



City Attorney's Office

AGENDA REPORT

DATE:	July 12, 2024
TO:	Mayor Martinez and Members of the City Council
FROM:	David J. Aleshire, City Attorney
Subject:	Disposition of 81.56 acre Developable Property at former Point Molate Naval Facility by Letter of Intent
FINANCIAL IMPACT:	LOI relinquishes City's 50% share of sale proceeds under Amended Judgment, which may have a positive but unquantified impact on the Richmond General Fund, potentially relieving the City from substantial costs of maintenance and security as well as risks of liability. Maintenance and security services for up to one year after closing at a cost not to exceed \$400,000. This carries out Council direction on June 21, 2022.
PREVIOUS COUNCIL ACTION:	November 21, 2019: Adoption of Settlement Agreement (Amended Judgment) with Upstream and the Tribe; September 8 and 15, 2020: Entitlements granted – Winehaven Legacy; May 24, 2022: Council determined Winehaven had not met conditions to close; June 21, 2022: Council determined to sell to Tribe as directed by Amended Judgment; May 7, 2024: Council rescinded Winehaven entitlements pursuant to Court of Appeal Order.

<p>STATEMENT OF THE ISSUE:</p>	<p>The Settlement Agreement (Amended Judgment) ordered the sale of “Development Areas” constituting 30 percent of the land area of Point Molate. The Judgment states, “Development Areas” shall mean the four development areas shown on Figure 6, Land Use Areas, Point Molate Reuse Plan or any parcel subsequently designated or subdivided from those four Development Areas under Amended Judgment.</p> <p>First, the City and then the Tribe was given the opportunity to find a developer. In June 21, 2022, two years ago, when selling to the Tribe, the staff report made the following recommendation:</p> <p>“The City should initiate the process of determining if there is a public or nonprofit entity willing to accept conveyance of the open space and make a commitment to open it for public use, manage it and maintain it at no cost to the City of Richmond. At least three entities have expressed such interest (1) East Bay Regional Parks District, (2) John Muir Land Trust and (3) Trust for Public Land.”</p> <p>After some period of exploring possible developers, the Tribe focused on the East Bay Regional Park District (“District”) and the District obtained a commitment through Senator Skinner for a \$36M grant. Based on such commitment, the Parties being the District, Tribe, and City have negotiated the LOI. Ultimate action on the grant rests with the California Coastal Conservancy (“Conservancy”) and the LOI must be finalized before August 5 for the matter to be on the Conservancy agenda for their quarterly September 5, 2024, meeting.</p>
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<p>RECOMMENDED ACTION:</p>	<p>APPROVE entering into the LOI and execution by the Mayor with any final technical changes made by the City Attorney – City Attorney’s Office (David Aleshire 510-620-6509).</p>
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DISCUSSION:

This staff report provides a brief history of (i) the acquisition of the Point Molate Property, (ii) the lawsuit and settlement with Upstream and Guidiville Tribe pursuant to the Amended Judgment; (iii) the reasons the City did not close the sale to Winehaven Legacy LLC pursuant to the Disposition and Development Agreement; (iv) the directive of the Council on May 24, 2022, concurrent with the sale to the Tribe to find a non-profit entity for conveyance for park and open space; and (v) development of the LOI with the Tribe and District.

PROPERTY HISTORY

In 2003, the US Navy transferred that certain real property consisting of 270 acres of upland and

134 acres of tidal and submerged real property (“**Property**”) to the City of Richmond (“**City**”).

In 2004, the City and Guidiville Rancheria of California and Upstream Point Molate LLC (jointly “**Tribe/Upstream**” or “**Tribe**”) executed that certain Land Disposition Agreement which was subsequently amended (“**LDA**”). In 2012, Tribe/Upstream filed a lawsuit in Federal court against the City alleging, among other things, that the City breached that LDA and the covenant of good faith and fairly dealing and for unjust enrichment. In November of 2019, after 7 long years of expensive litigation, the lawsuit was finally amicably resolved by the parties pursuant to that certain “Amended Judgment” issued by the Federal Court (“**Amended Judgment**”). The Amended Judgment was entered by the Court on November 21, 2019, and is binding on the Property.

JUDGMENT REQUIREMENTS

The Amended Judgment mandates that 270 acres of upland area, thirty percent (30%) was to be “development areas” and seventy percent (70%) was to be open space. The Judgment also defines four (4) areas within the Property as “**Development Areas**.”

The City was provided with the opportunity to market the Development Areas with an outside sale date being the earlier of (i) 30 months from the Effective Date; or (ii) 24 months after issuing the last discretionary approval.

If the City successfully sold the Property, “net” revenues from the sale were to be split equally between (i) the City, and (ii) Tribe/Upstream. “Net” revenues are generally determined as the gross sales price less all costs incurred by the City with respect to the Sale.

If the City did **not** consummate the sale of the Development Areas by the Outside Sale Date, Tribe/Upstream had the option to acquire all or any portion of the Development Areas from the City for \$100 per Development Area (for a maximum amount of \$400).

If the Option is exercised by Tribe/Upstream, Tribe/Upstream must thereafter market and sell the Property within 5 years. Tribe/Upstream were allowed to pursue alternate development of the Property (or portions thereof) although new approvals would be subject to the City’s land use discretion.

Upon Tribe/Upstream ultimately selling the Property, Tribe/Upstream are obligated to transfer 50% of the Net Proceeds to the City.

The Amended Judgment provides for various reporting obligations of the Parties as well as auditing rights with respect to the calculation of the “Net Revenues.”

WINEHAVEN DDA

The principal goal of the Amended Judgment was to induce the sale of the Property, preferably to a capable developer, and use the proceeds to satisfy Tribe/Upstream claims. This occurred on September 30, 2020, when the City executed that certain Disposition and Development Agreement (“**DDA**”) with Winehaven Legacy, LLC (“**Developer**” or “**SunCal**” to avoid confusion with Winehaven district) for the sale of all the Development Areas for \$45M (“**SunCal Sale Price**”).

Concurrently with the DDA, the City and Developer also executed that certain Development Agreement dated October 20, 2020, which was recorded against the Property on October 23, 2020, as Instrument No. 2020-247749 in the Official Records of Contra Costa County. The proposed project anticipated 1,260 new residential units plus a mix of uses in rehabilitated historic buildings and 250,000 square feet of new construction in the Winehaven Historic District.

Pursuant to the Amended Judgment, the outside sale date for closing the sale to Developer was May 21, 2022.

Pursuant to the DDA, Developer was required to reimburse the City for all costs which it incurred including, but not limited to, attorney fees, reports, processing fees, etc. as set forth in the DDA (“**Reimbursement Amounts**”). It has not done so and is now a part of the current litigation between Developer and City.

DEVELOPER DEFAULT; GENERAL FUND IMPACT

The DDA included a tentative financing plan, which included the proposal for a Community Facilities District (CFD) to finance the extensive public facilities and services of police and fire needed for the development. The CFD was intended to prevent the Project from having an impact on the General Fund. Extensive finance projections and studies were prepared. The Developer made changes to try and eliminate the financial impact on the General Fund. On March 18, 2022, the City Council concluded the impact could not be eliminated and disapproved the CFD.

On May 9, 2022, City Attorney David Aleshire sent Developer a letter summarizing the pending issues required to be resolved prior to the Closing. Significant issues remained unresolved and ultimately, the City Council concluded that the developer did not have the financing to satisfy the conditions. Thereafter, under the Amended Judgment, the City Council proceeded to sell the property to Guidiville Tribe/Upstream through its entity Point Molate Futures (“**PMF**”). This sale of the 81.56 acres “Development Parcels” was consummated on August 29, 2022. (The City retains ownership of the open space – 70% of the site.) The Developer sought an injunction to block the sale but the Judge refused to grant it due to the fact the Developer was unlikely to succeed.

CEQA LITIGATION SUCCEEDS AND INVALIDATES DEVELOPER ENTITLEMENTS

In September, 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, Disposition and Development Agreement, 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 (the “**Entitlements**”).

In October 2020, Point Molate Alliance, SPRAWLDEF, Citizens for East Shore Parks, North Coast Rivers Alliance, 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. Raising numerous claims and causes of act, the Petitions asserted causes of action asserting violations of CEQA (the “**Alliance Litigation**”).

The Contra Costa Superior Court, on March 15, 2022, entered Judgment Denying the Petitions for Writ of Mandate in full. Petitioners Point Molate Alliance and North Coast Rivers Alliance, et al., 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, directing the trial court to enter a new judgment and issue a peremptory writ of mandate directing the City to set aside its certification of the final SEIR and the Entitlements.

In compliance with the Opinion and Order of the Court of Appeal, the Superior Court on January 22, 2024, entered a new Judgment and Writ of Mandate ordering the City to:

1. Set aside and vacate its approvals of the Project, including Resolution No. 97-20 and Ordinance Nos. 22-20 and 23-20 adopted on September 8 and 15, 2020, respectively.
2. Decertify the SEIR for the Project (SCH No. 2019070447) for the purpose of addressing the deficiencies identified in the Court of Appeal’s Opinion; and

3. File a Return to the Writ within 120 days of the Judgment, which Return shall specify the action(s) taken to comply with the terms of the Writ.

STATE OF CALIFORNIA PROVIDES CRITICAL ASSISTANCE

Once the Tribe acquired title through its wholly owned entity, PMF, it began a process of contacting various development entities, and the City received inquiries from these entities. The City also received inquiries from several non-profit entities consistent with the direction on June 21, 2022.

The inquiries seemed especially serious from the East Bay Regional Park District (“Park District”). The Park District is a system of beautiful parklands in Alameda and Contra Costa counties to the east of San Francisco. The system comprises 73 parks spanning across 126,809 acres; 1,330 miles of trails; 55 miles of shoreline. The Park District manages and preserves natural and cultural resources for all to enjoy and protect. The regional parks are ideal for healthful recreation and environmental education.

The possibility of the Park District acquiring the Property was greatly enhanced from the State’s actions when it was assured that \$36M was reserved in the State’s budget for acquisition and development under Senator Skinner’s SB 179.

The story of Pt. Molate has been a long and winding road with many peaks and valleys. Most importantly, the story of Pt Molate is a story of what grassroots action and coalition-building can accomplish and a tribute to decades-long advocacy for this world class park. As stated by Councilmember Gayle McLaughlin: “Twenty plus years of community organizing, continuously bringing to the forefront the hopes and dreams of our residents for a major park at Point Molate, have once again demonstrated that with hard work and perseverance, dreams can and do come true!”

With the extra incentive of the grant, eventually PMF decided to focus its negotiation with the Park District.

TERMS OF THE LOI

Of course, the most difficult issue was reaching an agreement on the purchase price. The 80-some acres controlled by the Tribe was split in half with about half originally planned for residential development (over 1,200 units) and the other half a part of the historic Winehaven district consisting of warehouses, navy facilities and cottage barracks. Initially, the Park District/PMF transaction envisioned the Park District acquiring only the undeveloped half, and PMF acquiring the historic Winehaven portion and developing that area in accordance with the Developer Entitlements.

However, two problems developed here. First, as reiterated above, the ongoing Alliance CEQA litigation against the SunCal Project, although failing at the Superior Court level, succeeded at the Court of Appeal where the City was ordered to rescind the Entitlements. This not only upset the Tribe development plans, it also potentially impacted the value of the Property.

Secondly, the Council vision for the Property while supportive of historic preservation on the Winehaven Parcels, did not support aggressive development of that Property. The City was never presented with a specific development plan by PMF.

Negotiations to resolve these issues led to major developments. Under the Amended Judgment and the SunCal Entitlements, the price of the property was \$45M of which the City and Tribe/Upstream would have shared equally or \$22.5M each. The Tribe proposed that in exchange for their giving up the right to independently develop the Winehaven Parcels, the split be altered from 50/50. Eventually, the proposal was that PMF receive 100% of the sale price.

The State required an independent appraisal to support the negotiated purchase price. Initially, only the undeveloped parcels were appraised at a value of some \$27M. The appraisal was revised when the Winehaven Parcels were included and came in at over \$50M based on the Entitlements. With this value, the Park District and Tribe reached a price of \$40M for the entire 80 acres, with the Park District adding its own \$4M to the State grant of \$36M.

With this background, other important terms of the LOI include the following:

1. Property. Park District acquires all Development Parcels including Winehaven.
2. Federal Judgment. At Closing, Federal Judgment is dissolved and of no further force and effect and all claims waived and released.
3. Due Diligence; Closing. Parties develop Purchase and Sale Agreement and perform due diligence with Closing before the end of the year.
4. Coastal Conservancy. The State agency must approve the transaction and authorize disbursement of \$36M by November 21, 2024, pursuant to SB 179.
5. Maintenance Agreement. City and Park District will enter maintenance/security agreement whereby City continues maintenance and security services for up to one year after Closing at a cost not to exceed \$400,000, to allow ramp up of District Services.
6. Remediation. Upon Closing Park District will be responsible for all ongoing environmental remediation activity, and City shall advance to Park District all remaining Navy funds set aside for such activity. City shall not be responsible for remediation of hazardous materials or for environmental conditions after District takes title.
7. Good Faith Deposit. District deposits \$1M into escrow within ten (10) days after execution with \$250,000 immediately released and non-refundable. The remainder non-refundable when (i) the State approves the appraisal, (ii) the District releases conditions, and (iii) Federal Court has motions to modify revenue split to become effective on Closing. Additionally, District must reimburse Tribe \$1M to pay legal expenses of transaction.
8. City District Cooperation. District with City Stakeholders (Richmond residents and those with long-time involvement with Point Molate) and City Staff and departments in project planning, and keeping them involved at key milestones.

Note: The City has been spending up to \$1 million annually on maintenance and security, including environmental remediation, at Pt. Molate. Other expenses have included preservation of historical structures. There is a current contract in that regard of \$450,000.

NEXT STEPS

The 3 parties by their boards, need to each approve the LOI. It is calendared for City special meeting on July 12 given the summer recess, and by the Park District for July 16. After those steps are taken, it then must go through the process of the California Coastal Conservancy.

The Coastal Conservancy meets five or six times a year at different locations around the state, with the upcoming meetings on September 5 and November 21. Notice and agendas are set 30 days in advance so for the September meeting it would be August 5. The Conservancy then needs several weeks in advance of the notice date to be able to have the appraisal reviewed. We therefore believe that the LOI needs to be approved by the bodies no later than the week of July 15-19 to make the September agenda.

Other considerations are that we want the transaction approved this year given the State's general budget situation and the possibility that monies can be clawed back. So we think the transaction is time sensitive for all of the Parties, which is why a special meeting is being called.

CONCLUSION

It has taken some remarkable events for this transaction to come together, considering the community activists and those dealing with the San Francisco Bay, its unique and world-famous locations and resources and how long this has taken. For several decades many have been consumed by trying to put together a formula for the preservation of Pt. Molate. The dedication of many to this mission is illustrated by the fate of some of the prior development proposals and by the State of California and Senator Skinner and others who advocated for the large infusion of resources when the need arose to acquire the Property from the Tribe for the general public benefit.

Point Molate has been called “the most beautiful part of San Francisco bay no one’s ever heard of.” We are now at the point where everyone throughout the Bay Area and beyond will come to know Richmond as home to an amazing world-class park at Pt. Molate.

In terms of the specific transaction, three different parties were involved with somewhat different objectives and the deal they have struck is as unique as they are. While the Tribe has been enamored with the potential of the site for some time, ultimately the State offer of funding created a pot large enough that the Tribe might give up its past efforts, coupled with the litigation which overturned the EIR and caused the rescission of the Entitlements. This could only be achieved through the City giving up its 50% interest created by the Federal Amended Judgment. The Park District was granted the funding to make it possible, but had to come up with additional funding—and it was their public purpose of park and open space, and their past regional actions which have created the culture to let them see the importance of this regional asset and utilize their unique ability to preserve it.

From the City’s standpoint, from the action two years ago to see that SunCal had not provided the financial resources required by the agreement, and facing criticism about not receiving the purchase price—and deciding on a course of conduct to solicit and appropriate a non-profit to be able to acquire the Property and permanently preserve it—in two years this vision has been realized. The City loses its half of purchase price, and is contributing \$400,000 towards first year of maintenance, but in exchange (i) is not responsible for future maintenance expenses of the development parcels; (ii) is not responsible for remediation after Closing—with costs not fully known at this time; (iii) has a knowledgeable and proven regional partner for development of 1st class recreation programs and a unique property; (iv) retains 70% of the site to work in conjunction with the Park District for a unique Bay Area project; and (v) through its stewardship has preserved for all Richmond residents and for all citizens in the Bay Area one of the most unique areas in the Bay for future generations. The further one gets from conservation acquisitions in US history, the more valuable they become as the benefit to future generations is everlasting —and that will surely be the case here.

DOCUMENTS ATTACHED:

Attachment 1 - Letter of Intent