

**STATEMENT OF SCOTT CROWELL ON BEHALF OF
THE GUIDIVILLE RANCHERIA**

I am Scott Crowell, legal counsel to the Guidiville Rancheria and Point Molate Futures LLC (“PMF”), which is a wholly owned entity of the Guidiville Rancheria, and which owns and holds title to the 82 acres identified as the developable parcels at Point Molate. This written statement has been approved by the Tribal Council and is submitted on the Tribe’s behalf. I provide this statement to better inform the Coastal Conservancy of the larger context in which the subject transaction needs to be understood. Frankly, the Tribe is motivated to submit this written statement to the permanent record in large part to reduce (but not eliminate) the risk of history getting it wrong. Today, the Coastal Conservancy is considering the approval of \$36 million in state grant money to be directed to the sale of PMF’s property located at Point Molate to the East Bay Regional Park District (EBRPD). On a personal note, it has been my honor and privilege to work almost exclusively in the representation of Indian Tribes in inter-governmental matters for forty years. Much of my career has been devoted to correcting revisionist history. I find myself doing that, yet again, here. Specifically, there are four statements in the “COASTAL CONSERVANCY, Staff Recommendation, November 21, 2024, POINT MOLATE ACQUISITION, Project No. 23-024-01, Project Manager: Marilyn Latta” (“Staff Report”), that need to be corrected or clarified.

1. Although the Tribe chooses to have the transaction proceed, it falls far short of furthering the Tribe’s interests

First, the Staff Report reads “The Guidiville Rancheria of California fully supports the intended acquisition purposes.” “Supports” is an imprecise word that does not accurately convey the Tribe’s view. It is more accurate to say that the Tribe “chooses” to go forward with the proposed transaction. The Tribe chooses to go forward with this transaction, not because it advances the Tribe’s interest; It does not. Rather the Tribe chooses to go forward with this transaction because it is the best option amongst the only realistic options available to the Tribe under the circumstances, all options of which are bad options and none of which advance the Tribe’s governmental agenda.

My work with Guidiville began in 2006 when the Tribe was approached by the City of Richmond and Upstream Point Molate LLC with a proposal for the restoration of the Tribe’s land base (or “Reservation”) at Point Molate, to be used for multiple purposes, including the establishment of a world-class park (at no expense to the City or to California taxpayers), tribal governmental offices, cultural and ceremonial grounds, needed tribal housing and social services, as well as a world-class gaming resort. Given the acrimony between the Tribe and the City of Richmond over the last fifteen years, you

would think it was the other way around, but the Tribe would likely never have pursued a restored land base at Point Molate if the City had not approached to Tribe.

The phrase “restoration of the Tribe’s land base” is likely unfamiliar to you. The phrase refers to the federal government’s obligation to restore the Tribe to the position it would be in if the Tribe was not terminated by the illegal actions of the United States after the passage of the California Rancheria Act in 1958. For more than twenty years, the Tribe, along with dozens of other Tribes, was divested of its Reservation or Indian lands and told by the federal government that the Tribe no long exists. Guidiville, along with three other tribes filed a lawsuit against the United States which resulted in a Final Judgment issued in 1991 restoring the four tribes to federally-recognized status, See, *Scotts Valley Band of Pomo Indians, et al. v. United States*, Civil No. C-86-3660 WWS (N.D. Cal. March 15, 1991). Over the span of more than three decades during which time the four Tribes were wrongfully terminated, their Indian lands had been sold off to third parties or sold off at auction due to the inability of members to pay state or local property tax. So, when the Tribes’ legal status was restored, they had no viable land base or Reservation and no resources to pursue a restored land base. The federal government’s obligation to restore that land base continues to the current day, but the political reality is that the Tribe has to do all the hard work in finding and securing land to be used for its restored land base and then look to the federal government to take that land into federal trust status. Of the four Tribes in the *Scotts Valley* litigation two of them, the Lytton Indian Community and the Mechoopda Rancheria now have substantially accomplished their restoration of Indian lands agenda, both of which include successful gaming resorts. The third, the Scotts Valley Rancheria is well on its way. Other Tribes that access the North Bay Market, including Graton, United Auburn and Yocha Dehe were similarly tasked to restore their land bases after being wrongfully terminated. Notably, all of them have viable first-class gaming resorts. In sharp contrast, the City’s decision to approach the Tribe in 2006 resulted in Guidiville’s current status of being on the outside looking in.

Guidiville was working hard on its own agenda, looking at ancestral lands throughout the North Bay and into Napa and Sonoma counties when the Tribe was approached by the City of Richmond. The Tribe’s agenda was side-tracked by the City of Richmond’s proposal and then hijacked by the City when it reneged on its contractual obligations to Guidiville. The Tribe owns title to 82 acres of Point Molate today as the result of a settlement agreement reached only after the Ninth Circuit Appeals Court found the City had breached it contracts with Upstream and the Tribe. Although today’s vote likely results in the end to fifteen years of wasted time and limited tribal resources, it does nothing to advance the Tribe’s governmental agenda of restoring its land base. Accordingly, it is not correct to say the Tribe “supports” this transaction. It is more correct to say the Tribe capitulates because doing so enables it to redirect its resources and attention to far-more viable options to secure its land base. Make no mistake, the Guidiville Rancheria will have a restored land base that allows it to serve the North Bay’s robust gaming market. Depriving the Tribe of accomplishing that objective at Point Molate will not deprive the Tribe of the restored land base to which it is entitled.

2. The Tribe is relinquishing the entirety of PMF's 82 acres to the East Bay Parks District. There is no separate transaction to sell the southernmost 52 acres as suggested by the Staff Report.

Second, the staff report states that the \$36 million grant is to be used to purchase only 52 acres of the 82 acres owned by the Tribe. The Purchase and Sale Agreement provides that EBRPD is buying the entire 82 acres. The Purchase and Sale Agreement does not distinguish between the 52 southernmost acres identified by the staff report and the 30 northernmost acres. The Tribe understands the intent is for the entire 82 acres to be purchased by the EBRPD and be permanently dedicated to be used as a park. Indeed, the Tribe initially sought an agreement to sell only the southernmost parcels to EBRPD while continuing to secure a buyer for the northernmost parcels. EBRPD responded that it was only interested in purchasing the entirety of the 82 acres.

This carve out of only authorizing the \$36 million to be used for the acquisition of the southernmost 52 acres raises concerns as to whether the entirety of Point Molate is to be used for a park, which the Tribe supports, or whether the 30 northernmost acres may be sold or otherwise developed as the Tribe envisioned, closing the Tribe out of the very activities that it sought before being approached by EBRPD. At no point prior to the release of the Staff Report did the Conservancy, EBRPD or the City of Richmond disclose that the grant was only to be used for the southernmost 52 acres. That lack of transparency is disturbing, disrespectful and concerning.

3. The City's failure to correct the deficiencies in its CEQA documentation has nothing to do with the City's transfer of the 82 acres to PMF, but has everything to do with seriously limiting PMF's options in marketing and selling the 82 acres.

Third, the Staff Report states:

In 2020, a new development proposal on the property was entitled by the City. That development project was challenged, alleging CEQA errors, among other issues. Ultimately, that lawsuit found that there were CEQA deficiencies, which the City did not correct. Therefore, as stipulated in the judgment, the property transferred from the City to the current owner, Point Molate Futures, LLC (wholly owned by the Guidiville Rancheria of California) in May 2022.

The transfer of the property from the City to PMF was mandated by the settlement agreement in litigation wholly unrelated to the CEQA litigation and was transferred because the City failed to sell the property to a developer within the time frame allowed. Indeed, the Tribe had to threaten the City with contempt proceedings to force its compliance. At the time of the transfer from the City to PMF, the property was fully entitled for significant development. The judgment in the CEQA litigation did not occur until after the property had already been transferred. The judgment in the CEQA litigation did direct the City to disentitle the property, which the City did disentitle, but the Court's direction was expressly for the sole purpose of correcting two minor

deficiencies, which the City did not correct. Those irresponsible actions by the City to not correct the CEQA deficiencies crippled the Tribe's ability to market and sell the property to a developer as the Tribe is required to do under the federal court judgment. Although the Conservancy staff appears to accept the appraisals, which appraisals have not been fully disclosed to the Tribe, the reality is that those appraisals reveal the price the Tribe could have secured if the development entitlements to the property had not been rescinded. They do not reveal the seriously diminished value that seriously and materially limits the Tribe's ability to market and sell the property without the very same entitlements being in place, due to the City's wholesale refusal to correct two easily correctable deficiencies in the CEQA documentation. Although the Tribe "chooses" to go forward with the proposed sale to EBRPD, it does so because the alternative to going through with this sale is to engage in yet another decade of acrimonious litigation with a City government whose legacy will be one of breaching its contractual and legal obligations with impunity.

Fortunately, the United States has recognized that the Tribe's efforts to restore its land base has been unduly delayed by the City's bad behavior and the resulting litigation. The Department of the Interior has tolled the twenty-five years within which a restored Tribe must have land taken into trust for the land to qualify for gaming under the Indian Gaming Regulatory Act. With the closing of this transaction and being finally divorced from the City of Richmond, Guidiville can re-initiate its efforts to secure a restored land base in its ancestral area. The Tribe will be taking this unresolved issue – the establishment of a restored land base with the Guidiville Rancheria – directly to Governor Newsom. Make no mistake, Guidiville will stand on equal footing with its sister tribes with a viable gaming resort to tap into the underserved North Bay gaming market. That should have been at Point Molate. An entire generation of the Tribe's membership put their hearts and souls into realizing their vision at Point Molate – the next generation of tribal members now have the obligation to ensure that their parents' and grandparents' vision is fulfilled.

4. The platitudes of tribal engagement and consultation are disingenuous.

Fourth, the Staff Report asserts the "Project includes a serious effort to engage tribes." The Tribe wants the record to be clear that this option, using a \$36 million grant of State taxpayer funds to purchase the Tribe's property was only brought to the Tribe's attention after the City had withdrawn the entitlements – there was no consultation with the Tribe by the Senator taking credit for appropriating the \$36 million, the Governor's office or the Assembly. – none. Nor was there any outreach from the Governor's office. The whole concept was conceived behind the Tribe's back – This is 180 degrees opposite of the way it should have been done if the Executive Orders regarding tribal matters were truly selected and enforced. The State, including the Governor's office and the State Legislature should be committing resources and working to get lands back to the Tribes, not take more land away.

Conclusion

The Tribe is calling out the Conservancy staff on the four issues identified above, which are not accurately reflected in the Staff Report. Although these four examples are the most glaring, a more accurate Staff Report would provide far more detail regarding the significance of Point Molate to the ancestors of the Tribe's current membership and far more detail regarding the City's more recent irresponsible and unlawful actions regarding Point Molate from the moment the United States Navy designated Point Molate for transfer to the City. The Tribe is not standing in the way of this transaction, but the Tribe will not allow itself to be portrayed as welcoming this sale nor allow the true facts and circumstances that led to this sale be swept under a rug.

Sincerely,



Scott Crowell
On behalf of Guidiville Rancheria