

APPENDIX C
BCDC LETTER REGARDING NOP



Making San Francisco Bay Better

April 13, 2005

Barry Cromartie
City of Richmond
Planning Department
1401 Marina Way South
Richmond, California 94804

Subject: BCDC Inquiry File Nos. CC.PM.6901.1 and CC.NR.7314.1; Notice of Preparation, Draft Environmental Impact Report for the Point Molate Resort and Casino Project

Dear Mr. Cromartie:

Thank you for the opportunity to comment on the Notice of Preparation (NOP) for a Joint Draft Environmental Impact Report/Environmental Impact Statement (DEIR/S) for the Point Molate Resort and Casino Project. The NOP is dated March 15, 2005 and was received in our office on March 17, 2005. The Commission has not reviewed the NOP, so the following staff comments are based on the *San Francisco Bay Plan* and the McAtter-Petris Act and staff review of the NOP.

The project description on page 2 states, in part, that the project would include "development of an 182,000 ± square foot casino complex....The project also includes construction of up to four hotels (1,100 rooms maximum), business, conference and entertainment facilities. Approximately 3,400 parking spaces...with an additional 2,000 spaces in a second parking structure. The entire development will be built on land within the footprint of land previously used by the Navy. The project will provide extensive public transit, including on-site ferry service and linkages to public bus and BART systems."

The NOP identifies several potentially significant environmental impacts, which may come under the purview of the Commission, that should be evaluated in the draft DEIR/S, including land use consistency and compatibility, transportation and circulation, biological resources, hazardous materials, hydrology and water quality, cultural resources, and cumulative, short term and long term effects. In addition to those specifically identified in the NOP, the staff believes that certain additional effects should be carefully evaluated the DEIR/S, including the potential impairment of Bay views and views of the property, possible destruction or impairment of sensitive habitats and species, such as eel grass beds, and elimination of or interference with aquatic, and open space recreational uses.

Jurisdiction. The Commission has “Bay” jurisdiction over all areas of San Francisco Bay subject to tidal action, which is defined by the shoreline that extends up to mean high tide, except in marsh areas, where the shoreline is five feet above mean sea level. The Commission also has “shoreline band” jurisdiction over an area 100 feet wide lying inland and parallel to the shoreline. It appears that portions of the project would be within the Commission’s jurisdiction, particularly the San Pablo Point/Point Molate areas. It is unclear from the project description in the NOP which portions of the project would be located within the Commission’s jurisdiction. The DEIR/S should describe the Commission's jurisdiction on the project site and those project elements and proposed uses that would be located within the Commission's jurisdiction.

The *San Francisco Bay Plan* designates NFD Point Molate for waterfront park priority use. In park priority use areas, projects must be consistent with the Commission’s land use designation of the site for waterfront park use.

McAteer-Petris Act. Section 66605 of the McAteer-Petris Act states, in part, that “further filling of San Francisco Bay....should be authorized only when public benefits from fill clearly exceed public detriment from the loss of the water areas and should be limited to water-oriented uses (such as ports, water-related industry, airports, bridges, wildlife refuges, water-oriented recreation and public assembly,) or minor fill for improving shoreline appearance or public access to the Bay;...that fill in the Bay....for any purpose should be authorized only when no alternative upland location is available for such purposes; ...that the water area authorized to be filled should be the minimum necessary to achieve the purpose of the fill;...that the nature, location and extent of any fill should be such that it will minimize harmful effects to the Bay Area, such as, the reduction or impairment of the volume surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources, or other conditions impacting the environment, as defined in Section 21060.5 of the Public Resources Code. That fill should be authorized when the filling would, to the maximum extent feasible, establish a permanent shoreline....”

This authority limits the uses for which the Commission can authorize fills and requires that when fill is authorized, the amount is limited to the minimum amount necessary. The DEIR/S should discuss any new Bay fill proposed, and whether the fill would be for a water-oriented use identified in the McAteer-Petris Act, whether there is an alternative upland location, and whether it would be the minimum necessary, would minimize harmful effects to the Bay and establish a permanent shoreline.

Section 66602 of the McAteer-Petris Act states, in part, “that that existing public access to the shoreline and waters of the San Francisco Bay is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided.” The DEIR/S should evaluate whether the project would provide the maximum feasible public access consistent with the project. The analysis in the DEIR/S regarding public access should be based on the Commission’s *San Francisco Bay Plan* public access policies.

San Francisco Bay Plan Recreation Policies. The Bay Plan policies on recreation state, in part that...” [s]andy beaches should be preserved, enhanced, or restored for recreation

use, consistent with wildlife protection....In waterfront parks...To capitalize on the attractiveness of their bayfront location, parks should emphasize hiking, bicycling, riding trails, picnic facilities, viewpoints, beaches, and fishing facilities. Recreational facilities that do not need a waterfront location, e.g., golf courses and playing fields, should generally be placed inland, but may be permitted in shoreline areas if they are part of a park complex that is primarily devoted to water-oriented uses...Public launching facilities for a variety of boats and other water-oriented recreational craft, such as kayaks, canoes and sailboards, should be provided in waterfront parks where feasible....Limited commercial recreation facilities, such as small restaurants, should be permitted within waterfront parks provided they are clearly incidental to the park use, are in keeping with the basic character of the park, and do not obstruct public access to and enjoyment of the Bay. Limited commercial development may be appropriate (at the option of the park agency responsible) in all parks shown on the Plan maps except where there is a specific note to the contrary....Trails that can be used as components of the San Francisco Bay Trail...should be developed in waterfront parks. San Francisco Bay Trail segments should be located near the shoreline unless that alignment would have significant adverse effects on Bay resources; in this case, an alignment as near to the shore as possible, consistent with Bay resource protection, should be provided. Bay Area Ridge Trail segments should be developed in waterfront parks where the ridgeline is close to the Bay shoreline...Bus stops, kiosks and other facilities to accommodate public transit should be provided in waterfront parks to the maximum extent feasible. Public parking should be provided in a manner that does not diminish the park-like character of the site. Traffic demand management strategies and alternative transportation systems should be developed where appropriate to minimize the need for large parking lots and to ensure parking for recreation uses is sufficient...Interpretive information describing natural, historical and cultural resources should be provided in waterfront parks where feasible.

Former bayfront military installations designated for waterfront park use should be developed and managed for recreation uses to the maximum practicable extent consistent with the Bay Plan Map Policies and with all of the following:

- i. Physical and visual access corridors between inland public areas, vista points and the shoreline should be created, preserved or enhanced. Corridors for Bay-related wildlife should also be created, preserved and enhanced where needed and feasible.
- ii. Historic structures and districts listed on the National Register of Historic Places or California Registered Historic Landmarks should be preserved consistent with applicable state and federal Historic Preservation law and should be used consistent with the Bay Plan recreation policies. Public access to the exterior of these structures should be provided. Public access to the interiors of these structures should be provided where appropriate.
- iii. To assist in generating the revenue needed to preserve historic structures and develop and maintain park improvements and to achieve other important public

objectives, uses other than water-oriented recreation, commercial recreation and public assembly facilities may be authorized on former military installations designated on the Bay Plan maps for waterfront park uses only at locations identified in the Bay Plan map policies. Even at these designated locations, these other uses should be allowed only if they would: (1) not diminish recreation opportunities or the park-like character of the site; (2) preserve historic buildings where present for compatible new uses; and (3) not significantly, adversely affect the site's fish, other aquatic life and wildlife and their habitats."

Bay Plan Map Number 4 map policies that apply to Point Molate state that "**Naval Fuel Depot Point Molate** - Develop for park use. Landward of Western Drive should be developed consistent with recreation policy 5-c. Provide trail system linking shoreline park areas and vista points in hillside open space areas. Provide public access to historical district with interpretation of this resource. The Point Molate Pier should be re-used for water-oriented recreation and incidental commercial recreation. Encourage water-oriented recreation, including mooring facilities for transient recreational boats, excursion craft and small water craft. Protect existing eelgrass beds."

The DEIR/S should discuss the Commission's Bay Plan recreation policies as they apply to the project site, and evaluate whether the proposed casino and hotel development would be consistent with the Bay Plan recreation policies, and the designation of these sites for waterfront park use.

Bay Plan Policies on Public Access. The Commission can only approve a project within its jurisdiction if it provides maximum feasible public access, consistent with the project. The Bay Plan policies on public access state, in part that, "[i]n addition to the public access to the Bay provided by waterfront parks, beaches, marinas, and fishing piers, maximum feasible access to and along the waterfront and on any permitted fills should be provided in and through every new development in the Bay or on the shoreline....Whenever public access to the Bay is provided as a condition of development, on fill or on the shoreline, the access should be permanently guaranteed....Public access improvements provided as a condition of any approval should be consistent with the project and the physical environment, including protection of natural resources, and provide for the public's safety and convenience. The improvements should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline, should permit barrier-free access for the physically handicapped to the maximum feasible extent, should include an ongoing maintenance program, and should be identified with appropriate signs.....Access to the waterfront should be provided by walkways, trails, or other appropriate means and connect to the nearest public thoroughfare where convenient parking or public transportation may be available.... Public access should be sited, designed and managed to prevent significant adverse effects on wildlife. To the extent necessary to understand the potential effects of public access on wildlife, information on the species and habitats of a proposed project site should be provided, and the likely human use of the access area analyzed."

The DEIR/S should discuss whether project would provide the maximum feasible public access consistent with the project, based on the public access policies in the San

Francisco Bay Plan. The DEIR/S should discuss existing public access in the area, and whether the project would have impacts on any existing or potential future public access, such as the San Francisco Bay Trail Project.

San Francisco Bay Plan Policies Appearance Design and Scenic Views. The Bay Plan Policies on Appearance Design and Scenic Views state, in part, that “[a]ll bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay. Maximum efforts should be made to provide, enhance or preserve views of the Bay and shoreline, especially from public areas...Shoreline developments should be built in clusters, leaving open area around them to permit more frequent views of the Bay...Views of the Bay from...roads should be maintained by appropriate arrangements and heights of all developments and landscaping between the view areas and the water.”

The DEIR/S should discuss the effect, if any, the project would have on public views of the Bay. Also, the DDEIR/S should discuss the effects, if any, on views from the Bay to the project site.

San Francisco Bay Plan Safety of Fills Policies. The Bay Plan policies regarding safety of fills state, in part, that, “[e]ven if the Bay Plan indicates that a fill may be permissible, no fill or building should be constructed if hazards cannot be overcome adequately for the intended use in accordance with the criteria prescribed by the Engineering Criteria Review Board... The Commission has appointed the Engineering Criteria Review Board consisting of geologists, civil engineers specializing in geotechnical and coastal engineering, structural engineers, and architects competent to and adequately-empowered to (a) establish and revise safety criteria for Bay fills and structures thereon, (b) review all except minor projects for the adequacy of their specific safety provisions, and make recommendations concerning these provisions, (c) prescribe an inspection system to assure placement of fill according to approved designs...” The DEIR/S should discuss the safety measures that would be implemented to ensure that any proposed fill, particularly any seismic strengthening of the existing long wharf, would be consistent with the Bay Plan policies regarding the safety of fills.

San Francisco Bay Plan Water Quality Policies. The Bay Plan Policies regarding water quality state, in part, that “[w]ater quality in all parts of the Bay should be maintained at a level that will support and promote the beneficial uses of the Bay as identified in the Regional Water Quality Control Board’s Basin Plan. The policies, recommendations, decisions, advice and authority of the State Water Resources Control Board and the Regional Water Quality Control Board, should be the basis for carrying out the Commission’s water quality responsibilities.... Shoreline projects should be designed and constructed in a manner that reduces soil erosion and protects the Bay from increased sedimentation through the use of appropriate erosion control practices... Polluted runoff from projects should be controlled by the use of best management practices in order to protect the water quality and beneficial uses of the Bay, especially where water dispersion is poor and near shellfish beds and other significant biotic resources. Whenever possible, runoff discharge points should be located where the discharge will have the least impact. Approval of projects involving shoreline areas

polluted with hazardous substances should be conditioned so that they will not cause harm to the public or the beneficial uses of the Bay." The DEIR/S should discuss any potential water quality impacts from the project that may affect the Bay waters, and the discussion should address the relevant Bay Plan water quality policies.

San Francisco Bay Plan Dredging Policies. The Bay Plan Policies regarding water quality state, in part, that " [d]redging and dredged material disposal should be conducted in an environmentally and economically sound manner. Dredgers should reduce disposal in the Bay over time to achieve the LTMS goal of limiting in-Bay disposal volumes to a maximum of one million cubic yards per year. The LTMS agencies should implement a system of disposal allotments to individual dredgers to achieve this goal only if voluntary efforts are not effective in reaching the LTMS goal... Dredging should be authorized when the Commission can find: (a) the applicant has demonstrated that the dredging is needed to serve a water-oriented use or other important public purpose, such as navigational safety; (b) the materials to be dredged meet the water quality requirements of the San Francisco Bay Regional Water Quality Control Board; (c) important fisheries and Bay natural resources would be protected through seasonal restrictions established by the California Department of Fish and Game, the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service, or through other appropriate measures; (d) the siting and design of the project will result in the minimum dredging volume necessary for the project; Dredged materials should, if feasible, be reused or disposed outside the Commission's Bay and certain waterway jurisdictions. Except when reused in an approved fill project, dredged material should not be disposed in the Commission's Bay and certain waterway jurisdiction unless disposal outside these areas is infeasible and the Commission finds: (a) the volume to be disposed is consistent with applicable dredger disposal allocations and disposal site limits adopted by the Commission by regulation; (b) disposal would be at a site designated by the Commission; (c) the quality of the material disposed of is consistent with the advice of the San Francisco Bay Regional Water Quality Control Board and the inter-agency Dredged Material Management Office (DMMO); and (d) the period of disposal is consistent with the advice of the California Department of Fish and Game, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service."

If dredging is necessary to support proposed water transit uses at the site or for any other aspects of the project, the DEIR/S should evaluate whether the project would be consistent with the Commission's dredging policies.

San Francisco Bay Plan Fish, Other Aquatic Organisms and Wildlife Policies. The Bay Plan Policies regarding fish, other aquatic organisms and wildlife state, in part, that "to assure the benefits of fish, other aquatic organisms and wildlife for future generations , to the greatest extent feasible, the Bay's tidal marshes, tidal flats, and subtidal habitat should be conserved, restored and increased.... Specific habitats that are needed to conserve, increase or prevent the extinction of any native species, species threatened or endangered, species that the California Department of Fish and Game has determined are candidates for listing as endangered or threatened under the California Endangered Species Act, or any species that provides substantial public benefits, should be protected, whether in the Bay or behind dikes."

The NOP states that “[t]he EIR will analyze the project’s short term (construction) as well as long term impacts on the waters of the U.S and other biological resources.” The DEIR/S should include in this analysis, a discussion of the consistency of the project with the Commission’s Bay Plan fish, other aquatic organisms and wildlife policies.

Existing BCDC Permits. The DEIR/S should discuss the effects the project would have on existing public access required by the Commission in this area. The Commission issued Permit No. M90-3 that requires shoreline public access in the project area. The draft DEIR/S should evaluate whether the project would impact this required public access area.

Thank you for the opportunity to comment on the NOP for the Preparation of an Environmental Impact Report for the Point Molate Resort and Casino project. If you have any questions regarding this letter, or any other matter, please do not hesitate to contact me by phone at 415 352-3656 or email joel@bcdc.ca.gov.

Sincerely,

JOSEPH LaCLAIR
Senior Planner

JL/ec

cc: Carrie Hall, OCRM
Christine Boschen, RWQCB
Sandra Ikuta, Resources Agency
Janielle Jenkins, Office of the Governor
Sara Drake, Deputy Attorney General
Terry Roberts, Director, State Clearinghouse
and Planning Unit
Andrea Gaut, BCDC

