



October 14, 2009

Mr. Bill Lindsay, City Manager  
Ms. Janet Schneider, Assistant City Manager  
Richmond City Hall  
1401 Marina Way South  
Richmond, CA 94804

RE: Point Molate LDA Status Report

Dear Bill and Janet:

This letter is intended to satisfy our requirement to provide a semi-annual status report on our progress under the Land Disposition Agreement dated November 9, 2004 between the City of Richmond and Upstream Point Molate LLC.

#### **EIS/EIR**

The Draft EIS/EIR has been available for public comment since July 20. At the City Council Meeting on September 22, 2009, the Council extended the comment period from September 23 until October 23. Since being made public, public hearings to receive verbal and written comments were held before the Design Review Board on August 12, 2009 and before the Planning Commission on September 17, 2009. In addition, public workshops with technical experts were held on August 10, 2009 and August 27, 2009 at the Richmond Memorial Auditorium. Although very marginally attended, the workshops provided an opportunity for the public to learn about the proposed project, the environmental review process, and the analysis presented in the DEIS/R. Written comments were also accepted at the workshops.

Due to the extension of the EIR comment period, we understand the City is now reviewing a new schedule that would provide for City Council consideration of the EIR, Design Concept Documents and other approvals in January 2010. Since the City's CEQA review has been delayed, your staff has discussed a required delay in the Closing Date for Upstream to acquire the property until March 2010. This will be acceptable to us and we will work with your staff on the necessary extension approval arrangements.

#### **Federal Approvals**

Guidiville has filed all necessary applications with the National Indian Gaming Commission and the United States Department of the Interior to have Point Molate declared "restored Indian lands" eligible for gaming under the provisions of the Indian Gaming Regulatory Act. This is a legal determination that the Department of Interior will make based

(510) 596-9501  
1900 Powell Street, 12<sup>th</sup> Floor  
Emeryville, CA 94608

on the review of historical information concerning the Tribe. The federal government is under no deadline to make such an administrative determination. We are hopeful that we will be advised of their decision shortly.

### **Negotiations with Navy**

Upstream, with its environmental and insurance consultants, has substantially completed its work with the City staff and its consultants in negotiations with the U.S Navy leading to the conveyance of the remainder of the property to the City pursuant to an Early Transfer Cooperative Agreement (“ETCA”) and a Finding of Suitability for Early Transfer (“FOSET”). The Navy has deposited \$28.5 Million in escrow and Governor Schwarzenegger had approved the early transfer. We anticipate that the Early Transfer will close in the next few weeks (subject to a final environmental policy from AIG) and the City will then be in ownership of all property covered by the LDA. Upstream’s obligations to begin the remediation are governed by the Remediation Agreement dated September 9, 2008 and the LDA. It is important to note that had the Early Transfer not been achieved, the Navy’s proposed approach to Site 3 would have taken many years (or possibly even decades) to complete so this is truly an important milestone. We must acknowledge the professionalism and dedication of those who led this process for the Navy and the City, as successful conclusion of these agreements are rare around the country.

On behalf of the City, we are making provisions to assume responsibility of the ground water treatment system, and various site monitoring programs that the Navy was operating so there is no gap in fulfillment of these ongoing maintenance and monitoring responsibilities.

### **Project Planning and Engineering**

Upstream and its engineering consultants have made great progress in identifying viable infrastructure routing and capacities to serve the future project. We have provided this information to the City and to the EIR/EIS consultant, including water and energy-reducing measures such as graywater treatment and on-site renewable energy generation. Infrastructure routing and analysis has been studied in the EIR/EIS, and the consultant has developed some additional engineering ideas that will be helpful.

During the last nine months, we have undertaken a comprehensive cost analysis of the proposed project, using independent consultants and contractors. The results of that work indicate that projected costs to construct the project are within the ranges previously estimated, and within the financing capabilities of the team. Specific information to support this analysis will be submitted to the City with the financing plan required under the LDA.

While site engineering analyses have taken a lot of time and expense, we have also continued our work with Richmond groups to prepare to meet the hiring goals outlined in our

agreements. The bulk of that work has been to collaborate with community and church groups to identify what now numbers over fifty community partner organizations that will each function in some capacity as part of a fabric of programs and resources to identify, steer, prepare and train Richmond applicants into employment opportunities at the project. As we approach the final approval process, we will continue to work with Sal Vaca and others to pull the programs together into as seamless a process as we can design.

### **Funding**

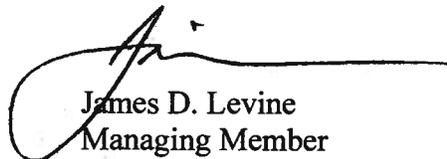
Payments to the City of Richmond under the LDA, together with all other predevelopment expenditures that Upstream has made since the LDA was executed in November 2004, now exceed \$22 Million (\$15.5 Million of which was paid to the City under the LDA or the prior Exclusive Right to Negotiate). All of these funds have been spent to advance the redevelopment of Point Molate. Our project budget over the next twelve months indicates that we will expend in excess of an additional \$4 Million to continue to advance the project. With our various financial arrangements and partners, we continue to have adequate resources available to fund those costs as they are incurred.

### **Closing**

Through our Winehaven partnership, Upstream will be ready to close the purchase of the property upon completion of the City's CEQA review, subject to the terms of the LDA. Preparatory meetings have been taking place among the lawyers involved and Closing Documents are being identified and drafted. We will continue to work with city representatives to finalize the necessary arrangements.

Please call me if you have any questions or comments.

Sincerely,  
Upstream Point Molate LLC



James D. Levine  
Managing Member

CC: John F. Salmon  
Merlene Sanchez, Guidiville Band of Pomo Indians  
Walter Gray, Guidiville Band of Pomo Indians  
Michael Derry, Black Oak Development