

RESOLUTION NO. 90-10

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND,
CALIFORNIA, CALLING FOR AND GIVING NOTICE OF A SPECIAL ELECTION
TO BE ADDED TO THE STATEWIDE ELECTION ALREADY SET ON TUESDAY,
NOVEMBER 2, 2010, SEEKING ADDITIONAL PUBLIC INPUT IN A MANNER
CONSISTENT WITH THE CITY'S LEGAL OBLIGATIONS, AS PART OF AN
ADVISORY, NON BINDING VOTE ON WHETHER THE CITY SHOULD INCLUDE A
CASINO AS PART OF A PROJECT AT PT. MOLATE**

WHEREAS, On November 9, 2004, the City entered into a Land Disposition Agreement (“LDA”) with Upstream Pt. Molate LLC, a California limited liability company (“Upstream”) to sell and lease land previously owned and operated by the United States Department of the Navy as the Naval Fuel Depot, Pt. Molate (“Pt. Molate”). The LDA has subsequently been amended six (6) times, most recently on May 18, 2010(the “Sixth Amendment”).

WHEREAS, Upstream has made numerous financial payments to the City as non-refundable, earned consideration under Section 1.2 of the LDA, in order to keep Pt. Molate under exclusive contract with the City. Upon execution of the LDA, Upstream paid the City the sum of One Million Dollars (\$1,000,000.00) to keep the property under contract until January, 2006. In order to extend the closing for successive periods of one (1) year each, Upstream paid the City additional sums equal to Two Million Dollars (\$2,000,000.00) for the first one (1) year extension, Three Million Dollars (\$3,000,000.00) for the second one (1) year extension, Four Million Dollars (\$4,000,000.00) for the third one (1) year extension, and Five Million Dollars (\$5,000,000.00) for the final one (1) year extension, collectively, totaling Fifteen Million Dollars (\$15,000,000.00). In total, these extensions will have kept the property under contract for a period over more than six (6) years. Additionally, Upstream has reimbursed the City for certain legal, administrative and site maintenance costs.

WHEREAS, the term of the LDA currently runs through April 20, 2011 pursuant to the Sixth Amendment.

WHEREAS, the LDA contemplates that an Indian gaming casino may be considered by the City as a potential use for a portion of Pt. Molate under certain arrangements whereby Upstream would assign rights to acquire portions of Pt. Molate to a Native American Indian tribe. The LDA also contemplates arrangements without any casino uses at Pt. Molate. Consistent with Section 2.2 of the LDA, the City, as co-lead agency along with the Bureau of Indian Affairs (“BIA”), has undertaken the processing of environmental review under NEPA and CEQA, in the form of an EIR/EIS(the “EIR/EIS”) which analyzes gaming uses and non-gaming uses, as well as a No-Project alternative. The Draft EIR/EIS was circulated for public review on July 10, 2009, the public comment period ended on October 23, 2009, and responses to comments are being prepared by the environmental consultant retained by the BIA. The Final EIR/EIS may be considered by the City and the BIA in 2011, but a specific date for certification of the EIR and approval of the EIS/Record of Decision has not been established.

WHEREAS, Section 2.8 of the LDA recognizes that “uncertainty exists concerning the feasibility of developing Indian gaming uses on the Property due to a variety of federal, state and local permitting issues, federal land in trust issues, state compact issues and local City revenue sharing issues.” To date, a number of these uncertainties remain, as various permits and issues have not been obtained or resolved. However, no determination has been made under Section 2.8 concerning the development of Indian gaming uses on the Property, which determination would trigger good faith exclusive negotiations between the City and Upstream regarding a non-gaming alternative development proposal. Instead, consistent with the LDA, the City has, through numerous efforts identified herein, sought to obtain the public’s input concerning both gaming and non-gaming uses at Pt. Molate.

WHEREAS, consistent with the terms of the Sixth Amendment, the City Council authorized a community outreach process seeking additional public input and community based policy discussions on alternative projects at Pt. Molate, to be completed in advance of the City’s consideration of the Pt. Molate Final EIR and prior to expiration of the April 2011 extended LDA term.

WHEREAS, in addition to the understandings set forth in the LDA, in 2006, the City, Upstream, Harrah's Operating Company, Inc, Citizens for East Shore Park, the East Bay Regional Park District, and the Attorney General of the State of California entered into a certain Settlement Agreement dated January 23, 2006 (the "2006 CESP Settlement Agreement"). The purpose of the 2006 CESP Settlement Agreement was to ensure compliance with CEQA by agreeing to certain interpretations of the LDA. Among other things, the 2006 CESP Settlement Agreement confirmed that (1) the City retains full discretion when considering the project, (2) the exercise of its full discretion would not constitute a default by City under the LDA, and (3) if the City exercises its discretion to disapprove the casino proposal or an alternative proposal, its disapproval would neither be a default under the LDA nor entitle Upstream to a return of any of the non-refundable consideration.

WHEREAS, as of March, 2010 the City has now acquired from the Navy all portions of Pt. Molate it was seeking to obtain, including the final remaining portion consisting of approximately forty-one (41) acres, that was the subject of a certain Early Transfer Cooperative Agreement by and between the Navy and the City dated as of September, 2008.

WHEREAS, there has been considerable public discussion, debate and controversy concerning a casino use at Pt. Molate.

WHEREAS, the November 2, 2010 statewide election provides another opportunity for City, in addition to its pending community outreach process on alternate uses at Pt. Molate and in addition to public testimony and input to be obtained at future public Planning Commission and City Council hearings, to obtain additional community input concerning future uses at Pt. Molate. Consistent with the LDA and Settlement Agreement, and as provided by Elections Code Section 9603(c), the additional input obtained from a non-binding, advisory measure concerning casino uses at Pt. Molate could be considered by City, together with all the other environmental, economic and policy information in the record, prior to the City exercising its discretion concerning the ultimate uses at Pt. Molate. Elections Code Section 9603, applicable to advisory measures, provides that such matters are appropriate where general voter opinion is sought and where the results of the advisory vote will in no manner be controlling on the City.

WHEREAS, the submission of this purely advisory, non binding measure to the voters does not constitute any discretionary approval or a project under California Environmental Quality Act ("CEQA") Section 21065 or CEQA Guideline Section 15378.

NOW THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF RICHMOND, CALIFORNIA, AS FOLLOWS:

1. Pursuant to Elections Code Section 9603, there shall be and there is hereby called and ordered held in the City of Richmond, California, on Tuesday, the 2nd day of November, 2010, a special election (the "Special Election") and the City Clerk is hereby directed to submit this advisory measure to the qualified voters of the City of Richmond at that Special Election.
2. The City Council hereby declares its intent to consolidate the Special Election with the Statewide Election to be held on the date of the Special Election.
3. Pursuant to Elections Code Section 9603, the City Council hereby submits, as a non binding advisory measure, the following ballot heading and question to be submitted to the voters at the Special Election:

Advisory Vote Only:

"Shall the City of Richmond approve a project including a casino at Pt. Molate provided that this advisory measure is considered in a manner consistent with all the City's legal obligations?"

4. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law applicable to an advisory vote.
5. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed, and directed to sign and publish notice as required by law.

6. The City Council hereby directs the City Clerk to transmit a copy of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and transmit such impartial analysis to the City Clerk within ten (10) days of the adoption of this Resolution.
7. That the City Council directs the City Clerk to process submitted written ballot arguments for or against this advisory measure in accordance with the applicable provisions of the Elections Code.
8. That the City Clerk shall certify to the passage and adoption of this Resolution and enter into the original Resolutions.
9. The City Council directs the City Clerk to file a certified copy of this Resolution with the Registrar of Voters of Contra Costa County.

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BY ORDER OF THE CITY COUNCIL OF THE CITY OF RICHMOND

I certify that the foregoing resolution was passed and adopted by the Council of the City of Richmond at a regular meeting thereof held on July 20, 2010, by the following vote:

- AYES: Councilmembers Bates, Butt, Viramontes, Vice Mayor Ritterman, and Mayor McLaughlin.
- NOES: Councilmember Rogers.
- ABSTENTIONS: Councilmember Lopez.
- ABSENT: 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 90-10**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on July 27, 2010.