



500 Capitol Mall, Suite 1600
Sacramento, California 95814
main 916.447.0700
fax 916.447.4781
www.stoel.com

TIMOTHY M. TAYLOR
tmtaylor@stoel.com

May 18, 2010

VIA FACSIMILE

Gayle McLaughlin, Mayor
City of Richmond
Mayor's Office
450 Civic Center Plaza
Richmond, CA 94804

City Council Members
City Council Chambers
Civic Center Campus
440 Civic Center Plaza
Richmond, CA 94804

Re: City Council Meeting of May 18, 2010, Agenda Items K-1 and K-2

Dear Mayor McLaughlin and Members of the City Council:

I write to you on behalf of my clients, Andres Soto and The Coalition to Save Point Molate (collectively, the "Coalition") concerning Agenda Items K-1 and K-2, scheduled for hearing during the May 18, 2010 City Council meeting. As you are aware, on behalf of the Coalition, this firm submitted extensive written commentary on the Point Molate Project Draft Environmental Impact Statement/Draft Environmental Impact Report ("DEIS/DEIR") on October 23, 2009. On behalf of the Coalition, this firm has been following the joint National Environmental Policy Act ("NEPA") and California Environmental Quality Act ("CEQA") review of the Point Molate Project.

I would like to state my full support for the Attorney General's December 15, 2009 assessment of the City of Richmond's rights and obligations under CEQA with respect to the Point Molate property in light of the Settlement Agreement in *Citizens for the East Shore State Park, et al. v. City of Richmond, et al.* ("Settlement Agreement"). My assessment of the Attorney General's analysis is based on my experience and knowledge after more than twenty years of CEQA litigation practice and sixteen years serving as a visiting professor of land use, CEQA and litigation.¹

¹ The letter was signed by Supervising Deputy Attorney General Janil Richards on behalf of the Attorney General, who also executed the Settlement Agreement on behalf of the Attorney General. The letter was executed in the same fashion as the Attorney General executes binding pleadings in litigation matters.



Mayor Gayle McLaughlin
Members of the City
May 18, 2010
Page 2

As the Attorney General correctly points out, the Settlement Agreement returns all parties to the *status quo ante* as if the Land Distribution Agreement of 2004 (“LDA”) had *never been approved or executed*. Thus, the City of Richmond has an absolute legal right to solicit project proposals from other developers for build-out on the property, or to pursue a plan for the property not previously considered.

The Attorney General specifically emphasized this right in the December 15, 2009 letter by commenting that the Settlement Agreement created a “blank slate” with respect to the property at Point Molate and the City’s ability to dispose of it by transferring it to entities other than Upstream LLC. In fact, as the May 4, 2010 email from the Attorney General’s office makes clear, interpreting the LDA as restricting the City’s ability to transfer the Point Molate property to any entity other than Upstream LLC would not only be inconsistent with CEQA, but would also be *in direct conflict* with the Settlement Agreement. As the Attorney General correctly instructs, such an interpretation *must be rejected*.

Through this letter I also ask, on behalf of the Coalition, that the City of Richmond immediately make all written comments submitted on the DEIS/DEIR available for public review. The fundamental purpose of CEQA is to ensure that members of the public are fully informed as to local agency actions having a physical effect on the environment. (Pub. Resources Code § 21000(e)-(g); 21002.1(e).) Making all written comments on the DEIS/DEIR publically available would advance the interests of CEQA by making Richmond residents more fully aware of the potential environmental impacts of the Point Molate Resort and Casino Project currently under consideration. Perhaps more importantly, there are no legal bases that support the City’s decision to maintain these particular items of correspondence outside of the public domain for literally months on end.

Thank you for your consideration.

Sincerely,

Timothy M. Taylor

TMT:eyh