



January 28, 2010

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Project No. 33109-010505.00

Subject: Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR)
Point Molate Mixed-Use Tribal Destination Resort and Casino, Richmond, California
Dated July 2009

Dear Mr. Taylor:

As requested, Bureau Veritas North America, Inc. (Bureau Veritas) has reviewed select portions of the Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Point Molate Mixed-Use Tribal Destination Resort and Casino, in Richmond, California (the Property). Specifically, we reviewed Sections 3.2, 3.3, 3.12, 4.2, 4.3, 4.12, 5.2, and Appendix P and X, which pertain to soil and groundwater contamination issues.

Based on this review, there are several unresolved soil and groundwater contamination issues at the Property; Navy funding of \$28.5 million may be significantly less than necessary to achieve environmental conditions that allow for regulatory closure. The approach utilized by the Navy to investigate and remediate the Site focused primarily on cleanup of soil in the shallow subsurface to address direct contact exposures. This approach assumes that significant amounts of contamination in saturated soil will be left in place in the vicinity of or below the groundwater surface. Contrary to this approach, the Regional Water Quality Control Board (RWQCB) has indicated it will require cleanup that is sufficient to assure that future discharge from the site will not occur and continued groundwater extraction will not be required.

The project has not yet established specific cleanup levels that will need to be achieved for submerged contamination, which historically affected and continues to threaten San Francisco Bay. Discussions on the appropriate cleanup levels have been ongoing between the RWQCB, the Navy, the City, and/or Upstream Point Molate, LLC (Upstream) for several years. The RWQCB recently issued a Tentative Order for the Site that defines cleanup objectives for the property; these are significantly different from cleanup objectives that were assumed by the Navy and Upstream. This tentative order will be applicable to the entire 413-acre Point Molate property and will become effective when the EIS/EIR is adopted.

The Order requires compliance with various RWQCB resolutions, including the Basin Plan, and specifies that the extent of cleanup must be sufficient to eliminate the need for long term monitoring within 5 years.

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This Order clearly is requiring removal of potentially mobile free product and source materials, which are prevalent in many areas of the site and may be present in additional unknown areas. Areas with known free product include:

- Approximately 11 acres in IR-3 that are saturated with hydrocarbons and other contaminants to depths of 20 to 25 feet below the ground surface (bgs)
- Approximately 5 acres in IR-4 that are saturated with hydrocarbons and other contaminants to depths of at least 20 feet bgs
- Approximately 1 acre in IR-1 that is saturated with hydrocarbons and other contaminants to depths of possibly 50 feet bgs
- UST areas 3, 5, 6, 8, 12, 13, 15, 19 and B, which are saturated with hydrocarbons and other contaminants to unknown depths and extents

Additional areas of suspect free product include:

- Areas within the 17 miles of pipeline and valves that were present at the Site and have not been thoroughly investigated
- A large petroleum impacted area at depth along the north shoreline, which was not thoroughly investigated

The middle distillate and heavy hydrocarbons present in the subsurface above residual saturation levels (i.e., free product) will not degrade in the foreseeable future and could affect the property for hundreds of years. Because of their locations, the areas saturated with hydrocarbons and other contaminants are currently an extraordinary threat to the bay. The hazard could be exacerbated by construction activities, erosion, earthquakes, dewatering and other events that disturb the current equilibrium, allowing greater mobility of the contaminants.

Two similar precedent projects include Pier 64 in San Francisco and Site B in Emeryville, where massive excavations were required to eliminate free product in accordance with regulatory directives such as Resolution 92-49, which stated that floating free product must be removed to the extent practicable. The only proven way to remediate middle distillates and heavy hydrocarbons such that they are not a threat to the waters of the State is to excavate contamination until remaining concentrations are below residual saturation levels, which are significantly lower than Fuel Product Action Levels (FPALs). The RWQCB has required submittal of cleanup levels for the Property and stated that FPALs do not address cleanup at or below the groundwater table. These FPALs, which were proposed by the Navy to allow significant residual contamination to remain at the Site, do not consider potential mobility of free product and therefore may not comply with RWQCB resolutions.

At this point, there are no remedial action plans, soil and groundwater management plans, or concurrence on cleanup objectives. This situation puts the City at extraordinary risk. For example, the full excavation at IR-3 to depths of 20 feet, which is very possibly required, could by itself cost more than \$50 million and is significantly more than funding provided by the Navy. Major removal action in other areas could only serve to exacerbate these risk and costs. Upstream, a single purpose entity with limited resources, may



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be unable to provide this funding, and to date an acceptable insurance policy has not been secured. Cost cap and stop loss insurance would only cover a defined remedial action plan. The insurance markets are extremely hesitant to insure soil excavation projects because these projects have histories of doubling and tripling in scope. Obtaining an effective insurance policy to protect the City may not be possible.

Another major risk at the Property with respect to long term management costs is the Navy's abandonment of 20 major underground storage tanks, which it opted to leave in place due to what would have been extraordinary removal costs. Management of these USTs will be required for the foreseeable future. These large tanks, which measure 100 feet in diameter, are buried within the hillside. Measures to address these tanks have consisted of pressure washing accessible interior surfaces. The tanks have lining systems that are still intact and some of tanks may have been repaired and relined over the years, resulting in multiple layers of liner material that would not have been permeated by pressure washing. Significant amounts of fuel may be present under the lining systems. Water entering these tanks from the surface or ground can easily become contaminated and require cause new releases to the environment and costly management measures in the future.

In summary, The Navy made certain assumptions with regard to cleanup objectives for the Site, and these are clearly being revised by the RWQCB. At this point, there is too much uncertainty to understand ultimate remediation actions that will be required to achieve conditions allowing for closure. The presence of massive areas with saturated hydrocarbons will need to be resolved. Resolution of this matter will not happen quickly and will most likely require much more remediation and long term management than envisioned by Upstream. It is in the City's best interest to require that remedial actions be as complete as possible to eliminate threats to the Bay and reduced potential costs associated with long term management.

For the reasons stated above, the EIS/EIR analysis is significantly flawed with its characterization of environmental impacts and regulatory cleanup objectives which leads to unrealistic conceptual mitigation approaches which have not been approved by RWQCB. These deficiencies in the EIS/EIR only serve to under-scope potential environmental issues and impacts associated with the Property. If you have any questions or need additional assistance, please contact me.

Sincerely,

Jon A. Rosso, P.E.
Regional Director
Environmental Services