

**FILED**

JAN 23 2006

MARIN COUNTY SUPERIOR COURT  
BY: R. SMITH, DEPUTY

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Chief Assistant Attorney General  
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CALIFORNIA, ex rel. BILL LOCKYER

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MARIN

**CITIZENS FOR THE EAST SHORE STATE  
PARK,**

Petitioner,

v.

**CITY OF RICHMOND, a California Municipality,  
CITY COUNCIL OF THE CITY OF RICHMOND,  
and DOES 1 through X, inclusive,**

Respondents.

and

**UPSTREAM POINT MOLATE LLC, a California  
Limited Liability Company, HARRAH'S  
OPERATING COMPANY, INC., a Delaware  
Corporation, and DOES XI through XX, inclusive,**

Real Parties in Interest.

**EAST BAY REGIONAL PARK DISTRICT, a  
special district,**

Petitioner

v.

**CITY OF RICHMOND, RICHMOND CITY  
COUNCIL, and DOES 1 through X, inclusive,**

Respondents,

and

Case No. CV 052241

**SETTLEMENT AGREEMENT  
AND ~~PROPOSED~~ ORDER  
DISMISSING ACTION**

Action Filed: December 15,  
2004

Transferred: May 17, 2005

Dept.: F

Judge: Hon. Vernon F.  
Smith

1 **UPSTREAM POINT MOLATE LLC, a California**  
2 **limited liability company, HARRAH'S**  
3 **OPERATING COMPANY, INC., a Delaware**  
4 **Corporation, and DOES XI through XX, inclusive,**

Real Parties in Interest.

5 **PEOPLE OF THE STATE OF CALIFORNIA, ex**  
6 **rel. BILL LOCKYER, Attorney General,**

Petitioner-Intervenor,

7  
8 v.

9 **CITY OF RICHMOND, a California Municipality,**  
10 **CITY COUNCIL OF THE CITY OF RICHMOND,**  
11 **and DOES 1 through X, inclusive,**

Respondents.

12 and

13 **UPSTREAM POINT MOLATE LLC, a California**  
14 **Limited Liability Company, HARRAH'S**  
15 **OPERATING COMPANY, INC., a Delaware**  
16 **Corporation, and DOES XI through XX, inclusive,**

Real Parties in Interest.

## 17 **SETTLEMENT AGREEMENT**

18 This SETTLEMENT AGREEMENT ("Agreement") is made – as of the date of the last  
19 signature below – by and among the City of Richmond and its City Council (collectively, "City");  
20 Upstream Point Molate, LLC, a California limited liability company ("Upstream"); Harrah's  
21 Operating Company, Inc., a Delaware Corporation ("Harrah's"); the Attorney General of the State  
22 of California in his independent capacity, *ex rel.* the People of the State of California ("Attorney  
23 General"); the East Bay Regional Park District ("EBRPD"); and Citizens for the Eastshore State  
24 Park ("CESP"). The foregoing are collectively referred to as the "Parties," and each of them is  
referred to individually as a "Party."

### 25 **Recitals**

26 A. On November 12 and 19, 2004, the City adopted Resolution Nos. 161-04a and 162-  
27 04, by which it approved and directed the City Manager to execute and enter a Land Disposition  
28 Agreement ("LDA") with Upstream concerning certain lands located at Point Molate. A copy of

1 the approved LDA is attached to this Agreement as Exhibit A. As used in this Agreement, the terms  
2 "Project" and "Alternative Proposal" shall have the meanings set forth in the LDA.

3 B. The City made a determination that the approval and execution of the LDA was not  
4 subject to and was exempt from the California Environmental Quality Act ("CEQA").

5 C. On December 15 and 16, 2004, respectively, CESP and EBRPD filed the  
6 above-captioned lawsuits challenging the City's approval of Resolution Nos. 161-04a and 162-04  
7 and contending, among other things, that the City unlawfully determined that the LDA was exempt  
8 from CEQA. By stipulation filed February 15, 2005, these lawsuits were consolidated for the  
9 purposes of case management, the administrative record, and hearings. These lawsuits are  
10 collectively referred to as "the Action."

11 D. On March 16, 2005, the City gave Notice of Preparation for an Environmental Impact  
12 Report ("EIR") for the development of a tribal gaming facility and entertainment and retail structures  
13 at Point Molate (SCH Number 2005032073). The City is in the process of completing the EIR.

14 E. On April 19, 2005, the Attorney General of the State of California filed a Complaint  
15 in Intervention in the Action.

16 F. The Parties desire to settle their disputes in such a manner that obviates the need for  
17 CESP, EBRPD, and the Attorney General to continue prosecuting the Action.

18 In consideration of the foregoing and in accordance with the following, the Parties agree as  
19 follows:

20 **Agreement**

21 1. The City, Upstream, and Harrah's agree and acknowledge that the LDA has the  
22 following legal effect:

23 a. The City retains its discretion to select any alternative use or non-use of the  
24 Point Molate site that was open to it before approval and execution of the LDA, including, but not  
25 limited to, alternatives that do not involve: a gaming and/or entertainment complex or the Project  
26 or Alternative Proposal. The LDA in no way restricts such discretion.

27 b. The City's exercise of its discretion as described in Paragraph 1.a will not  
28 constitute a default on the part of the City under the LDA. In the event the City elects not to pursue

1 and/or disapproves the Project or the Alternative Proposal, as either may be modified in the  
2 environmental review or the permit process, the City is not obligated to transfer or lease the land to  
3 Upstream or any other person or entity. The City's decision not to transfer or lease the land under  
4 these circumstances would not constitute a default on the part of the City under the LDA, and the  
5 City would not be obligated to return any consideration it has received under the LDA.

6 c. The provision in the LDA that requires the City to take specified actions to  
7 support the application of the Guidiville Band of Pomo Indians of the Guidiville Rancheria (LDA,  
8 Section 2.7), and the provision in the LDA that requires the City to prepare and process subdivision  
9 or parcel maps (LDA, Section 1.1(e)), are contingent on the City's decision to pursue and/or approve  
10 the Project or Alternative Proposal as described above.

11 d. The City will comply with CEQA. In particular:

12 i. in any EIR the City prepares (including the EIR described in Recital  
13 D, above), in examining project alternatives, the City will consider a reasonable range of  
14 alternatives, as that phrase is interpreted under CEQA, the CEQA Guidelines, and the case law in  
15 effect at the time of any certification of the EIR, and

16 ii. prior to any decision to pursue or approve the Project or the  
17 Alternative Proposal (including, without limitation, any approval of a transfer and/or lease of land  
18 to Upstream or any necessary subdivision or parcel maps or any support of the tribal application,  
19 as described in Paragraphs 1.a. through 1.c), the City will certify an EIR.

20 2. In the EIR described above, the City will inform the public that it retains discretion  
21 to select any alternative use or non-use of the Point Molate site that was open to it before approval  
22 and execution of the LDA including, but not limited to, alternatives that do not involve a gaming  
23 and/or entertainment complex or the Project or Alternative Proposal, and that the City has discretion  
24 to retain ownership of Point Molate or to transfer Point Molate to a party other than Upstream if the  
25 City elects not to pursue and/or approve the Project or Alternative Proposal.

26 3. This Agreement does not constitute an admission by any Party that the claims in the  
27 Action have, or lack, merit. In entering into this Agreement, the Attorney General, EBRPD, and  
28 CESP take no position as to whether the LDA reasonably may be read to support the interpretation

1 set forth in Paragraph 1, but agree to dismiss this Action with prejudice based on the City's,  
2 Upstream's, and Harrah's representations that each will abide by the Agreement, which includes the  
3 interpretation of the LDA set forth above.

4 4. EBRPD's and CESP's respective Petitions for Writ of Mandate, with the exception  
5 of their claims for attorneys' fees and costs, and the Attorney General's Complaint in Intervention,  
6 in its entirety, shall be deemed dismissed with prejudice on the date that the Court approves and  
7 enters this Agreement as an order of the Court. Within sixty days of the date that the Court approves  
8 and enters this Agreement as an order of the Court, Upstream shall pay legal fees and costs to the  
9 Attorney General, in the amount of \$13,740. The Parties further agree that the Court shall retain  
10 jurisdiction to rule on motions for attorneys' fees and costs brought by CESP and EBRPD pursuant  
11 to Code of Civil Procedure sections 1021.5 and 1032, provided that such motions are filed and  
12 served within sixty days after service of notice of entry of this Order. The City, Upstream, and  
13 Harrah's intend to oppose any motions for attorneys' fees and costs filed by CESP and/or EBRPD;  
14 this Agreement is not an admission by the City, Upstream, or Harrah's that any claim by CESP  
15 and/or EBRPD for attorneys' fees and costs has merit.

16 5. Miscellaneous.

17 a. Each individual executing this Agreement on behalf of a Party warrants that  
18 she or he is duly authorized to do so and that such execution is binding upon the Party.

19 b. This Agreement shall be interpreted according to California law.

20 c. This Agreement may be executed in one or more counterparts, each of which  
21 shall be deemed an original, but all of which together shall constitute one and the same instrument.  
22 Photocopies and facsimiles of counterparts shall be binding and admissible as originals.

23 d. This Agreement shall not become effective until and unless each and every  
24 Party has executed the signature page of the Agreement and the Court has approved and entered it  
25 as an order of the Court.

26 e. Each Party represents and warrants that, in connection with the negotiation  
27 and execution of this Agreement, it has been represented by independent counsel of its own  
28 choosing, that is has not relied upon the advice or counsel of any other Party's independent counsel

1 in the negotiation or drafting of this Agreement, that it has executed this Agreement after receiving  
2 advice of its independent counsel, that its representative has read and understands the provisions and  
3 terms of this Agreement, and that it has had an adequate opportunity to conduct an independent  
4 investigation of all the facts and circumstances with respect to all matters that are the subject of this  
5 Agreement.

6 f. Each Party represents and warrants that it is entering this Agreement of its  
7 own free will and was not subject to any coercion, duress, or similar stress. No inducement,  
8 promise, or agreement not herein expressed has been made to or by the Parties.

9 g. This Agreement constitutes the entire understanding of the Parties and  
10 supersedes all prior contemporaneous agreements, discussions, or representations, oral or written,  
11 with respect to the subject matter hereof.

12 h. Counsel for the represented Parties have negotiated, read, and approved as  
13 to form the language of this Agreement, the language of which shall be construed in its entirety  
14 according to its fair meaning and not strictly for or against any of the Parties.

15 i. Whenever in this Agreement a Party is named or referenced, the legal  
16 representatives, successors, and permitted assigns of that Party shall be included and all covenants  
17 and agreements contained in this Agreement by or on behalf of any Party shall bind and inure to the  
18 benefit of its successors and permitted assigns, whether so expressed or not.

19 j. This Agreement is made without respect to number or gender, and as such,  
20 any reference to a Party hereto by any pronoun shall include the singular, the plural, the masculine,  
21 and the feminine.

22 IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated  
23 below.

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27 ///

28 ///

1 The City of Richmond

2 By: William A. Lindsay

3 Date: 1/11/06

4 Name: William A. Lindsay

5 Title: CITY MANAGER

6 ATTESTED:

7 By: Diane Holmes

8 City Clerk

9 REVIEWED BY:

10 By: [Signature]

11 City Attorney

12

13 Upstream Point Molate, LLC, a California limited liability company

14 By: \_\_\_\_\_

15 Date: \_\_\_\_\_

16 Name: \_\_\_\_\_

17 Title: \_\_\_\_\_

18

19 Harrah's Operating Company, Inc, a Delaware corporation

20 By: \_\_\_\_\_

21 Date: \_\_\_\_\_

22 Name: \_\_\_\_\_

23 Title: \_\_\_\_\_

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28 ///

1 The City of Richmond

2 By: \_\_\_\_\_

3 Date: \_\_\_\_\_

4 Name: \_\_\_\_\_

5 Title: \_\_\_\_\_

6 ATTESTED:

7 By: \_\_\_\_\_

8 City Clerk

9 REVIEWED BY:

10 By: \_\_\_\_\_

11 City Attorney

12

13 Upstream Point Molate, LLC, a California limited liability company

14 By: 

15 Date: Jan. 11, 2006

16 Name: James D. Devine

17 Title: Managing Partner

18

19 Harrah's Operating Company, Inc, a Delaware corporation

20 By: \_\_\_\_\_

21 Date: \_\_\_\_\_

22 Name: \_\_\_\_\_

23 Title: \_\_\_\_\_

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1 The City of Richmond

2 By: \_\_\_\_\_

3 Date: \_\_\_\_\_

4 Name: \_\_\_\_\_

5 Title: \_\_\_\_\_

6 ATTESTED:

7 By: \_\_\_\_\_

8 City Clerk

9 REVIEWED BY:

10 By: \_\_\_\_\_

11 City Attorney

12

13 Upstream Point Molate, LLC, a California limited liability company

14 By: \_\_\_\_\_

15 Date: \_\_\_\_\_

16 Name: \_\_\_\_\_

17 Title: \_\_\_\_\_

18

19 Harrah's Operating Company, Inc, a Delaware corporation

20 By: Clayton K. Rice II

21 Date: 1/13/06

22 Name: Clayton K. Rice II

23 Title: Vice President Associate  
General Counsel

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1 People of the State of California, *ex rel.* Bill Lockyer, Attorney General

2 By: Jan L. Richards

3 Date: 1/13/06

4 Name: Janill L. Richards

5 Title: Deputy Attorney General

6

7 East Bay Regional Park District

8 By: \_\_\_\_\_

9 Date: \_\_\_\_\_

10 Name: Pat O'Brien

11 Title: General Manager

12 REVIEWED BY:

13 By: \_\_\_\_\_

14 Ted Radosevich, District Counsel

15

16 Citizens for the Eastshore State Park

17 By: \_\_\_\_\_

18 Date: \_\_\_\_\_

19 Name: \_\_\_\_\_

20 Title: \_\_\_\_\_

21 REVIEWED BY:

22 By: \_\_\_\_\_

23 Name: \_\_\_\_\_

24 Title: \_\_\_\_\_

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1 People of the State of California, *ex rel.* Bill Lockyer, Attorney General

2 By: \_\_\_\_\_

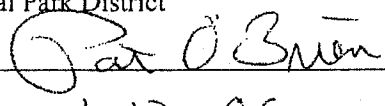
3 Date: \_\_\_\_\_

4 Name: Janill L. Richards

5 Title: Deputy Attorney General

6

7 East Bay Regional Park District

8 By:  \_\_\_\_\_

9 Date: 1-12-06 \_\_\_\_\_

10 Name: Pat O'Brien

11 Title: General Manager

12 REVIEWED BY:

13 By:  \_\_\_\_\_

14 Ted Radosevich, District Counsel

15

16 Citizens for the Eastshore State Park

17 By: \_\_\_\_\_

18 Date: \_\_\_\_\_

19 Name: \_\_\_\_\_

20 Title: \_\_\_\_\_

21 REVIEWED BY:

22 By: \_\_\_\_\_

23 Name: \_\_\_\_\_

24 Title: \_\_\_\_\_

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1 People of the State of California, *ex rel.* Bill Lockyer, Attorney General

2 By: \_\_\_\_\_

3 Date: \_\_\_\_\_

4 Name: Janill L. Richards

5 Title: Deputy Attorney General

6

7 East Bay Regional Park District

8 By: \_\_\_\_\_

9 Date: \_\_\_\_\_

10 Name: Pat O'Brien

11 Title: General Manager

12 REVIEWED BY:

13 By: \_\_\_\_\_

14 Ted Radosevich, District Counsel

15

16 Citizens for the Eastshore State Park

17 By: Robert C. Cheasty

18 Date: 1-13-06

19 Name: Robert C. Cheasty

20 Title: President

21 REVIEWED BY: Stephan C. Volker

22 By: \_\_\_\_\_

23 Name: Stephan C. Volker

24 Title: Counsel

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1 **ORDER**

2 The Agreement among the City of Richmond and its City Council; Upstream Point Molate,  
3 LLC, a California limited liability company; Harrah's Operating Company, Inc., a Delaware  
4 corporation; the Attorney General of the State of California in his independent capacity, *ex rel.* the  
5 People of the State of California; the East Bay Regional Park District ("EBRPD"); and Citizens for  
6 the Eastshore State Park ("CESP") hereby is approved and entered as an order of this Court. The  
7 Action hereby is DISMISSED, with the exception of CESP's and EBRPD's claims for attorneys' fees  
8 and costs. The Court retains jurisdiction to rule on motions for attorneys' fees and costs by CESP  
9 and EBRPD pursuant to Code of Civil Procedure sections 1021.5 and 1032, provided that such  
10 motions are filed within sixty days after service of notice of entry of this Order.

11  
12 Dated: JAN 23 2006

13 **VERNON F. SMITH**

14 Judge of the Superior Court  
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