



TO: WCCTAC Board

DATE: March 19, 2010

FR: Christina Atienza, Executive Director and Mike Rodriquez, Legal Counsel

RE: **Point Molate Casino Resort – Due Diligence Steps and Findings, and Issues and Options for Pursuing Monitoring and Impact Fee Agreement**

At the Feb. meeting, the Board approved the following actions:

- a) Request Richmond, on behalf of WCCTAC, to begin negotiations, with either the Tribe or the Developer as appropriate, for an agreement that would specify impact fees and outline parameters for monitoring impacts as the project develops over time, whereby the fees would be segregated to the extent feasible from the Subregional Transportation Mitigation Fee Program (STMP) so as to pay only for improvements that are specific to the project's impacts;
- b) Request Richmond to find a means for paying for the legal services associated with the development of the agreement; and
- c) Instructed staff to begin preparing the technical requirements for monitoring impacts on the affected routes of regional significance for potential inclusion in Richmond's Land Disposition Agreement (LDA) with the Tribe.

This memo presents for the Board's consideration and discussion an outline of steps and findings from staff's due diligence efforts and a summary of major issues and options for moving forward.

Background

The Measure J Growth Management Program requires participation in an ongoing cooperative, multi-jurisdictional planning process to address growth and its impacts on routes of regional significance. In part the West County Action Plan for Routes of Regional Significance fulfills this requirement. The Action Plan identifies routes of regional significance, minimum service objectives (both quantitative and qualitative) for those routes, actions aimed at achieving the objectives, and the responsible parties and timeline for implementing the actions; minimum thresholds for analyzing the impacts of new developments above what was assumed in the adopted General Plans; and the process and requirements for analyzing the impacts of General Plan Amendments that meet the minimum thresholds. Failure by a jurisdiction to comply with this requirement could be grounds for CCTA to withhold that jurisdiction's proportional share of Measure J local street maintenance and improvement funds and eligibility to apply for Measure J TLC funds.

Due Diligence Steps and Findings

Draft EIS/EIR Traffic Studies. The draft report was issued in July 2009, initially with a 75-day comment period that was later extended by a month to Oct. 23, 2009. The report provided two traffic studies, one main and the other supplemental, which changed some assumptions and expanded the study area. WCCTAC staff and the TAC reviewed the studies.

The highest-intensity gaming alternative, Alternative B, is projected to generate about 20,000 weekday daily trips, including over 700 morning peak hour trips and over 1,500 afternoon peak hour trips. Under Background + Project conditions, Alt. B is expected to result in potentially significant impacts, which are reduced to less than significant levels after mitigation. Under cumulative 2025 conditions, Alt. B is expected to result in significant and unavoidable impacts to intersections within the study area and delay at the Richmond-San Rafael Bridge toll plaza.

WCCTAC's comments were submitted on Sept. 18, 2009. The most substantive comments included: provide additional justification for the trip generation assumptions; analyze I-80 south of 580 and other routes of regional significance as specified; and provide additional detail on the ferry proposal. Owing to the substance and extent of the comments, WCCTAC requested that either a revised draft be reissued for public comment or Richmond meet with the TAC to discuss the proposed disposition of comments prior to issuing the final EIR.

Response to Comments on Draft EIS/EIR Traffic Studies. Richmond and the environmental consultants met with the TAC in Feb. 2010. The proposed responses to the most substantive comments were: additional detail was provided but no changes are warranted to the project trip generation; I-80 south of I-580 will not be analyzed; and clarification would be provided that ferry service is proposed to be provided through private providers. During the meeting, staff noted the potential for large variability in the project's trip generation, owing to its uniqueness; and proposed the idea of monitoring the project's actual impacts as it develops over time and allowing for adjustments to the mitigations and associated fees as appropriate, which the TAC endorsed.

Final EIR/EIS Traffic Studies. At the time of this writing, Richmond staff could not provide an estimate of when the final report would be released, due to the Council's recent action to extend the term of the LDA to negotiate amendments. The final report will need to be reviewed to determine the extent to which WCCTAC's comments were addressed.

LDA between Richmond & Developer, and Municipal Services Agreement (MSA) between Richmond & Tribe. The LDA sets forth the terms for transfer and development of the property consistent with the Preliminary Site Plan (Appendix G of the LDA) and Scope of Development (Appendix H of the LDA), collectively referred to as the Design Concept Documents. The MSA, incorporated as Appendix E of the LDA, sets forth the terms for provision and payments for municipal services associated with the project, including roads and traffic circulation (Article 3), as well as law enforcement, sewer, water, etc. Following are relevant findings from review of these documents:

- § The City has some latitude to determine what information is necessary for the environmental review process.
- § The Tribe will not be governed by CEQA after closing, but will be bound under the MSA to comply with the Design Concept Documents. Material changes to the Documents will require public input and consultation with and approval by the City. However, as defined in the agreement, a material change would not include substantial differences between the estimated and actual trip generation of the project.

- § A portion of the service fees that the Tribe will pay to the City will be applied toward funding a Roadway Maintenance and Enhancement Program. The program contains provisions for maintenance of Western Dr. and all major streets leading to the project site, at an annual cost of \$4.4 million.
- § The First Amendment to the LDA allowed for phased purchase of portions of the site. *It is unclear whether this provision would translate to phased construction of the project.*
- § The Tribe reimburses the City for actual costs or fees of certain City expenses, including reasonable legal and other professional consulting fees directly related to the project, incurred during the development of the project.
- § City officials may not make decisions relating to the Agreement which affect the interest of any partnership or association in which he or she is directly or indirectly interested. *This may be relevant for determining potential conflicts of interest arising out of Richmond's membership in WCCTAC.*

Intergovernmental Agreement between County & Tribe (IGA). The IGA sets forth the terms to satisfy the requirements of NEPA, CEQA, and the anticipated Compact; the obligations of the Tribe in providing feasible “Mitigation Measures” for any “Significant Effect on the Off-Reservation Environment” (as those terms are used in recent gaming compacts) attributable to the project; and provisions for the Tribe’s compensation to the County and other pertinent service provisions. Following are findings from staff’s review of this document:

- § The Agreement specifies four roadway projects along County-owned portions of Richmond Parkway, in addition to the EIS/EIR mitigation measures, to which the Tribe will contribute its fair-share of the construction cost.
- § The Agreement contains provisions for re-opening the traffic study if specified triggers occur on specified County roadways. It also provides for the Tribe to make fair-share contributions to additional mitigations resulting from the traffic study, if it is proven that the impacts are attributable to the project.
- § The Agreement contains provisions to undertake a joint analysis of the impacts of the project on traffic (and other areas as well) at any time after seven years after the project start date but no more frequently than every five years, if requested by the County. And if the study indicates a significant change in off-reservation impacts that materially or adversely affects the County to the extent that its annual costs exceed the Tribe’s payments, then the County may request the Tribe to renegotiate the terms of the Agreement.
- § The County has agreed that implementation of the mitigation measures outlined in the Agreement, combined with the MSA and Mitigation Plan, completely address the off-reservation impacts of the project, and as such satisfies any requirement for mitigation of such impacts in the anticipated Gaming Compact. The Agreement does not appear to specifically exclude incorporated areas to which the County’s authority may not extend. The Agreement contains a provision that in the event that a third party takes legal action challenging the power of the County to enter into the Agreement, that the Tribe will pay the County’s legal defense costs.

Action Plan for Routes of Regional Significance. The routes of regional significance and the associated actions that may be affected by the project are listed in Attachment A.

STMP Nexus Study and Ordinances. The STMP Nexus Study identified regional transportation projects that are needed due to increased congestion attributable to projected growth in population and employment in West County; determined the extent to which the need for those projects are driven by new development (as opposed to existing); and established a fee schedule for new development to pay for the construction cost of the projects in proportion to the needs that are created by them. The last STMP Nexus Study update was done in 2005. The program consists of 11 capital projects, the total cost of which is estimated at \$371 million, of which \$98.1 million, or about 26.4 percent of the total, was attributable to new development. The fee schedule includes fees for ten specific land use types (including residential, hotel, retail, and office, which are components of the project) and for an “Other” category at a rate of \$3,507 per AM peak hour trip. At the time of this writing, staff was in the process of researching requirements pertaining to the frequency of STMP Nexus Study updates.

Each of the West County cities and the County have adopted an ordinance to collect STMP fees. The Richmond STMP Ordinance provides that fees for uses not identified in the fee schedule shall be determined by the City according to information generated by traffic studies or other means of determining traffic impacts as approved by WCCTAC or in accordance with the ITE Manual. The Ordinance also stipulates that STMP fees will be used to maintain current service levels; accordingly, the fee, as they relate to development within the City, is not “a project” as defined by CEQA.

Differences between Local Mitigations and STMP Projects. It is important to note that the mitigations identified in the environmental document are designed to mitigate the specific environmental impacts of the project. Corollary to that, the fair-share contribution of the developer goes toward specific projects. The mitigations are also not confined to capital projects, but include a broad range of potential countermeasures.

The EIR Mitigation Plan is differentiated from the STMP, whose projects are designed to address congestion in West County in general, and seeks compensation from new development commensurate with the additional impacts. As such, the fees paid by any one developer under the program may be used to pay for any of the projects in the program. Further, the program is confined to capital projects only, as mandated by State statutes. Credit may be given to a developer to the extent that their EIR mitigations may overlap with STMP projects.

Legal Review. A nominal amount of time has been spent thus far on legal review to conduct a preliminary assessment of the feasibility of pursuing an agreement. If the Board elects to pursue an agreement similar to the County’s, it will be necessary to conduct a detailed legal review at a minimum of the LDA and MSA, IGA, STMP Ordinance, relevant CEQA and NEPA provisions, and relevant BIA statutes and regulations pertaining to the Tribe’s sovereign immunity. Staff may prepare an opinion of probable legal costs once the Board has selected a more defined scope of work.

Issues and Options

Issue 1: Potential for large margin of error in project trip generation – impacts on determining required mitigations. Significant inaccuracies would affect the significance and extent of the project’s impacts on West County’s routes of regional significance, and ultimately the required mitigations and the project’s fair-share of the fees for those mitigations.

Option 1a. Revise EIR for worst-case scenario. This could entail significant modifications to the EIR traffic study, including but not limited to: assuming all Class III gaming for the maximum number of positions as would fit within the designated size of the gaming facility; no ferry service to the site; and nominal reductions for internal capture, diverted linked trips, and TDM. This would likely result in a significant expansion of the study area and more mitigations. This option would be most disadvantageous to the Developer for the delay to the project and resulting higher costs for mitigation; however, it could eliminate the need for additional studies and agreements that provide for more flexibility. The Mitigation Monitoring and Reporting Program (MMRP) would identify mitigations for all affected routes of regional significance, and Richmond could assign monitoring responsibility for off-reservation impacts outside the City limits to the appropriate jurisdiction or WCCTAC, which may be accomplished through an MOU.

Option 1b. Provide for flexibility. The EIR traffic study could be used as a starting point for establishing a baseline for background and cumulative conditions without the project, and the assumed project trip distribution percentages to all of the routes of regional significance. Actual project trip generation could be measured on Western Drive and assigned to the network using the agreed upon percentages, and traffic impacts and required mitigations recalculated. Similar to the terms of the County’s agreement, the study could be undertaken over a specified period and frequency, until such time as the project is completely developed and occupied. This method would have to correct for fluctuations in project trip generation due to seasonal and economic changes. Following are different ways for effecting these provisions:

Option 1b-1. In the MMRP. It would need to be determined whether CEQA or NEPA would allow such provisions.

Option 1b-2. In the LDA. Richmond would need to negotiate as an amendment. The list of routes of regional significance and actions provided in the Appendix could be incorporated, subject to final review by the TAC and approval by the Board. Other West County jurisdictions may want some assurances for compliance monitoring, etc.

Option 1b-3. In separate agreement between WCCTAC and the Tribe. This may be akin to the County’s IGA with the Tribe. This would require extensive legal review to develop the terms of the agreement and to resolve potential conflicts of interest.

Option 1c. Commission an independent traffic study. The Board could retain a traffic consultant to conduct a traffic study that specifically addresses WCCTAC’s concerns. The study could look at a range of possible, reasonable project development scenarios

and conduct sensitivity analyses on the routes of regional significance, and use the results of the study to negotiate for additional mitigation measures if appropriate. Like the prior Dowling study, the study could also investigate the impacts of the development of the Sugar Bowl casino as well. Timing may be an issue however, as the preparation of such a study may not align well with the timing for certification of the EIR.

Issue 2: Potential for large margin of error in project trip generation – impacts on determining appropriate developer impact fee. A project of this magnitude was not envisioned in the development of the STMP. It is possible that the number of trips generated by the project could affect the overall fee determination. Most of the issues raised above regarding the total number of trips would still apply. In addition, the fee per trip is also an issue.

Option 2a. Use existing fee schedule. The Board could choose to approve the application of the current fee for “Other” for the gaming component of the project. The basis for the current fee is simply the total cost of the STMP projects divided by the total growth in AM peak hour trip generation; as such, the fee does not reflect anything about the trip generation characteristics of the type of land use.

Option 2b. Conduct special STMP study for project. The Board could choose to retain a consultant to determine a fee for the gaming component of the project that takes into account the characteristics of that type of land use.

Option 2c. Conduct a complete STMP Nexus Study update. The Board could choose to retain a consultant to update the entire program, and simply add the special consideration of the project as one of the tasks. This would have the added benefit of reevaluating the list of projects, which may be timely in light of the new focus on PDAs and renewed interest in West County rail options.

Attachment
West County Action Plan for Routes of Regional Significance
Summary of Routes and Actions that Could be Affected by Point Molate Casino Resort

West County-Wide

- § Maintain transit system quality
- § Encourage continued use of alternative transportation modes
- § Maintain and enhance roadway network
- § Improve pedestrian and bicycle access with related safety enhancements
- § Implement ferry service to Hercules and Richmond
- § Reduce greenhouse gas emissions
- § Identify new sources of transportation funding

Interstate 580

- § Maintain LOS E or better on all segments
- § Evaluate need for increased Park & Ride lot capacities, planned improvements, maintenance funding, and possible future expansion plans
- § Conduct future studies of operational improvements
- § Design, fund, and construct potential improvements recommended in the Richmond-San Rafael Bridge Bike/Pedestrian PSR

Interstate 80

- § Maintain a Delay Index of 3.0 or less during weekday morning and evening peak hours
- § Improve corridor management through implementation of I-80 ICM project recommendations
- § Complete design and construction of interchanges with Central Avenue and State Route 4

Richmond Parkway

- § Maintain LOS D or better at all signalized intersections
- § Plan, design, and upgrade to Caltrans standards for designation as a State Route
- § Provide improvements to transit service and pedestrian crossings

San Pablo Avenue

- § Maintain LOS E or better at all signalized intersections
- § Improve pedestrian and bicycle access with related safety enhancements, including bike connections to the Bay Trail
- § Monitor and potentially expand Rapid Bus
- § Obtain funding for operations and management of SMART Corridor
- § Discourage diversion from I-80

State Route 4

- § Maintain LOS E or better on all segments
- § Develop design options for improvements to the I-80/SR 4 interchange

San Pablo Dam Road

- § Maintain LOS E or better at all signalized intersections
- § Improve pedestrian and bicycle access with related safety enhancements
- § Complete design and construction of I-80 interchange
- § Resolve transit access and amenity needs
- § Study intersection configurations and signal coordination in the residential and commercial portions

23rd Street

- § Maintain LOS D or better at all signalized intersections
- § Improve pedestrian and bicycle access with related safety enhancements
- § Implement signal coordination

Carlson Boulevard

- § Maintain LOS D or better at all signalized intersections
- § Improve pedestrian and bicycle access with related safety enhancements
- § Implement signal coordination
- § Support reconstruction and bike facility upgrades in Richmond section

Central Avenue

- § Maintain LOS D or better at all signalized intersections
- § Complete design and construction of I-80 interchange
- § Implement signal coordination

Cutting Boulevard

- § Maintain LOS D or better at all signalized intersections
- § Improve pedestrian and bicycle access with related safety enhancements
- § Improve intersections with San Pablo Avenue and interchange with I-80

El Portal Drive

- § Maintain LOS D or better at all signalized intersections
- § Monitor for changes to I-80 interchange ramps as part of I-80/San Pablo Dam Rd interchange project

Macdonald Avenue

- § Maintain LOS D or better at all signalized intersections
- § Improve pedestrian and bicycle access with related safety enhancements
- § Upgrade traffic signals to provide signal coordination and bus priority