

RESOLUTION No. 23-11

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND
MAKING CERTAIN FINDINGS AND DETERMINING TO DISCONTINUE
CONSIDERATION OF A CASINO USE AT POINT MOLATE**

WHEREAS, in 1995, the Point Molate Navy Fuel Depot was listed for closure and disposition under the Defense Base Closure and Realignment Act of 1990 (“BRAC”) and the Navy ceased operations at Point Molate (“Point Molate” or “Property”) on September 30, 1995; and

WHEREAS, in 1995, the City of Richmond (“City”) established the City Council (“Council”) as the Local Reuse Authority (“LRA”), the official governmental agency responsible for reuse planning and disposition strategy for the Property; and

WHEREAS, the LRA established a 45-member Blue Ribbon Advisory Committee to help plan the future use of Point Molate, and that Committee developed the Point Molate Reuse Plan; and

WHEREAS, the Richmond City Council approved the Point Molate Reuse Plan in 1997; and

WHEREAS, in 2002, the Council, acting as co-lead agency with the Navy, certified a joint Environmental Impact Statement/Environmental Impact Report that analyzed the potentially significant environmental impacts of disposal and reuse of the Property; and

WHEREAS, in September 2003, the Navy transferred approximately 85 percent of the Property to the City pursuant to the BRAC process and the City’s 1997 Reuse Plan, and on March 25, 2010, the Navy transferred the remainder of the Property to the City; and

WHEREAS, on December 16, 2003, after a competitive process, the City selected Upstream Point Molate LLC (“Upstream”) as the developer of Point Molate; and

WHEREAS, on November 9, 2004, the City and Upstream entered into a Land Disposition Agreement (“LDA”) to sell and lease the Property to Upstream for \$50 million for the purpose of developing Point Molate; and

WHEREAS, the LDA requires that numerous conditions be satisfied (or waived) prior to the Closing, including among others, that all required environmental reviews of the Project have been completed, that all approvals, permits and other governmental approvals necessary to construct, own and operate the project have been obtained, that approvals from the Bureau of Indian Affairs have been obtained, and that the State/Tribe Compact has been executed and approved by the U.S. Department of Interior; and

WHEREAS, in order to allow the Property to be developed with an Indian casino, the LDA provides that the City consents to Upstream assigning its rights to purchase and lease the Property to the Guidiville Band of Pomo Indians of the Guidiville Rancheria (“Tribe”), provided the Tribe execute a Services Agreement and First Source Agreement; and

WHEREAS, in 2005 the Bureau of Indian Affairs (the “BIA”) and the City, acting as co-Lead Agencies, initiated the preparation of a joint EIS/EIR to analyze the environmental impacts of the Point Molate Mixed-Use Tribal Destination Resort and Casino (the “Project”); and

WHEREAS, on March 15, 2005, the City filed a Notice of Preparation (“NOP”) for the EIR with the California Office of Planning and Research (“OPR”) and distributed

the NOP to public agencies and interested parties for a 30-day public review period that concluded on April 15, 2005; and

WHEREAS, a public scoping meeting was held on March 31, 2005 to identify issues and areas of concern that should be analyzed in the EIS/EIR for the Project; and

WHEREAS, a Notice of Completion of the Draft EIS/EIR was filed with OPR on July 10, 2009; and

WHEREAS, the Draft EIS/EIR was circulated for a 105-day public review and comment period that concluded on October 23, 2009; and

WHEREAS, on August 12, 2009, a public hearing was held before the City's Design Review Board to receive comments on the Draft EIS/EIR; and

WHEREAS, on September 8, 2009, another public hearing was held before the City's Planning Commission to receive additional comments on the Draft EIS/EIR; and

WHEREAS, on August 10 and 27, 2009, the City and BIA hosted two public workshops to provide the public two opportunities to discuss the analyses presented in the Draft EIS/EIR with the technical experts who prepared the analyses; and

WHEREAS, the City received more than 400 written and verbal comments on the Draft EIS/EIR; and

WHEREAS, on December 7, 2010, the City completed the community outreach process regarding alternative land uses for Point Molate, as provided for by the Sixth Amendment to the LDA dated May 18, 2010; and

WHEREAS, the Closing Date for the sale has now been extended multiple times to April 20, 2011; and

WHEREAS, Measure U, a non-binding advisory measure placed on the November 2010 ballot, asked voters whether the City of Richmond shall approve a project including a casino at Point Molate; and

WHEREAS, 58.3 percent of Richmond voters voted "No" on Measure U; and

WHEREAS, the Final EIR evaluated the potential environmental impacts that could result from the approval of any project alternative including a casino use (and in particular focused on potentially significant impacts), analyzed a reasonable range of feasible alternatives to the proposed casino project and identified measures designed to mitigate or avoid the potentially significant impacts of that project; and

WHEREAS, the Final EIR found that the project alternatives including a casino use would have significant and unavoidable impacts to traffic and historic resources; and

WHEREAS, under CEQA, the City may only approve a project with a casino use if it adopts a Statement of Overriding Considerations that finds the benefits of such a project outweigh the significant and unavoidable adverse impacts; and

WHEREAS, after reviewing and considering the information contained in the Final EIR and holding a public hearing to consider certification of the Final EIR, on March 8, 2011, the City Council, as Lead Agency, certified the Final EIR; and

WHEREAS, the BIA has not indicated a timetable for approval of the Final EIS or acting on the various Federal approvals; and

WHEREAS, the City has been in the process of planning and visioning the future use and development of Point Molate for over 15 years and it has a strong interest in reaching finality on this question; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Richmond, in the exercise of its independent judgment, and based upon all the evidence in the record finds and determines, consistent with the terms of the Settlement Agreement in *Citizens for the East Shore State Park vs. City of Richmond* (2006), and the Land Disposition Agreement between the City and Upstream Point Molate LLC, to discontinue consideration of a casino use and determine that a casino use is “not legally permitted” at Point Molate, thus triggering Section 2.8 of the LDA with respect to an alternative non-gaming development proposal. This resolution is based upon all of the following:

1. The recitals above are true and correct and are incorporated herein by reference.

2. The City Council finds that, based on the entire administrative record, including but not limited to the twelve bases identified by the Mayor in her testimony, including a casino use as a component of any project at Point Molate will be detrimental to the general public welfare and, for the reasons set forth in detail below, the City will discontinue consideration of any project at Point Molate that includes a casino use.

3. The findings below are based on considerations related to a large Class III casino use at Point Molate, but these findings are not based on Upstream’s specific proposal. The City Council recognizes that Upstream has not submitted final Design Concept Documents that reflect the various mitigation measures set forth in the Final EIR, however, the Council finds that there is substantial evidence in the administrative record that supports taking this action at this time and that the final Design Concept Documents would not provide significant additional information regarding whether to continue to consider a casino use at Point Molate.

4. Each of the findings supporting discontinued consideration of a casino use set forth below constitutes a separate and independent ground for the City Council’s action.

Findings Supporting the City’s Decision to Discontinue Consideration of a Casino Use at Point Molate

Failure to Timely Obtain Federal Approvals

5. For a casino use to be legally permitted, the Secretary of Interior must approve the Indian Lands Determination, take the property into trust on behalf of the Guidiville Band of Pomo Indians, and determine whether the lands are eligible for gaming under Section 20 of the Indian Gaming Regulatory Act (“IGRA”). In March 2006, the Tribe requested the Secretary of Interior to make the required determinations. Five years later, the Secretary still has not acted. Without these Federal approvals, a casino use at Point Molate is not legally permitted. BIA must review the decision whether to take the Point Molate property into trust under the National Environmental Policy Act (“NEPA”), 42 U.S.C. 4321, et seq. To date, BIA has not published a Final EIS for the Project. Moreover, even the Project proponent acknowledged that the feasibility of such a project is uncertain, due in part to the current lack of federal approvals. Without these actions by the Federal government, Indian gaming is not legally permitted.

6. The Federal government has not offered any timetable for action under NEPA or with respect to the pending determinations. It is in the City’s and the public’s best interest that land use decisions are made not only after a thorough and fair assessment of a proposed project, but also in a reasonably timely manner. The City is now 15 years into the planning for the future development and use of Point Molate, yet it is still not known if a casino use could be legally permitted. At some point, it is in the best interests of the City to no longer wait for the Federal government to act and proceed with a use that does not require these Federal approvals. It is the City’s determination that the Federal agency’s significant delay is adversely affecting the City’s ability to plan for the future use of Point Molate.

Political Opposition at the Federal Level

7. The decision of whether to approve the Indian Lands Determination and other Federal determinations has created significant controversy. In particular, Senator Dianne

Feinstein has voiced her strong opposition to taking off-reservation lands into trust for tribal gaming in urban settings in general, and the casino use at Point Molate in particular. In a September 15, 2009 letter to Ken Salazar, Senators Kyl, Reid, Ensign, Feinstein, and Boxer wrote:

“We have serious concerns about the recent practice of tribes and municipalities seeking advantageous gaming opportunities on lands that are not traditionally tribal lands. This is an abuse of the land into trust process and violates the spirit of the Indian Gaming Regulatory Act.”

8. More recently, Senator Feinstein wrote an editorial in the Contra Costa Times on November 27, 2010, in which she stated:

“I encourage local leaders across California to oppose these kinds of casinos. And I urge the U.S. Department of Interior to reject them. . . . As a former mayor, I know the financial pressures that local governments face . . . [b]ut I also know the heavy price that society pays for the siren song of gambling. This price includes addiction and crime, strained public services and increased traffic congestion.”

9. In relation to Measure U, Senator Feinstein released a statement on October 10, 2010 stating, "I'm opposed to Measure U because a casino for Richmond's Point Molate is just wrong. It's wrong for Richmond, wrong for the East Bay shoreline environment, and it sets the wrong precedent for our state when it comes to off-reservation gaming casinos."

10. It is unusual for members of Congress to weigh in on a specific development proposal or use. The concerns raised by these Senators demonstrate the heightened controversy surrounding allowing a large casino within the core area of the Bay Area and the City Council finds that it is appropriate to respect this strong dissent voiced by these congressional leaders.

Traffic Impacts

11. A large-scale Class III casino use would have significant environmental impacts that would not be associated with a non-gaming use. This is primarily due to the intensity of use generated by the only Class III casino located within the inner Bay Area. Upstream's proposed casino is projected to generate 6.25 million patrons annually and operate 24 hours a day/seven days a week. This intensity of use will generate significant traffic volume at a challenging location, immediately adjacent to the Richmond-San Rafael bridge toll plaza. This unprecedented intensity of use is primarily attributed to the casino component of the proposed project.

12. The existing traffic count at Point Molate's main gate is minimal at 503 trips/day. A mixed-use casino project is expected to generate in excess of 16,000 new vehicle trips on weekdays and over 22,000 new vehicle trips on Saturdays. In comparison, the FEIR found that Alternative D, the only non-casino development proposal, is expected to generate 8,385 new vehicle trips on weekdays and 8,572 new vehicle trips on Saturdays. Thus, a large, Class III casino can be expected to generate twice as many vehicle trips during the week and nearly three times the trips on a Saturday, when compared to a mixed use project that lacks a casino use. Traffic concerns are particularly heightened given the constrained nature of the Property with one access road and its location in close proximity to the Richmond-San Rafael bridge toll plaza.

Impacts to Historical Resources

13. Point Molate is home to the Winehaven National Register Historic District. It is in the City's strong interest to ensure that any adaptive reuse of the existing historic buildings is compatible with and does not undermine the integrity of the District.

14. A Class III casino use at this location, particularly one that includes associated amenities such as a large hotel and entertainment center, will have a significant adverse impact on the property's ability to convey its historic character. For instance, the Project proposed by Upstream will introduce several large, modern buildings and associated infrastructure to the project site, including a 160-foot high new casino hotel structure, a 105-foot high 275-room hotel and associated parking, and a "Retail Village" of 300,000 square feet parallel to the shoreline. The massing and proximity of these project components are incompatible with the character of the Historic District. The FEIR found that the scale of new construction associated with a large scale casino within the District could impact the integrity of the District and would be significant and unavoidable.

15. The FEIR concluded that each of the project alternatives that include Tribal gaming will result in significant and unavoidable adverse impacts related to cultural resources, due to the introduction of incompatible new construction in the Winehaven National Register Historic District. Tribal gaming alternatives (other than Alternative B1) will also result in significant and unavoidable impacts to Cultural Resources due to the proposed demolition of Building 6, a contributing structure to the Winehaven National Register Historic District.

Significant and Unavoidable Impacts

16. The FEIR found that project alternatives including a casino use will cause significant and unavoidable impacts to traffic and historic resources. Thus, ultimate project approval of a casino use will require a finding by the City that the project's benefits outweigh these significant impacts and that the impacts to traffic and the Historic District are "acceptable." However, for the reasons stated herein, including increased crime and the potential to have a negative economic impact, among others, the alleged "benefits" of a casino use do not support overriding these significant and unavoidable impacts.

Incompatible Land Use

17. The unique nature of the Point Molate site is incompatible with a casino use. Point Molate is the last large undeveloped headland on the San Francisco Bay. Its five miles of scenic shoreline include a tranquil beach, open space, historic buildings, and stunning views of San Francisco bay and Mt. Tamalpais. A casino use and associated development would have a substantial and adverse effect on the Point Molate scenic vista. New construction would include a casino, hotel, dining, conference, entertainment, and Tribal facilities, as well as a parking structure.

18. Further, the Bay Conservation and Development Commission ("BCDC"), the regulatory agency created by the Legislature to oversee development immediately adjacent to the Bay, has raised significant concerns that a large scale casino facility is incompatible with the site and will adversely affect residents' enjoyment of the Bay.

19. As proposed, the Point Molate casino would be the only Class III gaming facility in the Bay Area and one of the only such facilities in an urban setting in California. Point Molate is a unique place that would be degraded by such a use.

Local Opposition to a Casino Use

20. During hearings on the Project and EIR, opponents of Upstream's proposal raised numerous concerns with respect to allowing a casino use at Point Molate, including: the casino may largely profit from local residents and those profits will primarily be spent outside of the region; job prospects are not immediate and there is no assurance that long-term high-paying jobs will be provided to Richmond residents; local businesses will suffer when consumer spending shifts to the casino; studies evidence that casinos attract crime, drugs, prostitution, and property crimes to the surrounding communities; and, a casino use at Point Molate will result in traffic, pollution, social and economic damage. In the last six years, the City has received hundreds of letters – over 400 on the Draft EIR alone – the vast majority of which oppose allowing a casino use at Point Molate. Further, at the April 5, 2011 City Council hearing considering the continuation of the casino use,

testimony was provided by approximately 85 members of the public, of which approximately 65 were in favor of discontinuing consideration of the casino use.

21. The City Council placed Measure U on the November 2010 ballot, a non-binding advisory measure that asked whether the City should approve a casino development project at Point Molate. Measure U was soundly defeated – approximately 58.3% of Richmond voters voted against a casino use on Point Molate, with only 41.2% of voters in support of a casino use. As stated in Resolution No. 90-10, the Council placed Measure U on the ballot to “obtain additional community input concerning future uses at Point Molate . . . [to] be considered by the City, together with all the other environmental, economic and policy information in the record.” The City Council finds that the results of Measure U indicate strong community opposition to allowing a casino use at Point Molate and that it is appropriate to weigh this community input as a factor when deciding to discontinue to consider a casino use at Point Molate.

Adverse Socioeconomic Impacts

22. Although the EIR notes several economic benefits of a casino use, such as increased employment opportunities and wages, fiscal impacts, and demand for vacant housing, it also cites to numerous studies that evidence adverse socioeconomic impacts of casino gaming facilities on local communities. (Final EIR, Errata 13) Numerous commenters also noted that casinos create externalities that are difficult to quantify in economic terms as well as social costs. While casinos may create new jobs, the full economic impact of a casino on the local economy and community depends on various factors. The City Council is concerned that the casino will result in adverse socioeconomic impacts, many of which are difficult to quantify or predict with precision.

23. The City received more than 400 written and verbal comments on the Draft EIR, many of which discuss socioeconomic concerns, such as: increased service demand for child welfare and protective services, adult protective services, income maintenance, mental health, alcohol, drug, and tobacco and gambling addiction; the potential to cause urban decay; and a casino’s dependence on addicted or heavily-indebted citizens. The City Council shares many of these concerns and cites to the following factors and issues:

The Potential for Increased Crime Linked to a Casino

- National and state-wide studies have found significant increases in crime statistics in counties where casinos are located, with crime rates rising steadily for five years after a casino opens and then increasing substantially thereafter. (Mallach (2010), at 22; Grinols (2004), at 20, 28)
- On a national level, one study found that casino gambling generates externality costs of approximately \$40 billion annually, with crime comprising a large majority of these costs. (Grinols (2004), at 1)
- Some studies have found that casino use increases rates of rape, robbery, aggravated assault, burglary, larceny, and auto theft. One such study found that between 5.5 and 30 percent of crimes in casino counties can be attributed to casinos, with approximately 8.6 percent of property crime and 12.6 percent of violent crimes attributed to the presence of casinos. (Grinols (2004), at 28-29).

Local Spending May Not Produce Net Economic Benefits

- Studies have found that casinos that rely on a local market usually do not bring outside money to the economy through the spending of their guests. Rather, locally-marketed and locally-dependent casinos may produce no net economic benefits since local gamblers often substitute casino spending for other local goods and services. (Mallach (2010), at 10) In addition, large casino developments may minimize the growth of smaller local establishments and increase displacement. While it is possible that a significant portion of the visitors to a casino at Point Molate may come from outside the local market, that cannot be guaranteed and thus, there is a risk a casino may produce no net economic benefits.

- In addition, although local counties and municipalities may incur the greatest portion of economic and social costs of a new casino, states usually reap most of the generated tax revenues. (Mallach (2010), at 17)

Increased Problem Gamblers within the Community

- Literature shows that incidences of “problem” and “pathological” gambling, as defined in studies, rise with increased proximity to a casino. In one study, survey respondents who lived within 10 miles of a casino exhibited double the rate of problem and pathological gambling. (Abaris Group (2005), at 6) In addition, pathological gambling is found proportionally more often among young, less educated, minority, and poor populations. (Id.)
- Problem and pathological gamblers engage in behavior destructive to themselves and others, such as depression, abuse, divorce, homelessness, and suicide. (Abaris Group (2005), at 5; National Gaming Impact Study Commission (1999), at 4-1)

Higher Public Health and Social Services Costs

- Studies demonstrate that problem gambling has clear health-related affects. (Abaris Group (2005), at 8)
- A study of the impact on public health and social services of allowing a Class III casino to be established at the existing Casino San Pablo found that it will cost approximately \$4 million for added mental health, child welfare, child abuse and indigent emergency department cases, \$500,000 for a problem and pathological prevention program, and \$490,000 for a new ambulance. (Abaris Group (2005), at 2)
- While the City recognizes that the Municipal Services Agreement and Intergovernmental Agreement are intended to cover increased services caused by Upstream’s proposal, it is concerned that such funding will be inadequate and that the City will need to make up any shortfall.

Increased Rates of Personal Bankruptcy

- A number of studies have shown a statistically significant correlation between casinos and increases in personal bankruptcy rates in the nearby communities. (Mallach (2010), at 23; Abaris Group (2005), at 9)

Casino Taxes Disproportionally Affect Low Income Minority Households

- The literature is in wide agreement that casino taxes and revenue collection effects of casinos have a greater impact on lower-income, less educated, and minority individuals and households. (Mallach (2010), at 18; Abaris Group (2005), at 6; National Gaming Impact Study Commission (1999), at 4-1)

Increased Incidences of Spousal and Child Abuse

- Studies have attributed increased child abuse and domestic assaults to increase casino gambling. (Abaris Group (2005), at 8)

24. In addition to the above general socioeconomic concerns, the City of San Pablo has expressed concerns that a Class III casino at Point Molate would have significant impacts on San Pablo’s finances. Casino San Pablo is a Class II casino located within the City of San Pablo and is the only existing casino within the nine-county Bay Area. According to a September 18, 2009 letter from Leonard McNeil, former Mayor of San Pablo, San Pablo derives two-thirds of its annual General Fund budget from revenue generated by Casino San Pablo. In that letter, Mr. McNeil expressed serious concerns that Casino San Pablo could not compete or co-exist with a large Class III casino only 2.5 miles away, which would have grave consequences for the City of San Pablo’s finances. According to Mr. McNeil, the loss of this revenue could have extensive and significant

effects on San Pablo's ability to provide basic municipal services and the negative effects of such a result may spill over into the City of Richmond. (Letter from Leonard McNeil, former Mayor of San Pablo, Sept. 18, 2009)

Smoking

25. In 2008, California marked the 10-year anniversary of the full implementation of AB 13, the landmark statewide smoke-free law. Restaurants and most workplaces went smoke-free in January 1995, and bars followed suit in January 1998. California's smoke-free air law generally prohibits smoking in enclosed workplaces and public places, including restaurants and bars and non-tribal gaming clubs and casinos. California's smoke-free law not only protects employees and patrons from secondhand smoke, but it also has resulted in an overall reduction in the percentage of smokers in the state.

26. Despite the fact that the City of Richmond and State of California prohibit smoking inside public places, Native American tribal casinos are one of only a few places where smoking is still permitted indoors in California.

27. Even if the Project provides ventilation that complies with LEED standards and Upstream demonstrates that the ventilation adequately reduces health risks, residents will be exposed to pro-tobacco and pro-smoking behaviors, which will may lead to an increase in smoking rates. (Abaris Group (2005), at 10).

An Urban Casino Violates the Intent of Proposition 1A

28. Several public figures have commented that Proposition 1A was not intended to permit urban casinos. Former Governor Arnold Schwarzenegger publicly opposed the Point Molate Project in an October 2009 letter, claiming that it is contrary to the intent of the voters of the State and the State's policy regarding gaming. That letter stated that the Project violates the May 2005 gubernatorial Proclamation on Tribal Gaming, wherein the former Governor stated he will "oppose proposals for the federal acquisition of lands within any urbanized area where the lands sought to be acquired are to be used to conduct or facilitate gaming facilities." (Letter to Dale Morris and Mayor Gayle McLaughlin, Oct. 12, 2009) Further, the letter stated that allowing a Class III casino at Point Molate would violate the rationale behind California's Proposition 1A. Before Proposition 1A was ratified in 2000, California banned casino-style gaming in the state. Proposition 1A authorized the governor to negotiate gambling pacts that would make Nevada-style casinos possible for "federally recognized Indian tribes on Indian lands in California." Proposition 1A was "never intended to result in Indian gaming in urban locales" or to "expose the most populous areas of the State to the effects of casino-style gaming." (Id.)

Conclusion Regarding Findings for Determination to Discontinue to Consider a Casino Use

29. For the numerous reasons set forth herein and based on the entire administrative record, the City Council finds that a casino use at Point Molate would be detrimental to the general welfare of the citizens of Richmond and that future consideration for the planning and visioning of Point Molate shall not include a casino use.

Findings Regarding Section 2.8 of LDA

30. Section 2.8 of the LDA provides that if it is determined that an Indian gaming use is "not legally permitted," Upstream shall have a period not to exceed 120-days to negotiate exclusively and in good faith regarding a non-casino alternative proposal. The City Council finds that as a result of its determination to discontinue consideration of a casino use, Indian gaming is "not legally permitted" and the Section 2.8 alternative proposal process is triggered.

NOW, THEREFORE, BE IT RESOLVED that the City Council adopts this resolution to discontinue consideration of a casino use for Point Molate based on the findings herein and the whole administrative record.

The City Clerk shall certify to the adoption of this resolution, and thenceforth and thereafter the same shall be in full force and effect.

I hereby certify that the foregoing resolution was adopted by the City Council of the City of Richmond at a regular meeting held on April 5, 2011.

Ayes: Councilmembers Beckles, Booze, Ritterman, Vice Mayor Butt, and Mayor McLaughlin.

Noes: Councilmember Bates and Rogers.

Absent: None.

Abstain: None.

DIANE HOLMES
Clerk of the City of Richmond

(SEAL)

Approved:

GAYLE MCLAUGHLIN
Mayor

Approved as to form:

RANDY RIDDLE
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Resolution No. 23-11**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on April 5, 2011.