

The Future of Point Molate – A Critical Analysis of Political Options

Tom Butt, Richmond City Council Member



Updated 11/5/2004

Introduction

Although not verified, the information I have is that the disposition of Point Molate will be on the November 9, 2004, City Council agenda. At this point, there are two offers being considered, one from Upstream Point Molate LLC and one from ChevronTexaco. The previous Exclusive Right to Negotiate (ERN) with Upstream has expired, and the City of Richmond is free to negotiate and contract with anyone.

Both Upstream and ChevronTexaco continue to run public relations campaigns in support of their proposals. Both organizations have been running full page ads in the *San Francisco Chronicle* and the *West County Times* in recent days. Both ads refer readers to websites that purport to have additional information, but what is presented is actually meager. The Upstream ads, paid for by Harrah's Operating Company, Inc., reference www.richmondsfuture.org, and invite readers to call 439-2758 for more information. The ChevronTexaco ads are paid for by "ChevronTexaco, a member of the Coalition to Preserve Point Molate," with a website at www.preservepointmolate.org.

Upstream Proposal

The latest known iteration of the proposed Land Development Agreement (LDA) with Upstream can be found at <http://www.ci.richmond.ca.us/press.htm>. The Upstream LDA is essentially an option agreement that allows Upstream, or its designee (presumably an Indian tribe), to assume ownership within the next five years with payments of \$1 million annually to the City as consideration for the option. The LDA envisions eventual ownership vesting in the U.S. Department of the Interior, which would hold the land in trust for the Guidiville band of Pomo Indians of the Guidiville Rancheria.

The purchase price is \$20 million in cash (including the option payments) and \$30 million in notes paid with interest over 20 years. In addition, there would be annual service fees and community benefit payments to the City of an estimated \$10 million to \$20 million annually.

ChevronTexaco Proposal

A summary of the most recent proposal from ChevronTexaco is shown below:

1. Chevron will pay the City of Richmond \$50,000,000 for Point Molate. Chevron will pay this sum as early as December 23, 2004. Chevron's offer is essentially non-contingent;
2. Within ten days of the execution of the Agreement, Chevron will pay the City of Richmond the non-refundable sum of \$5,000,000 to fund jobs. The City will maintain complete and unfettered discretion over how this money is to be used;
3. Chevron will agree to a special tax assessment of \$1,000,000 per year for 25 years. The money will be placed into the City's general fund for use as the City may deem appropriate;
4. Chevron will establish an account for \$1,000,000 to be used immediately for the development of a comprehensive land use plan, in concert with the City and other interested parties, that incorporates the light industrial and support commercial elements of the Navy's Reuse Plan for Point Molate, public open space, recreational uses, and historic preservation;
5. Chevron will establish an account for \$2,000,000 (funded by five annual payments of \$400,000 each) to be used for the development, construction and maintenance of a shoreline park and trail system;
6. Chevron will make available land that it currently owns that is adjacent to Point Molate for shoreline trail;
7. Chevron will take the Point Molate property "as is" and will pay regardless of whether the 51 acres currently under remediation by the Navy are available at the close of escrow. If these 51 acres are not ultimately conveyed to Chevron by 2011, the City will agree to partially refund the pro-rata portion of the purchase price attributable to this acreage (calculated by taking the total landed acreage and dividing by the portion of acreage not conveyed by that date). In no event will the City be required to refund any time value or interest payment on this money, effectively providing the City with a seven year interest free loan;
8. Chevron will accept a lease of shoreline property from the City; and
9. Chevron will make available to the City for long term lease a valuable 25 acre commercial/industrial property currently owned by Chevron.



Figure 1

The previously developed areas of Point Molate include the historic Winehaven Village (left) and the paved area at the head of the pier. Western Drive runs left to right through the middle of the photo. Roads on the hills behind were previously used to service underground fuel storage tanks.

Open Space

Based on the phone calls and email I continue to receive, the public continues to perceive the ChevronTexaco proposal somehow superior to the Upstream proposal in the preservation of open space. Based on information provided by both proposers to date, this is simply not true. The Upstream proposal commits to both a shoreline park and upland open space, and commits to pay the full cost for its development and maintenance as well as making it available for public use. ChevronTexaco, on the other hand, commits only to a limit of \$2 million for “the development, construction and maintenance of a shoreline park and trail system,” which is unidentified by size or location. ChevronTexaco is completely silent on the fate of the approximately 191 acres of upland open space identified in the Reuse Plan, but the presumption is that it will be unavailable for public use in perpetuity.

The Upstream LDA dedicates approximately 33 acres of shoreline and 150 acres of upland for perpetual public use, maintained at the cost of the developer. This is still slightly short of the allocations in the Reuse Plan. The remaining 88 acres of development will take place either in the existing historic Winehaven buildings or on sites that were already developed by the Navy for various purposes (Figures 1 and 5). Neither the Reuse Plan nor the Upstream plan calls for developing pristine, or even substantially degraded existing open space. The proportion of open space to development in the Upstream LDA is only 7% larger than that in the Reuse Plan (Table1).



Figure 6
Site Plan of Upstream project proposal for Point Molate (Exhibit G to LDA)

Table 1
Comparison of Point Molate Land Use in Various Documents

	Reuse Plan	EIS/EIR	Upstream Draft LDA	FOST
Submerged Land	130 ¹	100 ²	134 ³	134 ⁴
Dry Land	275 ⁵ or 285 ⁶	313 ⁷	271 ⁸	279 ⁹
Developable Land	78 ¹⁰	35 - 88 ¹¹	88 ¹²	
Open Space/Park	191 ¹³	225-278 ¹⁴	Approximately 183 ¹⁵	
Total Area	415 ¹⁶	413 ¹⁷	405 ¹⁸	413 ¹⁹

¹ Reuse Plan, page II-6

² EIS/EIR Table ES-1, page ES-9

³ LDA, page 1, 2nd paragraph

⁴ FOST 1.0, page 1

⁵ Reuse Plan, Table 2, page I-31/32

⁶ Reuse Plan, page II-6

⁷ EIS/EIR Table ES-1, page ES-9

⁸ LDA, page 1, 2nd paragraph (220 acres already conveyed + 51 remaining to be conveyed)

⁹ FOST 1.0, page 1 (413 acres total – 230 upland conveyed – 134 submerged conveyed)

¹⁰ Reuse Plan, page II-6

¹¹ EIS/EIR Table ES-1, page ES-9

¹² 271 dry land less 183 open space/park

¹³ Reuse Plan, page II-6

¹⁴ EIS/EIR Table ES-1, page ES-9

¹⁵ LDA, Exhibit H, page -2

¹⁶ Reuse Plan, page II-6

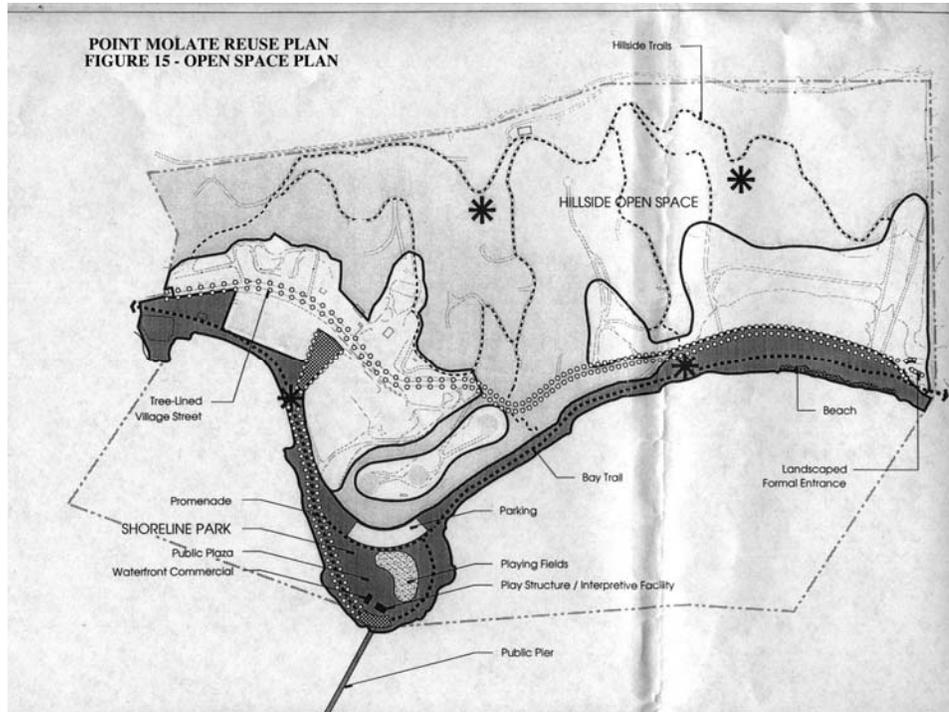


Figure 2
Land use diagram from the Reuse Plan shows the Shoreline Park (darkest) and the Hillside Open Space (shaded) with development areas in between. Winehaven Village is at the left.

Table 2
Open Space Breakdown from Reuse Plan

Hillside Open Space	156
Shoreline Open Space	14.4
Shoreline Park ²⁰	20.9
Total Shoreline Open Space	35.3

Winehaven

Winehaven is a historic district consisting of 71 acres and 35 buildings listed on the National Register of Historic Places. The Upstream proposal commits to rehabilitation and adaptive reuse of the historic Winehaven complex in accordance with the *Secretary of the Interior's Standards*. ChevronTexaco commits only to fund a land use plan that includes Winehaven.

¹⁷ EIS/EIR Table ES-1, page ES-9

¹⁸ LDA, page 1, 2nd paragraph (220 upland + 134 tidal and submerged + 51 remaining to be conveyed). However, 1.1 of Exhibit E states "approximately 415 acres."

¹⁹ FOST 1.0, page 1

²⁰ However, Reuse Plan page I-47, Section 7.a., paragraph one states:

"The proposed Shoreline Park, approximately 40 acres in size, is a strip at least 100 feet in width running along the entire length of the waterfront, a total of 1.4 miles."

Jobs and Economic Development

Upstream projects thousands of jobs and substantial economic development with a combination of taxes and “payment in lieu of taxes” (PILOT) to the City of Richmond. ChevronTexaco commits to \$5 million to “fund jobs” and to “make available to the City for long term lease a valuable 25 acre commercial/industrial property currently owned by Chevron.” The source of the “jobs” and the location and lease terms of the “commercial/industrial property” are not identified.



Figure 3
The Chevron initial proposal shows the entire area west of Western Drive as “shoreline park and open space” but does not provide any detail as to what is proposed for the Winehaven Village

Cleanup

The Navy’s current commitment is to complete the cleanup of the remaining 15% of Point Molate land area remaining un-transferred by 2009. Upstream commits to clean it up in “less than three years.” ChevronTexaco makes no commitment to cleanup.

Sustainable Income

The Upstream proposal anticipates some \$400 million in revenue for the City of Richmond over the next 20 years, while the ChevronTexaco proposal commits \$25 million “in new taxes” over the next 25 years.



Figure 4

Upstream proposal shows preservation and adaptive reuse of the Winehaven Village and new development between Western Drive and the Shoreline park in locations previously used by Navy. Location of Hillside Open Space is approximately the same as the Reuse Plan.

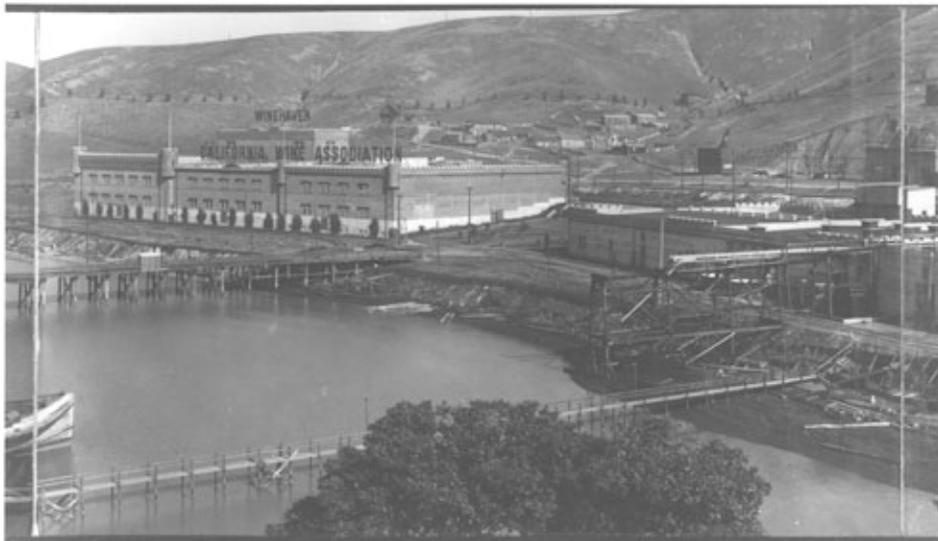


Figure 5

Winehaven in its heyday was a bustling industrial company town served by multiple piers, a railroad and a road.

Market Value of Point Molate

What is Point Molate actually worth? Some people claim it is being considered for sale at less than its true market value. The portion of the property reserved for open space and/or public use essentially has no monetary value to the City of Richmond. In fact, it may have a negative value if a developer is required to improve and maintain it.

The 88 developable acres in the Upstream proposal are constrained and restricted in several respects. Perhaps most importantly in today's red-hot residential economy, housing is not a readily available option due to deed restrictions from the Navy and conclusions in the EIS/EIR related to proximity to the ammonia release ARS in the Chevron RMP. The other major constraint is the lack of utility infrastructure, the cost of which was estimated at \$18.4 million in a 1999 Utility Master Plan Capital Improvement study. Comparable commercial and light industrial property in West Contra Costa County has recently been selling in the range of \$8 to \$10 per square foot, or \$348,480 to \$435,600/acre. That would give the developable portion of Point Molate a market value of between \$30.6 million and \$38.3 million. From that would have to be deducted the cost of infrastructure required to make it equally functional to comparable property. Since some of the \$18.4 million infrastructure cost projected in 1999 is for on-site utilities that would also be required for comparable property, the figure of \$10 million at full development would be a reasonable assumption. That would give Point Molate a residual value of \$21million to \$28 million.

There is potentially a \$5 million to \$10 million Historic Preservation Tax Credit opportunity for the developer that may or may not translate into increased value, but it certainly would enhance the attractiveness of a project, since the rehabilitation of the historic Winehaven buildings would have to follow the Secretary of the Interior's Standards in any event.

Interestingly, the original response to the RFP by Upstream Investments in July, 2003, projected an "as-is" value of \$5 million. Whether \$5 million, \$21 million or \$38 million, the enhancement of gaming has boosted the value to at least \$50 million, with lucrative additional annual payments of millions of dollars.

The Comparable Land Sales analysis provided by the City of Richmond in a PowerPoint presentation entitled "Point Molate Land and Services Analysis" is erroneous and misleading. For example, it discusses a 28 acre parcel on the Richmond Parkway and Parr Boulevard acquired for the Scotts Valley tribe at a cost of \$4.00/squre foot. In fact, the parcel is only about 30 aces, and the acquisition cost ranged from a low of \$6.25/SF to a high of \$18.85/SF, with the average being about \$8.68/SF. Other comparables are inaccurate, and some of the best comparables, such as the Regatta parcel recently acquired by legacy (\$7.50/SF) and the Zeneca parcel (\$10-\$15/SF), were ignored.

Positive and Negative Social and Economic Impacts

The Gaming Market Assessment, Economic and Social Impact Study commissioned by the City and completed in June 2003, concluded that a generic casino in Richmond would generate \$400 million in gaming revenue plus \$366 million in new non-gaming revenues, \$126 million in new income and 4,462 new jobs. A casino would reduce local unemployment and dependence on social welfare programs while increasing problems related to problematic or pathological gaming, including largely speculative minor increases in suicide, divorce and homelessness. Increased traffic is another negative impact. Studies tend to show that casinos do not result in increased crime.

Public Opinion

In the last few weeks, I have received hundreds of letters, phone calls and emails from people identifying themselves as Richmond residents. The trend is about ten to one against a project incorporating a casino at Point Molate. Most appear to have followed up on some communication from an advocacy group or paid lobbying effort, and many do not appear to have a clear understanding of the details of the proposed project or the LDA agreement. Cited most frequently by those opposed to a casino are traffic, crime and other social impacts, need for parks and open space and a moral or religious-based opposition to a gaming operation in Richmond. My perception is that the most resistance comes from residents in Point Richmond and Marina Bay, areas that would be most affected by traffic congestion and other adverse impacts related to proximity. Those further away appear to be more receptive because they anticipate increased revenue to the City would be used to improve services and infrastructure in their neighborhoods.



Figure 7

The Upstream proposal would rehabilitate the historic Winehaven complex, also known as Point Molate Village, for adaptive reuse as part of the destination resort. The ChevronTexaco proposal included no specific plans for Winehaven. Tax credits could be worth \$5 to \$10 million.

Both Upstream and ChevronTexaco have conducted extensive polling, each of which purports to evidence public support for the project sponsored by the organization paying for the polling.

Evaluation of the Upstream LDA

Although the second (and current) draft incorporates a number of revisions that address previous concerns and questions, there remain a number of areas where the Upstream LDA could be improved. These are detailed in Table 3.

The numbers in the Upstream LDA are impressive at first, but there are also substantial risks. The City could sit on the property for as long as five years with no net revenue, no jobs and no public access. Many credible sources assess the chances of a gaming compact at Point Molate at 5% to 50% at best.

Congressman Miller, Assemblywoman Hancock and Supervisor Gioia are all skeptical that the deal will ultimately be concluded successfully.

There is no clear and detailed analysis as to how the annual service and community benefit payments were calculated, whether or not they reflect taxes that would otherwise be paid, and what the net revenue to the City would be after contractual and projected increased service costs are accounted for.

Table 3
Revisions recommended for Upstream LDA

LDA Provision	Potential Problems	Recommended LDA Improvements
<p>1.1(c) provides for a lease to the developer of the shoreline and requires the developer to provide the City with a permanent conservation easement to assure open space and public access and requires the developer to construct and maintain the Bay Trail to accepted standards and to repair and maintain shoreline riprap. City reserves right to determine form and type of conservation easement.</p> <p>Exhibit E, 5.6 requires the Tribe to adopt laws that provide for the Tribe to maintain, at its expense, the Shoreline Parcel and Hillside Open Space.</p>	<ul style="list-style-type: none"> Does not require construction of shoreline park other than Bay Trail Opening of shoreline and Bay Trail could be delayed until 2010 	<ul style="list-style-type: none"> Make it clear that the developer/Tribe must design improvements, construct and maintain both the Shoreline Park (including the Bay Trail) and the Hillside Open Space. The option time should be accelerated.
<p>1.2 Closing shall occur on or before January 2006, but may be extended up to four 12-month periods, until January 15, 2010. Initial consideration and additional consideration at extensions is \$1 million.</p>	<ul style="list-style-type: none"> The reason cited for the need to execute the LDA immediately is to take advantage of what has been characterized as a relatively small window of opportunity to receive a compact from the governor, have it approved by the legislature and receive BIA approval. On the other hand, the need for a five-year window has been justified as the time required process all approvals and entitlements. Either this project is on a fast track, or it is not. The LDA has it both ways. Upstream has no "Plan B." The City has prepared no budget for maintenance prior to closing, but in previous years when the Navy paid the City to maintain the property, the budget was nearly \$1 million. 	<ul style="list-style-type: none"> The five-year option period should be broken down into segments: one year for the compact and BIA approval, another year for EIS/EIR. If substantial progress has not been made in accordance with the timetable, the option should close. Upstream should be required to outline a "Plan B" that will prevail if the casino option doesn't come through. The City needs a maintenance budget so that it will be clear how much, if any, of the option revenue is available for use by the General fund.
<p>Exhibit A, item 25: Hillside open space is defined as "approximately 150 acres ... east of Western Drive."</p>	<p>The Reuse Plan listed 156 acres for Hillside open Space</p>	<p>Require at least 156 acres for consistency with the Reuse Plan</p>
<p>Exhibit E, 2.3.C requires the City to pay for fully operating a fire station.</p>	<p>This will cost approximately \$1.3 million in today's dollars, reducing the net amount of annual service fees and community benefit payments to the City</p>	<p>Require the developer/Tribe to pay the entire cost of whatever increased fire protection is required for the project</p>
<p>Exhibit E, 3.1 states "The Tribe will mitigate off reservation traffic and circulation in conformity to City requirements," but the City will maintain Western Drive in accordance with "normal City standards."</p> <p>The City is also required to fund a Roadway Maintenance and Enhancement Program, as described in Schedule 3.1</p>	<p>Schedule 3.1 requires \$4.4 million to be spent annually by the City maintaining Western Drive and all major streets leading to the project site. This will reduce the net amount of annual service fees and community benefit payments to the City.</p>	<ul style="list-style-type: none"> "Normal City standards" for street maintenance are currently potholes, deteriorating pavement, missing curbs and gutters and cracked sidewalks. The developer/Tribe should be required to maintain Western Drive to some reasonable codified standard at their cost at least from I-580 through Point Molate. The City would reimburse them the pro-rata cost of users past Point Molate. The mitigation of "off

LDA Provision	Potential Problems	Recommended LDA Improvements
		reservation traffic” is perhaps the biggest single physical challenge to the proposed project. The LDA should not be executed until at least a conceptual plan for mitigating traffic has been circulated and found to be reasonable by credible reviewers. This may be an immitigable fatal flaw.
Exhibit E, 4.2, lists Community Benefit Payments for property “within the area operated by the Tribe and/or casino manager.” Other portions are subject to a proportionally smaller Community Benefit Payment.	<ul style="list-style-type: none"> • There is no requirement that any particular portion be operated by the Tribe or casino manger, nor is there any minimum timetable for completing and operating improvements that result in Community Benefit Payments • There has been no detailed calculation provided to show how the community benefit and service fees were conceived. 	<ul style="list-style-type: none"> • There should be a minimum requirement for area and types of building operated by the Tribe/casino manager and clarification about the bifurcation of Tribal and non-tribal operations. • There needs to be supplementary documentation justifying the community benefit and service fees, which are characterized as PILOT in the Point Molate Land and Services Analysis
Exhibit E, Article 5, paragraph 5.1(b) refers to “Uniform Building Code as adopted or supplemented by the City,” is an erroneous reference.	The <i>Uniform building Code</i> (UBC) no longer exists. It has been replaced with the <i>International Building Code</i> (IBC), but the prevailing code in California is the <i>California Building Code</i> (based on the former UBC with California amendments. It will be replaced by the time this project proceeds. There is no mention of design guidelines or standards. Although the code issue is more technical than substantive, it indicates a substandard level of technical professionalism in the preparation of the LDA that may be indicative of far more substantive issues.	The “independent third party” should be selected by the City. Why get the City involved plan checking and inspections with no means of enforcement? Why not simply commit the Tribe to hiring a third party, duly licensed and duly insured, plan checking and inspection consultant (similar to the Chevron Certified Inspection program – RMC 6.02.200) and require a sign-off by them? The City has liability immunity for plan checking and inspection anyway, but a consultant will carry that liability for a long time. The 4 th line should read “. . .third party retained by the City pursuant to this Section. . .”
Exhibit E, 5.6 requires tribal laws and commitments for public access and maintenance of Shoreline Parcel and Open Spaces.	Why refer to something that is only speculative at this time?	Define the standards of public access in the LDA and hold the Tribe to them contractually, like other provisions of the LDA.
Exhibit E, 6.3 warrants that there is no undisclosed pending litigation against the Tribe that could have a material effect on the Tribe’s ability to perform its obligations.	From 9/2 Contra Costa Times “The consortium, NGV Gaming Ltd., says it has a valid 10-year agreement with the Guidiville Band of Pomo Indians to develop a casino on tribal land to be acquired in Northern California. NGV seeks \$200 million in compensatory damages from Upstream Point Molate LLC and Harrah’s Operating Company Inc., plus \$400 million from each in punitive damages, alleging they urged the tribe to break its pact with NGV.”	There should be some kind of bond or guarantee that this litigation will not affect the deal. The ramifications of it need to be evaluated by the City’s legal; counsel.
Exhibit E, 8.6: Tribe may charge fees to the public “consistent with those charged for other public regional parks in the County of Contra Costa or the County of Alameda” for use and access.	This leaves the issue of fees totally to the discretion of the Tribe with the public only able to challenge them by litigation.	Make public access free in perpetuity.
Exhibit E, Schedule 2.2 lists the cost of police services at \$1.5 million but does not specify who pays for them.	Is this an annual cost? This will reduce the net amount of annual service fees and community benefit payments to the City.	Require the Tribe to pay the incremental cost of any City police services caused or required by the project.
Exhibit H states that the project “will”	There is no requirement that any of the	<ul style="list-style-type: none"> • Use a feature that is common to

LDA Provision	Potential Problems	Recommended LDA Improvements
include a number of features... including "approximately 33 acres of shoreline park."	development be completed and operational on any schedule. It is possible that only the casino would be constructed.	<p>most development agreements. Provide a list of improvements and a schedule for implementation. Failure to implement on schedule is a default.</p> <ul style="list-style-type: none"> • Set the shoreline park area at a minimum 35.4 acres to conform to the Reuse Plan.
Exhibit F, First Source Agreement	This document is weak, non-binding and ambiguous. It does not guarantee any jobs for Richmond residents.	See comments and responses in Exhibit 1. Similar to the physical facilities implementation plan discussed in the line above, there should be a job creation guarantee with a timetable, including a guarantee of want types and proportions of jobs go to Richmond residents.

Evaluation of the ChevronTexaco proposal

ChevronTexaco delivered a revised offer to City Hall last week, an executive summary of which is attached. Each ChevronTexaco offer has improved the previous one, but there remain serious gaps that must be fleshed out.

Following are my comments on the latest offer:

1. The non-contingent \$50 million is good.
2. I never understood the point of the \$5 million for jobs. You can't create jobs with money alone. Jobs require sustainable businesses.
3. The \$25 million in annual payments of \$1 million is good, but is this in lieu of taxes or supplemental? If ChevronTexaco buys the land for \$50 million to \$80 million, depending on how you allocate the money, will that be the assessed value for taxation?
4. The commitment to spend money for a land use plan is pointless without some commitment to what will happen conceptually. What will happen with Winehaven, and when? What will happen with the development parcels, and when? And who will pay for it? What will happen to the 191 +/- acres of upland open space? Chevron has a history of agreeing to study things or cooperate in some effort but never following through with any action.
5. The \$2 million to construct the park is good, but has anyone ever calculated what the cost will actually be? Who will operate and maintain the park, and how will that be paid for?
6. How much land outside Point Molate will be made available? How will improvements, maintenance and operation be funded?
7. The refund for un-conveyed remediation property is questionable. I am under the impression that Chevron is basically buying security. What difference does it make whether Chevron owns the property or the Navy owns it?
8. Why does Chevron want to own the shoreline and then lease it to the City? Why not just let the City or some public agency own it and avoid the liability and legal complexity of a lease?
9. Where is the 25-acre property, and what are the terms of the lease?
10. Where is the money for the Plunge?

Comparison of Upstream and ChevronTexaco Proposals

	Upstream	ChevronTexaco
Due on execution of agreement to purchase	\$1 million	\$50 million plus \$5 million for "jobs"
Due until closing	\$1 million annually up to 5 years	\$0
Due on closing	\$20 million less pre-closing payments	\$0
Notes	\$30 million + interest paid at \$2 million principal annually	\$0
Other payments	\$0	\$1 million for master planning
Additional annual payments	\$10-\$20 million annually	\$1 million annually for 25 years
Direct permanent jobs created	Estimated 3,000	Unknown
Indirect permanent jobs created	Estimated 2,500 – 3,000	Unknown
Construction jobs	Estimated 2,000	Unknown
Rehabilitation and adaptive reuse of Winehaven	Included	Unknown
Infrastructure	Included	Unknown
Construction and maintenance of shoreline park and Bay Trail	Included	\$400,000 annually for 5 years for park development
Acres in open space	205	Unknown
Developed acres	70	Unknown
Other development	1,100 rooms, a 300,000 square foot retail mall with 85 stores and 15 restaurants, a 3,000 seat auditorium and a five-star casino	Unknown

EXHIBIT 1 – FIRST SOURCE AGREEMENT

To: Tom Butt
 From: Rev. Andre L. Shumake, Sr.
 Contact Number (510) 860-3681
 Email: riafaithbasedorg@aol.com



Notes re First Source for Point Molate

Concerns with the First Source program for the Tribe:

The Tribe is required to adopt a First Source program “substantially similar” to the City’s, which only covers construction employment.

(1) Because the Tribe has to follow the City’s program, **the First Source program for the Tribe only covers construction employment. What about employment at the Casino itself?** If the gaming manager is responsible for hiring non-construction employees, then Exhibit F applies. However, if the Tribe is hiring directly, then there is no local hiring requirement for operational employment. Need to spell out who is responsible for hiring operational employees, and make clear that 1st Source applies to them.

Response – The First Source Agreement form attached to the LDA as Exhibit F covers both construction and operational employment at the project. The management Agreement for operation of the casino provides that all employees will be hired by Harrah’s and thus Exhibit F applies.

(2) **The Tribe is only required to adopt a first source program “substantially similar” to the City’s.** Again, “similar” is in the eye of the beholder. The tribe could make important changes and call it “substantially similar.” **There is no reason we can’t spell out ahead of time what the Tribe’s obligations are.**

Response – The City cannot dictate the exact language of an ordinance to be adopted by the Tribe, and that is why the exhibit says “substantially similar”. However, the Tribe has committed to the substantive provisions of Exhibit F, including the requirement for sourcing jobs first to Richmond and tribal target populations, use of Richmond Works as a candidate screening process for Richmond applicants, and the goals listed in the First Source Agreement form. These provisions will be in the Tribal ordinance to be adopted.

(3) It is **unclear whether the Tribe’s First Source requirements will be enforceable by the City,** even in the construction context. The document requires the Tribe to adopt a policy, but the City may have no power to enforce a policy adopted by the Tribe (vs. an agreement between the Tribe and the City. (Also: is the Tribe the entity that will be awarding the construction contract anyway?))

Response – The City will not have the typical enforcement powers that it does over City-funded projects. However, the Tribe’s commitment to adopt and utilize First Source procedures is a contractual obligation of the Tribe. Although unanticipated, the Services Agreement does provide mechanisms for the City to redress unfulfilled contractual obligations of the Tribe. Furthermore, it is in the interests of the project to establish good referral, training and hiring programs since this will increase the pool of successful applicants and reduce employee turnover.

Concerns with the First Source program for contractors & gaming manager (Exhibit F):

Contractors on the project will have to agree to a program “similar” to the First Source agreement attached to the LDDA.

(1) **Biggest concern: INADEQUATE MONITORING and NO ENFORCEMENT.** Only monitoring provision is: contractor forwards “appropriate employment records” to the Tribe. It puts the Tribe in the position of enforcing First Source, and the Tribe has no incentive to do so. **We need contractors to provide *the City* with specific information about rate of hiring out of the First Source system, and the City needs to be able to address any problems.**

Response – Harrah’s has agreed to provide summaries of hiring and employment demographics to the City so the project’s record in hiring Richmond and tribal applicants can be verified. The Tribe believes that establishment of positive partnering relationships with the Richmond community is in the project’s best interests and local hiring is a critical component of this. We therefore disagree that the Tribe has no incentive to push for local hiring. Furthermore, the success of the program will depend on the depth of referral linkages and between the project and the community and on training programs. We have initiated relationships with Richmond’s churches to establish those referral systems. Training programs are discussed below.

(2) **The Tribe is only required to make its contractors enter into a first source agreement “similar” to the one we see.** “Similar” is in the eye of the beholder. Even if we put some monitoring and enforcement provisions in the first source attachment, the tribe could take them out of what it has the contractors sign, and then call it “similar.” **There is no reason we can’t spell out ahead of time what the contractors’ obligations are.**

Response – We have identified the key substantive components of the First Source requirements (sourcing procedures, goals, reporting) and are committing to maintain those in any Tribal first source ordinance and contractor agreements.

(3) Even under the contractor first source document we have in front of us, there are a few **loopholes:**

- allows contractors to bypass the first source system by hiring from a pool of applicants they keep on file;
- allows contractors to bypass the first source system if the contractor thinks that it is not “normal circumstances”;
- allows contractors to bypass the first source system by using “other employment agencies”
- seems to say that if any one of the Tribe, the union, or the City has no candidates to refer, then the contractor can immediately bypass the first source system and advertise elsewhere;
- 50/20% goals apply only to “new hire operational workforce,” which is not defined. Doesn’t seem to apply to vacancies created when someone leaves a job.
- contractors only have to make “reasonable efforts, where practical” to meet the goals. weak standard, not enforceable.

Response – 1) the use of other employment agencies in addition to Richmond ETD is not a loophole, it is a reality on how over half of the 3,000 ultimate employment opportunities will be filled. Note that the goal is not to hire 100% of the employees from Richmond, so other agencies and referrals from the manager are necessary to complement the Richmond First Sourcing procedures. 2) If the Tribe, union or ETD are unable to find candidates or applicants for a specific position or set of positions, then the contractor can seek candidates elsewhere *for that position*. The plain wording of the First source Agreement does not allow the contractor to bypass First Source procedures for future positions based on the inability to find candidates for any one position.

3) The goals will apply to filling of vacancies as well as the initial operational workforce. 4) Since it is impossible to mandate employment goals, all comparable agreements use the “reasonable efforts” standard.

(4) The **training requirement** for contractors is **too vague** to be effective: “The Contractor *should seek to offer* training programs to assist members of the Tribe, Native Americans and residents of the City to become qualified for positions at the project ...”

- Does not actually require the contractor or gaming manager to do anything.
- Does not specify an amount and source(s) of funds for the training program.
- Does not specify a process for setting up the training program: who will have a say in how it is structured?
- Does not specify the nexus between job training and the First Source program: will graduates of the program get preference in hiring

Response – It is well-known that Harrah’s has a successful training program for candidates for operational positions and has committed to using the Harrah’s program for the Richmond project. There is no way to staff a Harrah’s-branded casino without use of this program, so there is no question this will be used. The Upstream/Harrah’s/Guidiville team has also committed to work with the Contra Costa Building and Trades Council and community leaders to develop a successful pre-apprenticeship training program for construction jobs for the project. Ideas have already been formulated by community leaders on how to build on the Kennedy High School or North Richmond fledling programs already in place. We anticipate development of the program by spring 2005, and initiation of the program by fall 2005, several months before construction work would likely commence. We have committed approximately \$200,000 of project funding for that program, which would supplement government and foundation sources, as well as contributions from other projects in the immediate area. We have already received commitments from the Contra Costa Building and Trades Council that they will assist in placing pre-apprenticeship program graduates in union apprentice positions.

Exhibit F

First Source Agreement

THIS AGREEMENT is entered into this ___day of _____, 200_, by and between the Guidiville Band of Pomo Indians of the Guidiville Rancheria, a federally recognized Indian Tribe (hereinafter referred to as "Tribe"), and _____ (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the Contractor has been awarded a contract by the Tribe (the "Contract") to perform certain construction work, consulting services, gaming operations management or other services as described as follows:

WHEREAS, the Contractor desires to enter into this First Source Agreement with the Tribe;

NOW, THEREFORE, the parties hereto mutually agree as follows:

The Contractor and the Tribe agree that, during the term of the Contract (including any extensions approved by the Tribe) the Contractor shall seek qualified employees to fill entry-level and new employment positions. These positions may include but shall not be limited to positions involving construction, operations, maintenance and management of the hotel(s)/convention center/casino/retail facilities. The positions may be either full-time, part-time, or seasonal. In order to find qualified employees the Contractor shall follow the following procedures:

- A. Upon learning of the availability of an employment position created by vacancy of an existing position or of a new employment position, the Contractor shall provide written notice of such position to: (i) the local union, with a copy to the Tribe and City of Richmond's Employment and Training Department ("ETD"), for union classifications, and (ii) the Tribe and ETD for non-union classifications, of any open employment positions qualified to be filled as a part of this Agreement. The notice shall include a general description of the position and the Contractor's minimum requirements for qualified applicants. The Contractor shall request the Tribe, the union or ETD, as applicable, to refer qualified applicants for such position to the Contractor's appropriate human resources representative (this process is hereafter referred to as the "Multiple Notification Process"). The Contractor shall, at the same time, forward a copy of the notification to the manager of the relevant project or his designee with a request to approve the use of temporary workers during the hiring period. In the Multiple Notification Process, the Contractor shall utilize the "namecall," "rehires" or "sponsorship" options in maximizing the participation of members of the Tribe, Native Americans and residents of the City of Richmond (the "City").
- B. After initiating the Multiple Notification Process, the Contractor should, in normal circumstances, refrain from any general announcement or advertisement of the availability of such position for a period of five (5) business days. A general announcement shall not include any internal postings or postings with affiliates of the Contractor seeking an employee for an open position which would otherwise be subject to this Agreement. Such five-day period is hereinafter referred to as the "Advance Notice Period." During such Advance Notice Period, the Tribe, the union and/or ETD shall then submit a list of candidates qualified for the position to the Contractor. The Contractor shall review the qualifications of the candidate submitted and consent to grant interviews to those candidates it deems that in its reasonable business judgment to be qualified for the position advertised. The Contractor shall use its reasonable business judgment in selecting

employees. After the Advance Notice Period, the Contractor may post, advertise or otherwise publicize the job opening.

- C. Upon receipt from the Contractor of a notice of an employment position, the Tribe, the union or ETD may each refer to the Contractor a minimum of one (1) and up to a maximum of five (5) candidates for employment believed by the Tribe, the union or ETD to be qualified for each position and who meet the Contractor's minimum requirements for such position, and may make arrangements for the person or persons referred to be interviewed by the Contractor within the Advance Notice Period. In the event that the Tribe, the union or ETD believes that it is unable to refer qualified candidates for such position within the Advance Notice Period, it shall so inform the Contractor as soon as possible, and if any of the Tribe, the union or ETD fails to do so, each thereby waives the obligation of the Contractor to refrain from further announcement or advertisement to fill such position during the balance of the Advance Notice Period.
- D. In the event that any persons seek employment with the Contractor at the job site at any time, the Contractor shall have the person complete a Job Site Application consisting of name, address, telephone number, social security number and trade. The Contractor will then submit this information to the Tribe, the appropriate union and/or ETD, as provided for under the Multiple Notification Process.
- E. The Contractor shall use reasonable efforts in conjunction with the Tribe, the union and ETD to employ a workforce reflecting reasonable parity with the Bay Area adult demographic population. In addition, the Contractor shall use reasonable efforts to employ persons who reside in or near the Tribal property and to benefit both the Tribe and City communities. To benefit both parties, the Contractor will use reasonable efforts to, where practical:
 - 1. Employ a construction workforce reflecting reasonable parity with the West Contra Costa County adult demographic population, based on the 2000 census.
 - 2. Hire 50% of its new-hire operational workforce from bona fide members of the Tribe, Native Americans or residents of the City, including hiring a minimum of 20% of its new-hire operational workforce from residents of the City.
 - 3. With respect to construction workers, hire 50% of new union apprentices or new workers from bona fide members of the Tribe, Native Americans or residents of the City, including hiring a minimum of 40% of new hires or new union apprentices from residents of the City until a minimum of 20% of its new hires are residents of the City.
- F. Nothing contained herein shall prevent the Contractor from filling job vacancies or newly created positions without compliance with the foregoing procedures by transfer or promotion from its existing staff of the Contractor or its affiliates, if any, or from a file of qualified applicants maintained by the Contractor, provided, however, that the Contractor shall give appropriate consideration to those applicants in such file or qualified applicants previously referred by the Tribe, the union or ETD. Further, nothing contained herein shall be construed to require Contractor or any construction, operations, maintenance or management agent or independent subcontractor engaged by the Contractor to hire any candidate referred by the Tribe, the union or ETD.
- G. The Contractor shall incorporate the provisions of this First Source Agreement in all sub-contracts, consulting agreements, and other agreements for labor that it uses to perform the services contemplated in the Contract between the Tribe and the Contractor whose personnel will be assigned to perform for the Contractor under the Contract and shall obligate such agent or subcontractor to comply with the procedures set forth in Paragraphs A through C above. Nothing contained herein shall be construed to require the Contractor or its agents or subcontractors to terminate or replace any employee solely to comply with the provisions of this First Source Agreement.

- H. The Contractor shall be responsible for monitoring compliance with this Agreement. The Contractor shall, on a quarterly basis, furnish appropriate employment records to the Tribe and any additional information required by the Tribe to ascertain the status of members of the Tribe, Native Americans or residents of the City hired pursuant to this Agreement. Failure by the Contractor to provide the Tribe with proper documentation may result in delay of progress payments for that portion which is deemed not in compliance with the provisions of this Agreement.

- I. Nothing contained in the Agreement shall preclude the Tribe and its contractors from entering into other agreements to use other employment agencies to employ persons to work on the project. Subject to certain preferences available to members of the Tribe and Native Americans under federal Indian preference statutes and other than as to those persons, the Tribe and Contractor agree that during the construction and operation of the project there shall be no discrimination on the basis of race, color, creed, religion, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in the operation of the facilities.

- J. The Contractor should seek to offer training programs to assist members of the Tribe, Native Americans and residents of the City to become qualified for positions at the project to the extent permitted by applicable law.

Executed this _____ day of _____, 200_.

Guidiville Band of Pomo Indians of the Guidiville Rancheria:

By: _____
Chairperson

Contractor:

By: _____
Title: _____