

December 3, 2008

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  
Notice to Extend Closing Date and Status Report

Dear Bill and Janet:

This letter confirms our intent to extend our right to close the purchase of the Point Molate property for an additional 12-month period until January, 2010, as provided in Section 1.2 of the Land Disposition Agreement dated November 9, 2004 between Upstream Point Molate LLC and the City of Richmond (the "Point Molate LDA").

This letter is also intended to satisfy our obligation to provide a semi-annual status report on our progress under the Point Molate LDA.

#### **EIS/EIR**

We understand that the review of the Administrative Draft of the EIS/EIR by the City of Richmond and the Bureau of Indian Affairs is substantially complete and that the Administrative Draft has been forwarded to cooperating agencies (Contra Costa County and US EPA) for their comments. When those comments have been received and incorporated as necessary by the City's and the Bureau of Indian Affairs' environmental consultants (AES Environmental of Sacramento), the EIS/R will be released for public comment. We are hopeful that will occur prior to the end of this year. We are working with City staff to schedule Study Sessions and City Council Hearings early in the New Year, based upon the required comment periods required by applicable federal and State law. Since AES is under the managerial control of the Bureau of Indian Affairs ("BIA") pursuant to its MOU with the City, we do not control the pace of work under the EIS/EIR.

#### **Federal Approvals**

The Guidiville Band of Pomo Indians (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 legal determination is progressing through the Department of Interior based upon their review of historical information concerning the Tribe. The federal government is under no deadline to make

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such an administrative determination, but we believe that this site qualifies as restored lands for Guidiville under all reasonable interpretations of the law.

### **Negotiations with Navy**

We have made significant progress since our last status report with our environmental and insurance consultants, working 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"). Substantially all actions have occurred, including the approval on November 12 of a revised Order by the San Francisco Bay Regional Quality Control Board, to submit the ETCA and related documents to the Governor for his approval of the Early Transfer. The Navy has already funded its \$28.5 Million grant for the cleanup cost into escrow pending all final approvals and the conveyance of the remainder of the property to the City. Correspondingly, Upstream and the City have entered into a Remediation Agreement under which Upstream will contribute funds to the clean up and manage the implementation of the remediation. These agreements will allow the transfer of approximately 50 acres of developable land from the federal government to the City of Richmond, along with a federal grant of \$28.5 million so that we can complete the remediation and monitoring of the site in accordance with the anticipated development timetable.

Although the financial markets are in disarray, we continue to get indications from AIG as to the availability of environmental insurance for the project. The Navy has circulated, received public comment and has now finalized their Finding of Suitability to Transfer (FOSET) and Early Transfer Cooperative Agreement (ETCA) documents.

Our goal remains to complete all of the agreements and documents to allow transfer of remaining parcels by January 2009. We are very appreciative of the work that the Navy and the City have done with us to complete these agreements, which are few and far between across the United States.

### **Project Planning**

Upstream and its engineering consultants have continued to make 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. In addition, we have met with the Police and Fire Departments to further refine the needs of the project from those City agencies, and have agreed to increase project support for police and fire agencies as requested during those meetings. We have also met with the City's Historic Advisory Committee to brief them on the overall conceptual plans of the project and the anticipated activities with regard to the historic resources on the property. We anticipate that further information on all of these issues will be developed as the EIS/R is processed.

### **Community Outreach**

Consistent with our prior commitments, we have begun an active program to make presentations to Neighborhood Councils and interested community groups that have

requested information on the project. We have also conducted joint meetings with officials representing Richmond Works, Contra Costa College, WCC Unified School District, various trade unions and other non-profits with whom we intend to work to advance the job training that we believe necessary to facilitate achieving the hiring goals targeted under the LDA.

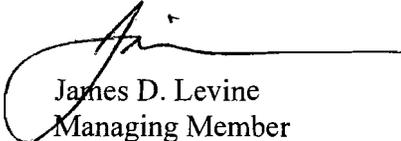
### **Funding**

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 \$18 Million (\$10.5 Million of which has been paid to the City under the LDA or the prior Exclusive Right to Negotiate). Pursuant to our Notice to Extend above, we will pay the City an additional \$5 Million in January 2009. All of these funds have been spent to advance the redevelopment of Point Molate. As has been previously reported to you, Upstream and the Guidiville Tribe have entered into financial arrangements with the Rumsey Band of Wintun Indians, the owners of the Cache Creek Resort in Brooks, CA, and we continue to maintain adequate resources to fund costs as they are incurred.

In summary, we are proceeding as anticipated under the LDA and look forward to certification of the EIR and closing of our purchase transaction in the coming months.

Please call me if you have any questions or comments.

Sincerely,  
Upstream Point Molate LLC



James D. Levine  
Managing Member

CC: John F. Salmon, Upstream Point Molate LLC  
Merlene Sanchez, Guidiville Band of Pomo Indians  
Donald Duncan, Guidiville Band of Pomo Indians  
Walter Gray, Guidiville Band of Pomo Indians  
Michael Derry, Black Oak Development