

August 12, 2019

Lina Velasco  
Director of Planning  
City of Richmond

**RE: Comment on NOP Dated July 12, 2019 Notice of Preparation of a SEIR for the Point Molate Mixed-Use Development Project**

Dear Mrs. Velasco,

Thank you for your diligence and leadership in managing the planning aspects around the Point Molate Mixed-Use Development Project. This project has a long and convoluted processes for which we have been involved since our organization formally formed in 2007. On behalf of Golden Hour Restoration Institute, I submit the following comments and thank you for helping guide a legal and equitable process review process.

Point Molate is an incredibly important location both for the City and in a much larger Bay Area context. The coastal resources provided by this 413-acre site are irreplaceable. The upland resources represent a matrix (or landscape) of ecosystems that have disappeared from the East Bay: streams running from ridgeline to bay waters, old growth Toyon woodlands, expansive eelgrass beds, and native coastal prairie. Although the entire site is not pristine, it is intact and functionally significant. We will never be able to create more of these type of places (such as the Point Molate project area), they will only continue to disappear.

**The NOP published on July 12, 2019 is out of compliance with CEQA guidelines and current case law. We recommend the City fulfills its requirements and completes a valid analysis of the newly presented project by initiating a new NOP which properly describes the new project.** The sooner the City comes to terms with these regulations, the sooner a proper and legal conversation about a "Point Molate project" can ensue.

**A NEW PROJECT REQUIRES A NEW EIR**

The NOP published on July 12, 2019 indicates that a Supplemental EIR (SEIR) is the only required review for the presented project. Unfortunately, this conclusion is in conflict with 14 CCR § 15162:

- (a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:
  - (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted...

Per § 15162(a)1 an increase in the number of housing units, rehabilitated WineHaven facility and commercial or mixed use is significant. This proposal isn't about a new drive or even a new building or two. The NOP has attempted to obfuscate the analysis by presenting a "mix-and-match" dataset in Tables 2 and 3. Once the reader cuts through the numbers, it is clear that building 860 *new (not previously reviewed)* dwelling units should constitute an entirely new project. **This increase of dwelling units, as presented in Table 3 of the NOP, represents a 253% increase in the dwelling units, almost quadrupling its impact and severity, triggering a new EIR review.** Even if the purported footprint is similar, the different land uses will have significantly and substantively different uses and requirements for nearly each section considered under CEQA (including but not limited to): air quality, biological resources, cultural resources, greenhouse gases, water quality, public services, noise, transportation, fire risk, and utilities to name a few.

Per § 15162(a)2 substantial project changes as to the circumstances of the FEIR (2011) are clear and evident. This project was heavily marketed as a project to benefit native peoples and "tribes". In the FEIR (2011) the word "tribe" or "tribes" is mentioned 33 times in 16 pages. It is clear this element of "tribe" is both central and integral to this project. Even "ALTERNATIVE D – NON-TRUST ACQUISITION WITH NONGAMING MIXED-USE DEVELOPMENT" notes that the first step in this process is "Sale of the Point Molate property to the Tribe/Upstream;" (FEIR, page 2-60).

We are repeating and highlighting the following text from the FEIR:

The approval of the Proposed Project would provide a Tribal land base for its members and establish a Tribal Headquarters from which its Tribal Government can operate to provide housing, health care and other governmental services, and from which it can conduct the economic development necessary to fund these Tribal Government services and provide employment opportunities for its members. The Proposed Action serves the needs of the BIA by advancing the agency's "Self Determination" policy of promoting the Tribe's self-governance capability. It serves the needs of the Tribe by promoting meaningful opportunities for economic development and self-sufficiency of the Tribe and its members, as well as satisfying some of the provisions of the *Scotts Valley et al. v. United States* decision.

Approval and construction of the Proposed Project would assist the Tribe in meeting the following specific objectives:

- Replace wrongfully terminated reservation lands, pursuant to a court approved stipulation in the *Scotts Valley et. al. v. United States* decision of September 6, 1991 (NO. C-86-3660-VRW);
- Improve the socioeconomic status of the Tribe by providing a revenue source that would be used

to: a) strengthen the Tribal Government, b) fund a variety of social, cultural, environmental, housing, governmental, administrative, educational, health and welfare services to improve the quality of life of Tribal members consistent with federal policy, and c) provide capital for future economic development and investment opportunities;

- Allow the Tribe to establish a foundation for economic self-sufficiency;
- Provide employment and business opportunities to the Tribal and non-Tribal community;
- Provide funding for local governmental agencies, programs, and services; and
- Make contributions to charitable organizations and governmental operations, including local educational institutions.

Materially the project lead is different due to this change because the removal of "Tribe" from this land transfer negates the cultural, restitution, and ethical dimension presented in the 2011 FEIR.

**The word "tribe" is mentioned zero (0) times in the 2019 NOP. The characterization of this project as beneficial and healing to native tribes clearly played a role in the EIR's certification. This has no such association/remediation with "tribes" therefore making this a different project.** The precedent this type of SEIR could set is harrowing. We hope the City will consider being sensitive and equitable to our First Nations people.

#### **NEW EVIDENCE AND RESEARCH REQUIRING A NEW EIR**

Per Per § 15162(a)3, the following is a brief list of new research and information that is sufficient to deem the current analysis as out-dated and out of compliance. In general, there is much more new evidence pointing to the need for a new review.

The soil remediation of the site has been ongoing. With its long history as a Naval Fuels Depot, numerous plumes and unexpected pollutants have been located. This new project seeks to move development and land movement activity into new areas. Because the lead remediation contractor noted in the certified EIR was also the lead developer, there are questions as to the validity of the remediation and the judgement calls that are made around clean-up. Currently, the lead remediation contractor and the lead developer do not seem to be the same entity. The remediation work needs formal peer review by disinterested parties. This work needs review in a new, separate EIR.

The Cosco Busan spill and other subsequent releases of petrochemical product have adversely impacted the Pacific herring population which NOAA has noted is the most important in California. New evidence summed up by the PEW Ocean Science (2013) *The State of the Science: Forage Fish in the California Current* states "The largest remaining California population, in urban San Francisco Bay, recently suffered effects of an oil spill (Incardona et al. 2012) presumably reducing already depressed numbers (CDFG 2012). Other historically large herring spawning populations in California, such as Tomales Bay, are also significantly reduced (Bartling 2006)." Herring fisheries impacts and impacts to Bay require reanalysis.

Climate change impacts to both the Bay and to terrestrial environments are more dramatic than expected and managing these impacts will be costlier than previously expected and present new challenges. A research article specifically analyzes the SF Bay area (Cloern et al. 2011). Shile et al. (2014) indicate how important it is to have coastal upland connections for future climate change: Point Molate is one of those such areas.

Osprey recolonization of the site is continuing. This is a significant new occurrence ecologically (pers. com. Golden Gate Audubon Society), with this representing arguably the most southern breeding population of this critical raptor. These birds are protected by a number of acts and laws, including the Migratory Bird Act, that deserve new consideration.

We thank you for your consideration of these comments and hope you will take proper legal steps to rectify the current project and documentation around it.

Sincerely,

Lech Naumovich  
Executive Director

## REFERENCES

Bartling, R. 2006. Pacific herring. Status of the Fisheries Report. California Department of Fish and Game.

California Department of Fish and Game. 2012. Final supplemental environmental document Pacific herring commercial fishing regulations. (Sections 163, 163.1, 163.5, and 164, Title 14, California Code of Regulations). SCH No. 98052052, State of California, Natural Resources Agency, Department of Fish and Game. Sacramento

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