

Lawsuit Challenges Point Molate Casino

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Two environmental groups filed suit Monday in an effort to block construction of a casino resort and condo complex at Richmond's Point Molate.

Richmond attorney Stephan Volker filed the action in Contra Costa County Superior Court on behalf of Citizens for Eastshore State Park and the Sustainability, Parks, Recycling and Wildlife Legal Defense Fund (SPRAWLDEF).

The action seeks to block the plan backed by the Richmond City Council to allow a consortium of a corporation controlled by Berkeley developer James D. Levine, teamed with two Native American tribes, to build a massive gaming, hotel, shopping, entertainment and condo complex on a prime stretch of Richmond shoreline.

Named as defendants in the action are the city, the City Council, the Department of the Navy, the Guidiville Rancheria Band of Pomos, who would own the land as a reservation, and the Rumsey Band of Wintuns, who Levine and partner John Salmon have said would bankroll the project and run the extensive gambling operation.

Gambling giant Harrah's Entertainment withdrew as financial backer and was replaced by the Rumseys, who own and operate the Cache Creek Casino and resort in Yolo County.

All depends on a series of other approvals, including a decision by the Bureau of Indian Affairs (BIA) that would grant the land in trust as a reservation for the Guidiville Rancheria Band of Pomos, who also plan to build a tribal ceremonial center on the site.

If granted reservation status, the tribe must also gain approvals to operate a casino from the BIA and negotiate a gambling agreement with the state.

City failure?

The approval process that sparked the litigation is what Volker called "the City of Richmond's failure to prepare an environmental impact report on developing a mega-casino at Point Molate as required by the California environmental Quality Act (CEQA)."

The lawsuit charges that the city and the navy breached CEQA when they reached an early transfer agreement giving most of the site to the city, and again on Sept. 2, when the city and Upstream, Levine's company, signed a remediation agreement in which Upstream agreed to pay for the remaining cleanup or containment of hazardous materials remaining from the naval operations.

"My biggest concern is that the city is trying to get around what they had signed in the settlement agreement," said Norman La Force, president of SPRAWLDEF and a CESP board member.

But Levine said no CEQA agreement was required for either approval. In fact, he said, he has been in negotiations with both groups on a mitigation agreement that would provide for parks and open space elsewhere in the area.

"They told me that the statute of limitations on their chance to file an action was about to expire, so they filed to preserve their options in case we don't work out an agreement," Levine said.

But La Force said, "We could do a lot better than a casino at Point Molate," describing the Levine proposal

as “not appropriate, and one that will do a lot of harm to the community.”

“We want people to know beforehand all of the environmental and economic impacts,” he said. “Upstream and the tribe have made a lot of promises, but when you look at the history of urban casino gambling, these things don’t pan out.”

In the lawsuit, Volker charged that implementation of the cleanup agreement depends on funds from the Wintuns and essentially commits the city to the project.

Levine said the funding agreement didn’t constitute an action covered by CEQA and said the impacts will be addressed by an EIR prepared for the property transfer from the city to Upstream.

Last autumn the developer told a community oversight group that has been monitoring the navy cleanup effort that the combined state EIR and a federal environmental impact statement would be ready by December. He said Tuesday that the BIA is now on track to release the document next month.

Volker’s suit also alleges that the city’s approvals breached the Land Use and Open Space and Conservation elements of the Richmond General Plan as well as its zoning ordinance.

The suit also contends that the agreements breached a state government code section requiring that, before a city or county can hand over waterfront land to a developer, it must first make a finding that the land is not suitable for a public beach or park.

Earlier suit

Volker won another CEQA lawsuit against the city last year, overturning Richmond’s \$335 million agreement with a tribe that is planning a second casino in unincorporated North Richmond.

The city has appealed that ruling, issued Sept. 2, the same day the city approved the cleanup agreement with Levine for Point Molate.

The ruling by Contra Costa County Superior Court Judge Barbara Zuniga struck down the city agreement with developers on the grounds that the city hadn’t first conducted an EIR on the impacts of providing emergency services and roadway improvements for the Scotts Valley Pomos’ Sugar Bowl Casino, a much less lavish project without the hotels and condos of the Point Molate proposal.

The Sugar Bowl would be a \$200 million casino with 1,940 slot machines and a parking structure and lots to hold 3,500 cars.

The Point Molate resort would be much larger—a total of two million square feet of construction built at the cost of \$1.5 billion. The project also includes an upscale shopping center, deluxe hotel facilities, including private cottages, and a gambling resort in a restored Winehaven building, once California’s largest winery.

The project also calls for private condos, solar power, a biofueled ferry service—all creating what Levine said will be California’s greenest-ever major construction project.

Upstream team

Levine has two partners in Upstream Investments: former Secretary of Defense and Maine Sen. William Cohen, and Napa developer Salmon, former director of the Governor’s Office of Asset Management and, previously, vice president for property development and sales of Santa Fe Pacific Realty Corp., now known as Catellus Development.

Levine and Salmon have been partners in at least one other venture, Encapo Technologies, LLC, which patented a chemical process to trap heavy metals in soils so they can then be used for structural fill materials.

While Napa resident Salmon is an enthusiastic backer of a casino in Richmond, he played to anti-casino sentiments during a talk four years ago to Napa Rotarians, when he was reported as saying the Richmond casino was a good deal for the Napa Valley, because it would relieve pressure that might otherwise lead to a gambling spa in the heart of Wine Country.

According to the March 5, 2007, Napa Rotagram, Salmon told the club, "Pt. Molate will bear a likeness to Ghirardelli Square, and with its high-end qualities, will take the pressure off Napa and other North Bay locations that may face future casino proposals."

Point Molate was a U.S. Navy refueling station on the shoreline near the foot of the Richmond–San Rafael Bridge. Though the City of Richmond had bought the base for \$1 under terms of the federal Base Closure and Realignment Act of 1988, cleanup is still under way under the supervision of the navy, conducted by Levine's former firm, LFR Inc. (for Levine Fricke Recon) of Emeryville.

<http://www.berkeleydailyplanet.com/issue/2009-01-29/article/32111?headline=Lawsuit-Challenges-Point-Molate-Casino>