



# AGENDA REPORT

City Attorney's Office

<b>DATE:</b>	June 18, 2024
<b>TO:</b>	Mayor Martinez and Members of the City Council
<b>FROM:</b>	Dave Aleshire, City Attorney
<b>SUBJECT:</b>	Settlement Agreements with Point Molate Alliance and North Coast Rivers Alliance
<b>FINANCIAL IMPACT:</b>	\$1,225,000, payable in sixty (60) days funded from the Risk Management Insurance Reserve Fund - 5001
<b>PREVIOUS COUNCIL ACTION:</b>	September 8 and 15, 2020
<b>STATEMENT OF THE ISSUE:</b>	<p>In September 2020, the City Council certified a Subsequent Environmental Impact Report ("SEIR") and approved land use approvals for the Point Molate Mixed Use Project. Point Molate Alliance, et al. ("PMA") and North Coast Rivers Alliance, et al. ("NCRA") filed related Petitions for Writ of Mandate challenging the City's SEIR and land use approvals for the Project. After an appeal, the First District Court of Appeal issued a Final Opinion and Order on November 27, 2023. Consistent with the First District's Opinion and Order, the superior court on January 22, 2024, issued a judgment and peremptory writ of mandate directing the City to vacate its certification of the SEIR and approvals of the Project. As prevailing parties in the appeal, Petitioners PMA and NCRA in March and April 2024 filed and served motions to recover attorneys' fees and litigation expenses in connection with the consolidated CEQA cases. The parties have proposed to avoid the uncertainty and expense of litigation, and offered settlement of the attorneys' fees claims.</p>

<b>RECOMMENDED ACTION:</b>	APPROVE proposed agreements with Point Molate Alliance and North Coast Alliance to settle attorney fees claims in <i>North Coast Rivers Alliance v. City of Richmond</i> , Contra Costa Co. Sup. Ct. Case No. N20-1528 (Consolidated with Case No. N20-1474) for a total of settlement amount of \$1,225,000 – City Attorney’s Office (Dave Aleshire, 510-620-6509).
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**DISCUSSION:**

On or about September 8 and 15, 2020, the City Council adopted Resolution No. 97-20 and Ordinance Nos. 22-20 and 23-20, which together certified the Subsequent Environmental Impact Report (“SEIR”) in compliance with the California Environmental Quality Act (“CEQA”) and approved the land use approvals for the Point Molate Mixed Use Project (“Project”), consisting of a General Plan Amendment, Rezoning, Development Agreement, Design Guidelines, including a Master Planned Area Plan and Historic Conservation Plan, Vesting Tentative Tract Map, Conditional Use Permit, and Major Design Review (PLN20-057).

In October 2020, Point Molate Alliance (“PMA”), SPRAWLDEF, Citizens for East Shore Parks, North Coast Rivers Alliance (“NCRA”), and numerous other community groups and individuals filed two related Petitions for Writ of Mandate challenging the City’s September 2020 certification of the SEIR and land use approvals for the Project. While raising numerous claims, the Petitions’ primary causes of action asserted violations of the CEQA.

The Contra Costa Superior Court, on March 15, 2022, entered Judgment Denying the Petitions for Writ of Mandate in full. Petitioners PMA and NCRA filed notices of appeal to the First District Court of Appeal on March 21 and 23, 2022, respectively (Case Nos. A164906 and A165758).

The First District Court of Appeal issued a Final Opinion and Order Modifying Opinion and Denying Rehearing on November 27, 2023, finding the SEIR for the Project deficient in its analysis of mitigation measures addressing impacts to tribal cultural resources and emergency evacuation risks. After remittitur, the superior court on January 22, 2024, entered judgment and issued its peremptory writ of mandate directing the City to vacate its certification of the SEIR and approvals of the Project.

On March 21, 2024, PMA filed and served a motion to recover its attorneys’ fees and litigation expenses in connection with the CEQA litigation pursuant to Code of Civil Procedure section 1021.5. On April 14, 2024, NCRA filed and served a motion to recover its attorneys’ fees and litigation expenses. As successful parties in the litigation, PMA sought a total recovery of \$2,118,984 and NCRA sought \$678,795.94. The City disputes PMA’s and NCRA’s entitlement to attorneys’ fees in the amounts claimed, but the parties nevertheless desire to avoid the time and expense associated with contesting post-judgment motions.

The City, PMA, and NCRA propose to settle their claims for attorneys' fees related to the above-mentioned litigation actions under the terms specified in the attached draft Settlement Agreements (Attachments 1 and 2). Under the terms of the Agreements, the City would pay PMA \$825,000 and pay NCRA \$400,000, all within 60 days after the effective date of the respective Agreements.

As a consequence of this settlement, PMA and NCRA have agreed to withdraw their respective motions, request that the superior court vacate the hearing date on the motions, and release and forever discharge the City from all claims to attorneys' fees and related litigation expenses arising from or related to the two cases that have accrued through the effective date of their respective agreements.

Upon approval of the above-mentioned settlement, the City Attorney will file a Notice of Settlement of Petitioners' Motions for Attorneys' Fees with the Contra Costa County Superior Court, specifying the terms of the settlement.

**DOCUMENTS ATTACHED:**

Attachment 1 – Draft Point Molate Alliance and City of Richmond Agreement to Settle Attorneys' Fees

Attachment 2 – Draft North Coast Rivers Alliance and City of Richmond Agreement to Settle Attorneys' Fees