the HAA, which findings cannot be made here.

The Planning Commission's No Net Loss Law study requirement establishes an undefined and open-ended funding obligation. This obligation is an impediment to the production of new housing that runs afoul of the HAA's statewide new housing production policy (Gov. Code § 65589.5(a)(2)(L)), is a condition that works directly against the production of new housing (Gov. Code § 65589.5(f)(1)), and even if lawful would be subject to an incentive or concession under the Density Bonus Law as a condition whose avoidance would produce identifiable and actual cost reductions (Gov. Code §§ 65915(d)(1) and (k)(3)).

Finally, although it is the City's sole burden to comply with the No Net Loss Law and the Project could not be disapproved even if it creates a loss in capacity—which it does not—we already indicated our willingness to provide the City some informal assistance in productively resolving this issue. By way of example, we note that the 6th Cycle Housing Element indicates the potential for 1,892 above moderate-income units. The City could place 10% (i.e., 189) of those units in the moderate-income category, which would retain a "buffer" of 89 moderate-income units and 52-unit above moderate-income units. The City's No Net Loss Law issue is its own to solve but it is easily solvable.

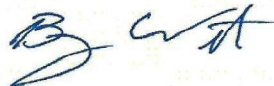
The No Net Loss Law requirement that Guardian fund a study should be removed. Please note, however, that while this open-ended and undefined requirement is not lawful Guardian is willing to spend up to \$10,000 on this study. Accordingly, Guardian would be willing to accept such a condition with a clear \$10,000 cap.

Conclusion

We appreciate the Planning Commission's approval of this long-pending Project but we must respectfully appeal that approval to address the foregoing critical issues. Please note that we have requested a copy of the adopted Conditions of Approval but have yet to receive it during the 10 day appeal window. Accordingly, we hereby reserve our rights to identify other issues that will be included in this appeal.

Please do not hesitate to contact any member of the Project team if you have any questions or require our assistance. We look forward to the City's anticipated cooperation in the final stages of this lengthy process.

Sincerely,



BRYAN WENTER

ENCLOSURES

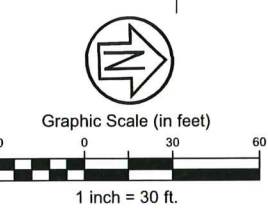
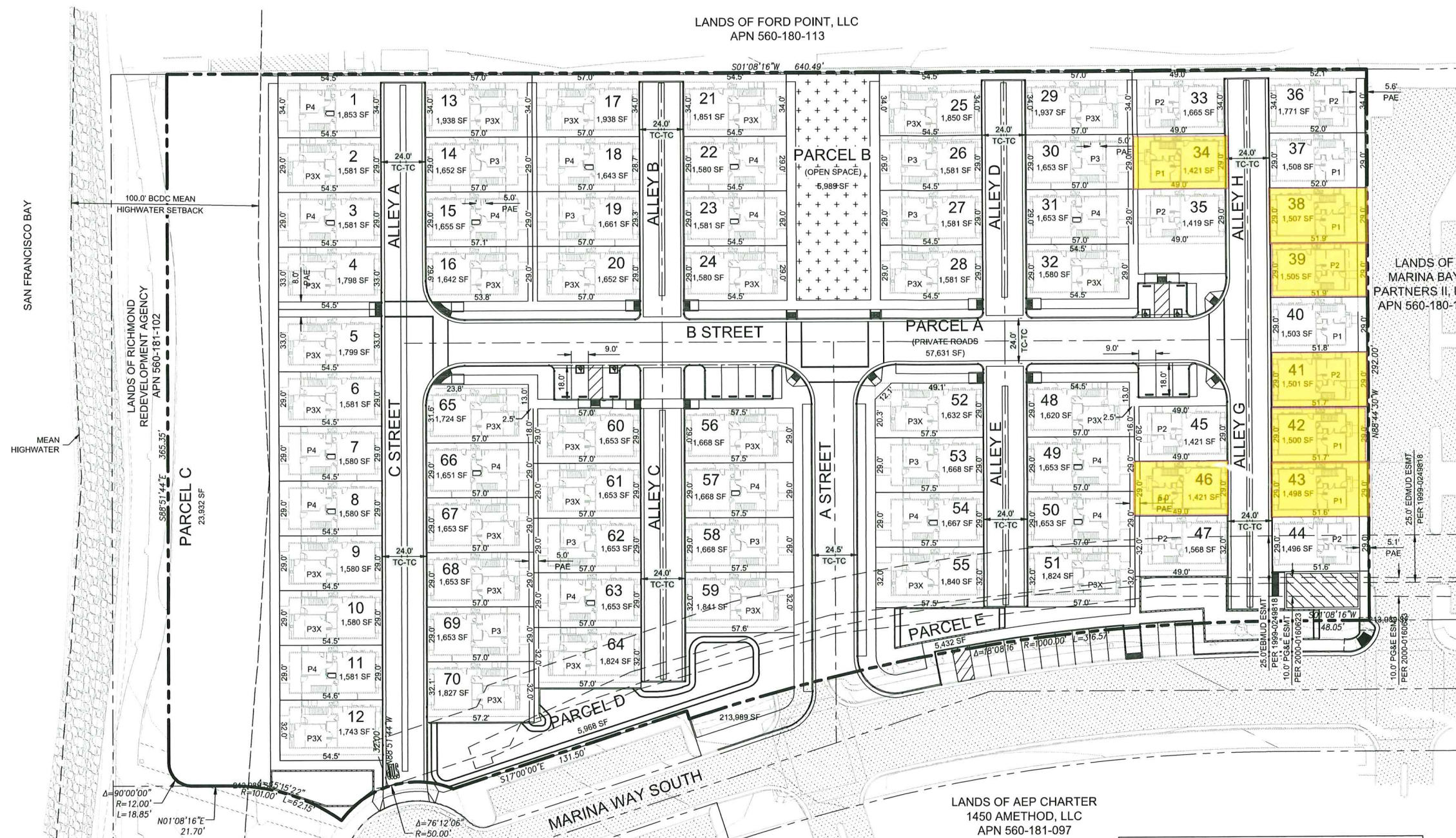
CC: LINA VELASCO, COMMUNITY DEVELOPMENT DIRECTOR
AVERY STARK, PLANNING MANAGER
JAMES J. ATENCIO, SENIOR ASSISTANT CITY ATTORNEY

PAM LEE, OUTSIDE COUNSEL
GLEN L. POWLES, SENIOR VICE PRESIDENT OF PLANNING AND ACQUISITIONS

LANDS OF FORD POINT, LLC
APN 560-180-113

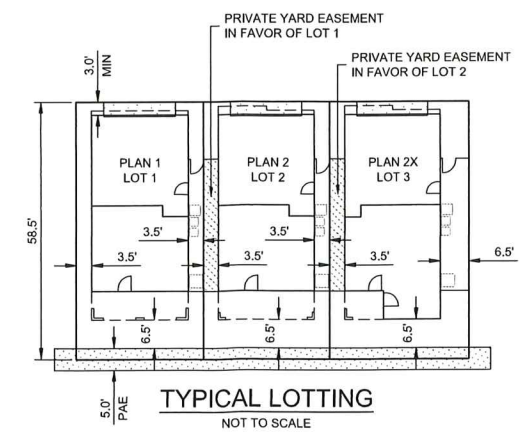
SUMMARY OF LOT COVERAGE

LOT NO.	PLAN NO.	LOT AREA (SF)	BUILDING FOOTPRINT (SF)	LOT COVERAGE	UNIT TOTAL (SF)
1	P4	1,853	1,023	55%	2,338
2	P3X	1,581	1,023	65%	2,328
3	P4	1,581	1,023	65%	2,338
4	P3X	1,798	1,023	57%	2,328
5	P3X	1,799	1,023	57%	2,328
6	P3X	1,581	1,023	65%	2,328
7	P4	1,580	1,023	65%	2,338
8	P4	1,580	1,023	65%	2,338
9	P3X	1,580	1,023	65%	2,328
10	P3X	1,580	1,023	65%	2,328
11	P4	1,581	1,023	65%	2,338
12	P3X	1,743	1,023	59%	2,328
13	P3X	1,938	1,023	53%	2,328
14	P3	1,652	1,023	62%	2,242
15	P4	1,655	1,023	62%	2,338
16	P3X	1,642	1,023	62%	2,328
17	P3X	1,938	1,023	53%	2,328
18	P4	1,643	1,023	62%	2,338
19	P3	1,661	1,023	62%	2,242
20	P3X	1,652	1,023	62%	2,328
21	P3X	1,851	1,023	55%	2,328
22	P4	1,580	1,023	65%	2,338
23	P4	1,581	1,023	65%	2,338
24	P3X	1,580	1,023	65%	2,328
25	P3X	1,850	1,023	55%	2,328
26	P3	1,581	1,023	65%	2,242
27	P3	1,581	1,023	65%	2,242
28	P3X	1,581	1,023	65%	2,328
29	P3X	1,937	1,023	53%	2,328
30	P3	1,653	1,023	62%	2,242
31	P4	1,653	1,023	62%	2,338
32	P3X	1,580	1,023	65%	2,328
33	P2	1,665	1,023	61%	2,016
34	P1	1,421	1,023	72%	2,027
35	P2	1,419	1,023	72%	2,019
36	P2	1,771	1,023	58%	2,019
37	P1	1,508	1,023	68%	2,027
38	P1	1,507	1,023	68%	2,027
39	P2	1,505	1,023	68%	2,016
40	P1	1,503	1,023	68%	2,027
41	P2	1,501	1,023	68%	2,016
42	P1	1,500	1,023	68%	2,027
43	P1	1,498	1,023	68%	2,027
44	P2	1,496	1,023	68%	2,016
45	P2	1,421	1,023	72%	2,016
46	P1	1,421	1,023	72%	2,027
47	P2	1,568	1,023	65%	2,016
48	P3X	1,620	1,023	63%	2,328
49	P4	1,653	1,023	62%	2,338
50	P4	1,653	1,023	62%	2,338
51	P3X	1,824	1,023	56%	2,328
52	P3X	1,632	1,023	63%	2,328
53	P3	1,668	1,023	61%	2,242
54	P4	1,667	1,023	61%	2,338
55	P3X	1,840	1,023	56%	2,328
56	P3X	1,668	1,023	61%	2,328
57	P4	1,668	1,023	61%	2,338
58	P3	1,668	1,023	61%	2,242
59	P3X	1,841	1,023	56%	2,328
60	P3X	1,653	1,023	62%	2,328
61	P3X	1,653	1,023	62%	2,328
62	P3	1,653	1,023	62%	2,242
63	P4	1,653	1,023	62%	2,338
64	P3X	1,824	1,023	56%	2,328
65	P3X	1,724	1,023	59%	2,328
66	P4	1,651	1,023	62%	2,338
67	P3X	1,653	1,023	62%	2,328
68	P3X	1,653	1,023	62%	2,328
69	P3	1,653	1,023	62%	2,242
70	P3X	1,827	1,023	56%	2,328



LEGEND:

	PROJECT BOUNDARY		PROPOSED PAVEMENT
	PRIVATE STREETS		EXISTING PAVEMENT
	ADJOINER		PROPOSED SIDEWALK
	PROPOSED EASEMENT		PROPOSED CONCRETE
	EXISTING EASEMENT		
	CENTERLINE		
	MONUMENT LINE		
	LOT LINE		



SUMMARY OF REMNANT COVERAGE

LOT NAME	PLAN AREA (SF)
PARCEL A (PRIVATE STREETS)	57,631
PARCEL B	5,989
PARCEL C (BCDC)	23,932
PARCEL D	5,968
PARCEL E	5,432

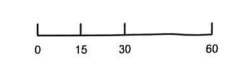
TOTAL AREA

LOT COVERAGE	115,334 SF (2.65 AC)
REMNANT COVERAGE	98,652 SF (2.26 AC)
DEVELOPABLE LAND (LESS BCDC)	190,054 SF (4.36 AC)
TOTAL SITE	213,986 SF (4.92 AC)

Affordable Units Exhibit
Affordable units highlighted in yellow



VESTING TENTATIVE MAP
JULY 25, 2025



VESTING TENTATIVE MAP

C3.0