



City Attorney's Office

# AGENDA REPORT

<b>DATE:</b>	August 26, 2025
<b>TO:</b>	Mayor Martinez and Members of the City Council
<b>FROM:</b>	David J. Aleshire, City Attorney
<b>Subject:</b>	Approval of Maintenance and Security Agreement at Point Molate between East Bay Regional Park District and the City of Richmond
<b>FINANCIAL IMPACT:</b>	The total General Fund cost to provide short term maintenance and security services for up to one year after closing will not exceed \$400,000. This carries out Council direction on July 12, 2024.
<b>PREVIOUS COUNCIL ACTION:</b>	November 21, 2019: Adoption of Settlement Agreement (Amended Judgment) with Upstream and the Tribe; September 8 and 15, 2020: Entitlements granted to 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to close; June 21, 2022: Council determined to sell to Tribe as directed by Amended Judgment; May 7, 2024: Council rescinded Winehaven entitlements pursuant to Court of Appeal Order. July 12, 2024 Council approved LOI with Tribe (Seller) and EBRPD (Buyer).

<p><b>STATEMENT OF THE ISSUE:</b></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. On June 21, 2022, three 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”). The District obtained a commitment through Senator Skinner for a \$36M grant. Based on such commitment, the Parties being the District, Tribe, and City negotiated a Letter of Intent (“LOI”) which was approved by the City Council on July 12, 2024. California State Coastal Conservancy (“Conservancy”) approved the funding and the Tribe and District approved a purchase and sale agreement with an expected escrow closing on August 22, 2025 or during the week of August 25, 2025. One of the terms of the LOI was for the City to provide maintenance and security services for the District for up to one year at a cost not exceeding \$400,000.</p>
<p><b>RECOMMENDED ACTION:</b></p>	<p>APPROVE entering into an Agreement for Short Term Maintenance and Security of Property at Point Molate with East Bay Regional Park District and allow for execution by the Mayor with any final technical changes made by the City Attorney - City Attorney's Office (Dave Aleshire 510-620-6509)</p>

**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; (v) development of the LOI with the Tribe and District, and (vi) now the successful negotiation of the Maintenance Agreement with District.

## **PROPERTY HISTORY**

In 2003, the US Navy transferred 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**"). Approximately 85% of the Property was transferred in 2003 and the remaining 41 acres were transferred in 2010. 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 fair dealing and for unjust enrichment. In November 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 mandated that 270 acres of upland area, thirty percent (30%) was to be "development areas" and seventy percent (70%, approximately 194 acres) was to be open space. The Judgment also defined four (4) areas within the Property as "**Development Areas**."

The City was provided 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).

When the Option was exercised by Tribe/Upstream, Tribe/Upstream was thereafter required to 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 were subject to the City's land use discretion.

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

## **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 1,452 new residential units plus a mix of uses in rehabilitated historic buildings and 250,000 square feet of new construction for mixed use development on the Property.

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 financial impact on the General Fund. On March 18, 2022, the City Council concluded the impact could not be eliminated and disapproved the CFD. 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 [194 acres] – 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 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 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 rescind the Pt. Molate entitlements; 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. PMF eventually decided to negotiate with the East Bay Regional Park District (“Park District” or “District”). The Park District is a system of parklands in Alameda and Contra Costa counties. 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 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.

## **TERMS OF THE LOI**

The LOI was a nonbinding statement of intentions among three parties. PMF or Tribe as Seller, the District as Buyer, and the City as a facilitator (giving up a financial interest and securing District as Operator of the Property).

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. City shall not be responsible for remediation of hazardous materials or for environmental conditions on the Property 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.

## **SALE OF PROPERTY TO DISTRICT**

The Tribe and District entered into extensive negotiations and concluded a Purchase Sale Agreement in October 2024, which was approved by California State Coastal Conservancy on November 21, 2024, then opened escrow and the transaction is expected to close on August 22, 2025.

## **MAINTENANCE AND SECURITY AGREEMENT**

The most significant unfulfilled term of the LOI is now the finalization of the Maintenance Security Agreement between the District and City, which is the subject of this proposed action. The principal terms of that Agreement are as follows:

1. City to pay for maintenance and site security for one year to a cost cap of \$400,000.
2. District to indemnify City for remediation of transferred property and receive remaining Navy funds which are likely insufficient. Transferred property includes Winehaven Historic.
3. No new contracts on Property other than the landscaping and security contracts. Those contractors will incorporate indemnities of the District at District expense.
4. Reciprocal license agreements to enter properties with notice and repairing any damage.
5. City maintenance standard will not exceed current standards but will mutually inspect property to see if improvements warranted with any upgrades paid for by District.
6. Reasonable measures to prevent dumping and regular removal of debris and trash.

7. Maintenance improvements including benches, tables, signage, etc.
8. Take all actions necessary to reduce the risk of fire and correct unsafe conditions.
9. Collaboration on a long-term maintenance agreement.
10. Removal of City property stored on Property.
11. Maintenance of City Insurance with District assuming insurance obligation thereafter.
12. Dispute resolution process.

All the foregoing suggests that the public entities will have to stay intimately involved for years to come to shepherd this property to realize its full public potential.

## **FUTURE ACTIONS**

Since June 21, 2022 tremendous progress has been made toward altering the future of the Pt. Molate Property, still significant decisions remain concerning the Property and the City. These include:

1. Remediation Plan. While formerly the City was responsible for the remediation efforts, with the sale to District, there is a need for a joint effort to pursue a remediation program, given the continued ownership of District and City. A critical component of this is for District to develop its park development plan so that the remediation standard can be developed.
2. Park Development Plan. The LOI provides some City participation, but the effort by the District is likely to take a year or more.
3. Winehaven Historic Preservation Issues. This becomes the responsibility of District, but the City's regulatory measures play into this.
4. Developer Litigation. While the City has initially prevailed on the basis of the entitlements being lost through litigation, the matter is on appeal.

## **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. It is not surprising how long this has taken. For several decades many have been consumed with 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.

## **DOCUMENTS ATTACHED:**

Attachment 1 - Agreement for Short Term Maintenance and Security of Property at Point Molate