



May 18, 2010

Mayor Gayle McLaughlin and  
City Council Members  
City of Richmond  
City Hall  
450 Civic Center Plaza  
Richmond, CA 94804

Re: Land Disposition Agreement, dated November 9, 2004, between Upstream Point Molate LLC ("Upstream") and the City of Richmond (the "City")

Honorable Mayor and Council Members:

As you know, the above-referenced agreement, as amended to date (as so amended, the "LDA"), remains in full force and effect. While the parties have been endeavoring to reach an agreement to extend the closing date to a fixed date and to generally update and improve the terms of the LDA for both parties, the LDA, by its terms, provides for an automatic and ongoing extension of the closing date on account of the pending CESP litigation. We had in the past supported an extension of the LDA to eliminate any possible public confusion about the status of the LDA, but regardless of whether the Council extends the scheduled closing date, the LDA remains in effect until, at least, mid-2011.

We note that the City has calendared an item for this evening's City Council meeting to "explore various development alternatives (apart from the Upstream proposal) for the Point Molate site and direct staff ... to receive ideas and suggestions for alternative plans so that the city may weigh the relative costs and benefits and responsibly rise from this economic downturn." We have no objection to the City evaluating all of the advantages and disadvantages of various development options, provided that the City honors its obligations under the LDA. We would assume that in considering any alternatives, you would measure the options against the same standards of economic development, job creation, job training, revenues to the City, historic rehabilitation, public transit, open space and environmental restoration that you have applied to our project, all with a realistic view of what alternatives would attract the necessary investment to create these benefits.

At the same time, we trust the City will not to take a cavalier attitude with respect to its contractual obligations. The City is a party to the LDA and is bound by its terms. Upstream, with its partners, has invested years of uncompensated efforts to bring jobs and revenues to the City, and has paid many millions of dollars in connection with the LDA, sums which the City has used for both project and non-project purposes.

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

Accordingly, Upstream expects the City to continue performing its obligations under the LDA, including completion of the CEQA environmental review of the project prior to the LDA's expiration. While the Guidiville Tribe has had over 160 years of history with governmental agreements that have been abrogated, Upstream and Guidiville will, if forced, vigorously enforce the contractual rights provided by the LDA.

Upstream, with its partners, fully intends to perform all of its obligations under the LDA including work to accelerate the environmental cleanup of the site. While Upstream remains interested in working with the City to evaluate possible changes to the LDA, Upstream is not interested in a piecemeal negotiation in which the City seeks to gain advantageous LDA changes for each short-term extension of the scheduled closing date. If the City elects not to extend the scheduled closing date under the LDA, Upstream will make the monthly payments required as part of the automatic extension provisions of the LDA. The City should be aware, however, that those amounts are substantially less than the amounts Upstream has been paying in connection with the previous extensions of the scheduled closing date.

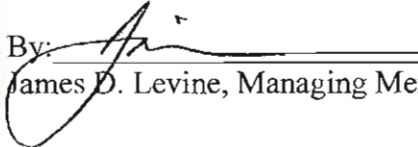
Upstream looks forward to continuing to work with you to achieve the long-term benefits everyone seeks.

Respectfully submitted,

Guidiville Band of Pomo Indians

Upstream Point Molate LLC

By:   
Merlene Sanchez, Tribal Chairperson

By:   
James D. Levine, Managing Member

CC: Bill Lindsay  
Janet Schneider  
Randy Riddle  
Bruce Goodmiller