

TECHNICAL PEER REVIEW

Point Molate Draft Environmental Impact Statement/
Environmental Impact Report

September 2009

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TECHNICAL PEER REVIEW

Point Molate Draft EIS/EIR Mixed-Use Tribal Destination Resort and Casino

Executive Summary

ESA performed a technical peer review of the Point Molate Mixed-Use Tribal Destination Resort and Casino Project Draft Environmental Impact Statement/Environmental Impact Report (Draft EIS/EIR). The review was conducted to determine technical adequacy in meeting the statutory requirements of the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA). ESA scientists and specialists reviewing the document included senior planners, biologists, air quality/noise specialists, traffic engineers, hydrologists, geologists, and archeologists/historians, all who have considerable experience in the preparation of joint NEPA/CEQA documents.

Both NEPA and CEQA regulations require a revision or supplement to draft environmental impacts documents when significant new information is presented. The Council on Environmental Quality's Regulations for Implementing NEPA state that agencies shall prepare a supplement to an EIS if "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts" (40 CFR Part 1502.9(c)(1)(ii)). Similarly, the Bureau's NEPA Handbook states that an EIS must be reviewed to determine if it needs to be revised or supplemented under several conditions including "[s]ignificant new circumstances or information relevant to environmental concerns" (59 IAM 3-H, Section 6.7). Section 15088.5 of the CEQA Guidelines require an EIR to be recirculated whenever significant new information has been added to the EIR. It is our conclusion that the Draft EIS/EIR requires revision or supplement in order for the public and reviewing agencies to provide meaningful comments on the analysis.

Our peer review indicates that the Draft EIS/EIR is incomplete and fails to evaluate several components of the proposed project. In particular, the Draft EIS/EIR fails to evaluate the potential effects of site remediation and cleanup (the extent of which varies by alternative) and the operation of a rock quarry during construction (Alternatives A, B and D). These actions may have substantial effects upon the human environment, and therefore should be fully disclosed and evaluated within a revision or supplement to the Draft EIS/EIR.

In addition, the Draft EIS/EIR contains missing information, contradictory information, and inaccurate conclusions in terms of significance, for the following key environmental issue areas: Hydrology and Water Quality; Air Quality; Socioeconomic Conditions; Transportation/Traffic; and Hazards and Hazardous Materials.

Finally, the 2010 timeframe within the cumulative analysis (with the exception of traffic and air quality which are analyzed to 2025) is inadequate under both NEPA and CEQA requirements. Given the limited scope of evaluation, the resulting 114 pages of cumulative analysis cannot be adequately evaluated until this timeframe is revised.

These deficiencies are, in our opinion, significant, and render the Draft EIS/EIR incomplete as to the analysis of impacts to the environment. Without the requested additions and revisions, the public and reviewing agencies cannot provide a meaningful review of the project and decision makers cannot make informed decisions regarding the proposed project. Based on these factors, it is our opinion that the current Draft EIS/EIR fails to meet the requirements of NEPA and CEQA, and a revised Draft EIS/EIR should be prepared and recirculated.

1.0 Introduction

The following report has been prepared by ESA to provide a technical peer review of the Point Molate Mixed-Use Tribal Destination Resort and Casino Project Draft EIS/EIR. The Draft EIS/EIR evaluates the potential effects of selling and then transferring approximately 266 acres of land within the former Naval Fuel Depot Point Molate to federal trust for the benefit of the Guidiville Band of Pomo Indians (Tribe). The Bureau of Indian Affairs (BIA) is the lead federal agency under the NEPA while the City of Richmond is the lead local agency under the CEQA for the proposed project. (The reader should note that the term proposed project is used to refer to Alternative A, which includes the comprehensive set of federal actions and local approvals and subsequent resort and casino development. When the peer review refers only to the federal actions under NEPA the term proposed action is used). The purpose of this review was to evaluate the technical adequacy of the Draft EIS/EIR and determine if it meets the requirements of the following statutes and regulations:

- NEPA (42 U.S.C 4321 *et seq.*)
- Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR Parts 1500-1508)
- BIA NEPA Handbook (59 IAM-3)
- Department of the Interior (DOI) Department Manual Part 516 (516 DM 1-6, 10)
- CEQA and CEQA Guidelines (California Code of Regulations, Title 14).
- City of Richmond Guidelines and Procedures for Implementation of CEQA (Resolution No. 125-03).

2.0 Evaluation

The following peer review is organized by the sequence of sections and issue areas as presented in the Draft EIS/EIR.

2.1 Introduction/Purpose and Need (Section 1.0)

Section 1.0 of the Draft EIS/EIR provides the background of the action contemplated, and includes a description of the project location, a summary of the proposed project, the environmental review process under NEPA and CEQA, and the regulatory requirements, permits, and approvals necessary to implement the proposed project. It also describes in detail the purpose and need of the proposed action (under NEPA) as well as the project objectives (under CEQA).

In general, Section 1.0 (and Section 2.0, see below) inadequately describes the entire scope of the action under NEPA (40 CFR §1508.25) and CEQA (CEQA *Guidelines* §15126). While the introduction does summarize the approved Early Transfer Cooperative Agreement (ETCA), it fails to disclose the impact assessment requirements behind this action. As identified by the Navy and the San Francisco Regional Water Control Board (RWQCB) in Appendix X of the Draft EIS/EIR, the City of Richmond must contemplate the potential environmental effects of any remedial actions under CEQA. Throughout this section and others it is clear that remedial actions would take place "...following certification of the Final EIR and transfer to Upstream." (Draft EIS/EIR, pg 1-14). Since these actions are integral to the proposed action, the BIA should also fully disclose and evaluate the remedial actions under NEPA. This includes the tasks described in the RWQCB's Cleanup and Abatement Order (CAO, Appendix X), which provide a framework of remedial actions necessary for site development to occur. Per the requirements of NEPA and CEQA, these remedial actions should be fully disclosed and evaluated in the Draft EIS/EIR. These actions are a "foreseeable consequence" of the federal and City actions, and should be disclosed as such in Section 1.0.

In addition to this broader issue, Section 1.0 has the following technical issues:

- The purpose and need discussion should provide details of where Tribal members live and work. In order to meet the needs of providing jobs and services to the Tribe it would be logical to locate restored trust lands near the Tribe's current population base. The Tribe currently receives health services in Mendocino County through the Consolidated Tribal Health Project, Inc¹. The document must include analysis explaining how development on the project site would directly meet the social and economic needs of the Tribe.
- Under Regulatory Requirements, Permits, and Approvals (Section 1.6), the U.S. EPA would be the regulatory authority for Section 401 of the Clean Water Act for fill of wetlands on trust lands, not the RWQCB (Alternatives A, B, and C). The National Marine Fisheries Service may also need to be consulted under Section 7 of the Endangered Species Act. A section 10 permit may be required from the Corps as the pier modifications may affect navigable waters; a U.S. Coast Guard permit may be required as well. Based on Appendix X, the RWQCB would have final approval authority for the remediation plans proscribed in the CAO, including the Final Feasibility Studies and Remedial Action Plans for Sites 3 and 4 (in addition to other approval actions).

¹ Indian Health Service, 2009. Consolidated Tribal Health Project, Inc. Profile. Available online at: <http://www.ihs.gov/facilityservices/areaoffices/california/universal/PageMain.cfm?p=231&ProgramNbr=13>. Accessed September 14, 2009.

2.2 Proposed Action and Alternatives (Section 2.0)

Section 2.0 of the Draft EIS/EIR describes the proposed project and alternatives, including four development alternatives, a parkland alternative, and a no action/no project alternative. Three of the alternative (A, B, and C) would transfer approximately 266 acres of lands held by the City (presently or expected under the Finding of Suitability for Early Transfer or FOSET) to the Federal Government to be held in trust for the benefit of the Tribe. The section describes the energy efficiency goals of the project, land disposition and municipal services agreements (LDA and MSA, respectively), deed restrictions, the early transfer process (including the FOSET), and the environmental remediation steps that must take place before site development. The remainder of the section describes the alternatives in detail as well as alternatives eliminated from consideration, and ends with a comparison of the alternatives.

As described for Section 1.0, this section inadequately describes the entire scope of the action under NEPA (40 CFR §1508.25) and CEQA (CEQA *Guidelines* §15126). Under 40 CFR §1508.25, the lead federal agency shall describe the entire scope of the action, which includes:

“Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

1. Automatically trigger other actions which may require environmental impact statements.
2. Cannot or will not proceed unless other actions are taken previously or simultaneously.
3. Are interdependent parts of a larger action and depend on the larger action for their justification.” (40 CFR §1508.25)

Furthermore, under CEQA (CEQA *Guidelines* §15126):

“All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation.”

Section 2.0 appropriately describes (in summary form) the remediation steps that must take place prior to project development. However, the Draft EIS/EIR fails to evaluate the potential environmental effects of these actions. Furthermore, the document does not include enough details regarding the site remediation activities to determine their potential significance. The proposed activities are presented in a poorly organized format, making it difficult for the reader, as well as decision makers, to understand the entire scope and consequences of the actions being contemplated. For example, it is clear that only Alternatives A through D would receive “aggressive” remedial clean-up actions from the developer, Upstream, and that the City would be responsible for remediation actions under Alternatives E and F, and remediation under these alternatives would likely be at the Navy “baseline” funding level of \$28.5 million (pg. 2-8). It is also clear that the RWQCB’s CAO requires certain remediation actions before site development could occur; per Section 2.1.5, these actions are guided under a “conceptual Remedial Plan” (RP) prepared by Upstream. However, a copy of the RP is not included within the Draft EIS/EIR, so it is unclear what the details of this remediation plan entail. Based on these factors, both the physical impacts of the remediation actions (which are dependent upon the alternative selected) as well as the ultimate future conditions of the project site (i.e., level of remediation treatment) are intricately tied to the

action and alternatives being considered. Both the Navy and the RWQCB recognized the connection between the proposed development and site remediation when responding to public comments on the FOSET and the CAO:

“Impacts to the environment (habitat and wildlife) will be addressed by the City and its developer in future work plans or remedial design documents, as appropriate, at the time those documents are prepared and approved by the Water Board, in compliance with the requirements of CEQA.” (FOSET, Appendix C, pg. C-5)

“The proposed activities under the work plans are not yet known, but approval of the work plans for implementation may result in significant physical impacts to the environment that must be evaluated under CEQA. The City is the lead agency in approving the transfer and redevelopment of the Point Molate Naval Fuel Depot (NFD) and must evaluate the environmental impacts of the entire project including proposed specific cleanup activities at the site. Under CEQA, prior to approving any work plan that may have a significant impact on the environment, the Board, as the responsible agency, must consider the environmental document prepared by the City, (14 California Code of Regulations Section 15096). It is therefore important that the City’s environmental document adequately address the full scope and extent of the environmental impacts of the cleanup at the site and require adequate mitigation measures.” (CAO, pg. 8)

It is clear that the remediation actions necessary for site development should be described in detail *for each alternative*, as the level of remediation would differ under each alternative. The remediation actions should be detailed enough to make meaningful comparisons between alternatives. In addition, some alternatives, like Alternative B, would require higher levels of remediation than other development alternatives because it would include residential uses. Again, this requirement is made clear in the FOSET:

“Should the City and Developer select residential use as the development alternative, cleanup levels will need to be consistent with that use. The decision to allow or not allow residential redevelopment on specific areas of the site, will be based upon the remedial cleanup levels obtained during future remedial actions and the City’s desired land uses for the site. Ultimately any proposals for residential reuse at NFD Point Molate must be consistent with completed remedial actions.” (FOSET, Appendix C, pg. C-4)

The Draft EIS/EIR fails to evaluate the cleanup actions under each alternative. Instead, the document treats site clean-up as mitigation measures under the hazardous materials section (Section 3.12). This is inappropriate, as site cleanup is mandated under existing orders; it is not mitigation for project impacts. Instead, the impact discussion in Section 4 should address in detail the potential effects of site remediation actions under each alternative. Based upon the actions being proposed, site remediation may affect geology and soils, hydrology and water quality, air quality, biological resources, cultural resources, transportation/traffic, noise, and aesthetics. Absent this analysis, the Draft EIS/EIR fails to disclose to the public and decisions makers all of the potential environmental effects of the proposed project and alternatives. It is therefore apparent that the current Draft EIS/EIR fails to meet the requirements NEPA and CEQA, and a revised Draft EIS/EIR that evaluates the full scope of the actions contemplated should be prepared and circulated.

In addition to incompletely describing the actions that would occur under each alternative, Section 2.0 has the following technical issues:

- Section 2.1.3 describes the Interim Land Use Controls (LUC) that will provide land use limitations on portions of the subject property. Development under Alternatives A, B, C and D would be contingent upon some of the LUCs being removed. However, a copy of the LUCs is not provided in the document, therefore it is difficult to determine what actions, if any, would be allowed within areas subject to the LUCs as well as the specific process to remove the LUCs.
- As noted above, all alternatives should describe the discretionary approvals that the RWQCB must make to certify that the project site has been properly cleaned up and that the pertinent LUCs are lifted prior to site development.
- Alternatives A, B, and C include retrofitting the existing fuel pier. It is unclear, but Alternative D may also require pier work. Although no new pilings are proposed, the retrofit would require “some structural and cosmetic work, installation of utility lines along the underside of the decking, and covering of the pedestrian walkway...among other upgrades.” The described actions do not contain enough detail to determine if the improvements may affect visibility or navigability in the bay. Furthermore, the Draft EIS/EIR fails to specifically address the potential environmental effects of these improvements, particularly to water quality.
- Alternatives A, B and D include provisions for on-site quarrying. This is due to the excess fill material generated by the project (note that some of this material may be considered hazardous, per the description provided in Section 3.12). The project proposes to crush and sort material on-site, and then ship the material to “construction sites around the Bay and Delta region.” An on-site quarry has the potential to substantially affect resources such as air quality, water quality, and noise. However, the Draft EIS/EIR fails to evaluate the effects of an on-site quarry.
- When comparing alternatives (Section 2.9), the Draft EIS/EIR recognizes that remediation levels would differ between Alternatives A through D from E and F. While this is accurate, as described above, the appropriate comparison should include the cleanup actions as part of the actions tied to each alternative, as the cleanup actions themselves may have potentially significant impacts on the environment.

2.3 Analysis of Environmental Issues

This section provides a critical analysis of each environmental issue area addressed in Sections 3.0, 4.0, and 5.0 of the Draft EIS/EIR.

For all issue areas the following comments apply:

- The document lacks analysis of how mitigation measures would reduce impacts from significant to a less-than-significant level. Explanation of the anticipated effectiveness of proposed mitigation should be included within Section 4.0 or Section 5.0.
- The document discusses the City’s 1994 General Plan in the regulatory section for each issue area. Although the City of Richmond General Plan Update has not yet been adopted, the draft General Plan Update has been released. It is reasonably foreseeable that the General Plan Update will be adopted by the time of project approval; therefore each section should be updated to include the draft General Plan Update.

Geology and Soils (Sections 3.2 & 4.2)

Environmental Consequences

- The document states that the project and alternatives may be developed on expansive or unstable soils. The impact analysis and mitigation are vague as to whether the project site is suitable for development and whether these effects could be feasibly mitigated.

Mitigation Measures

- Mitigation recommending disposal of contaminated, expansive, and/or unsuitable soils has indirect impacts on traffic (increased truck trips) and air quality (increased pollutants from construction equipment and increased traffic) which are not analyzed.
- The document does not include specific mitigation measures for soils or prevention of landslides. Preparation of a geotechnical report does not ensure safety. Site specific mitigation measures should be included as well as a commitment to implement the recommendations of the geotechnical report.

Hydrology and Water Quality (Sections 3.3 & 4.3)

Affected Environment

- The regulatory discussion should include information on dewatering permit requirements and regulations.
- The regulatory and impact sections should elaborate on Contra Costa County Stormwater C.3 provisions and how the proposed project would be designed to meet them (page 3.3-6).
- The following statement is included on page 3.3-8:

“There are no water resources (streams, creeks, rivers, ponds, or lakes) designated by the RWQCB within the project site, except for natural and man-made drainages forming watersheds isolated from the surrounding region that cascade down the upper elevations located on the interior of the project site discharging into the Bay.”

The nature and location of these drainages is unclear; a map of the drainages and additional description would be necessary to determine impacts.

- The “Drainages” section on page 3.3-10 requires additional information for the reader to understand the magnitude of changes in site drainage and hydrology that could occur from the proposed project and alternatives. This section should provide existing percentages of impervious surfaces, peak stormwater flow estimates, stormwater discharge rates, rainfall data, and information on the absorption rate of soils. Additional description is needed for manmade drainage features, such as “French Drains”, sewers, and diversion facilities to assess site drainage impacts.
- The section divides the project area into eight distinct “watersheds” however it does not indicate how these boundaries were determined or explain whether they are hydrologic watersheds (page 3.3-10).
- The discussion of tsunamis and seiches (page 3.3-10) does not reference recent studies on tsunami hazards in the San Francisco Bay. Seiches can occur in certain areas of the Bay. Considering the seismic setting of the site, the Draft EIS/EIR should discuss potential for seismically-generated waves. Location outside of an evacuation zone does not eliminate risk.
- The document states that the project is located in an area that is not prone to flooding from a rise in sea level; however, no citation is provided for this conclusion while many areas of the

San Francisco Bay would be affected. The document should reference the San Francisco Bay Scenarios for Sea Level Rise Index Maps².

- The Drainage Watershed Map (Figure 3.3-2) lacks contours and natural drainages.
- The drainage discussion lacks a narrative of the drainage within each watershed.
- The surface water quality section does not address documented surface soil contamination and its present effects on surface water. Also, there is no discussion of the existing petroleum contamination at the beach and the impacts to the waters of the San Francisco Bay.
- The document states that there is no aquifer capable of providing potable water but does not further discuss groundwater underlying the site. The document should include 1) the extent of groundwater flow, 2) recharge areas, 3) groundwater sub-basins 4) soil conditions and soil types, 5) existing groundwater contamination from past uses, 6) migration routes of groundwater to the Bay, and 7) whether ongoing clean-up efforts would adequately improve or otherwise affect water quality. As portions of the project site would be in federal trust there is legal uncertainty as to the implication of unrestricted use of areas with potentially contaminated groundwater.

Environmental Consequences

- The Draft EIS/EIR should be revised as appropriate to more wholly incorporate the Drainage Study and Conceptual Stormwater Management Plan (SWMP) into the project description and impact analysis. For instance, the analysis discusses the use of bioretention basins but does not provide clarification on what these are, where they would be located, the size and depth, the retention times, the capacity, where the overflow from the basins would be conveyed, etc. More information is needed to assess the nature of the impacts and whether the use of bioretention basins would be suitable.
- The methodology on page 4.3-1 does not clearly explain what methods were used to analyze project impacts. There are no quantifiable significance thresholds listed.
- Permitting, treatment, disposal and monitoring for construction dewatering, is not addressed in the impact analysis.
- Water quality discussions need to reference Section 3.12, Hazards and Hazardous Materials and include some discussion about encountering hazardous materials during construction and the potential for runoff to contain contaminants that originate from on-site petroleum or sand blast grit. The Draft EIS/EIR should incorporate, as necessary, information that appropriately cross-references the contaminated nature of the site and the effect on water quality from the proposed remediation. In addition, please refer to Section 2.2 of this peer review for a discussion on the need to evaluate the effects of site cleanup within each alternative.
- The impact analysis only focuses on impacts to aquifers with respect to groundwater supply rather than overall environmental impacts regarding groundwater quality. Although there is not a shallow aquifer capable of providing a potable source of groundwater, to suggest that there are no aquifers beneath the site due to bay mud is not accurate. The project could interfere with recharge to the shallow groundwater providing underflow to the Bay.
- Discussion of stormwater runoff and altered drainage patterns should be accompanied by a detailed figure to show the location of the features discussed. More detail is necessary such as whether there would be quantifiable changes in flow and quantity, the effects of bioretention facilities on stormwater quality and whether there would be a net zero

² San Francisco Bay Conservation and Development Commission, 2009. San Francisco Bay Scenarios for Sea Level Rise Index Maps. Available at: <http://www.bcdc.ca.gov/planning/climate_change/index_map.shtml> Accessed September 14, 2009.

increase in stormwater runoff. Discussion of the functionality of the bioretention facilities during large storm events would also be of value to the analysis.

- The impact analysis must clearly explain how the project, through detention and conveyance, would be able to comply with the Contra Costa County C.3 stormwater provisions.
- The Draft EIS/EIR lacks sufficient data or analysis to support the conclusion that runoff to the Bay from the site is less than significant (Impact 4.3.6). Considering that the site has been previously contaminated and runoff from contaminated areas could be mobilized and enter the Bay through project construction, additional detail is necessary to substantiate the conclusion of less than significant. The comparison of numerical water quality objectives to anticipated discharge pollutant levels is unfounded because there is no evidence presented that demonstrates how treatment of stormwater can achieve the desired discharge levels.
- The impact analysis of tsunami and seiche hazards is not supported by a documented source. There are studies available that should be referenced and used to analyze whether seismic waves can be generated in this area of the San Francisco Bay.
- Construction and operation impacts should be separated in the water quality impact analysis to clearly delineate short-term versus long-term impacts.
- There is no discussion of water quality impacts resulting from grey water use in landscaping.
- There is no analysis on the potential effects to water quality and hydrology due to quarrying at the site under Alternatives A, B and D and pier retrofitting under Alternatives A through E.

Cumulative Impacts

- The comments above for the environmental consequences section should be addressed in order to clarify the project's contribution to the cumulative impact of water quality degradation in the San Francisco Bay.

Mitigation Measures

- There is no data or information that demonstrates that the mitigation measure requiring a SWPPP and C.3 Compliance would reduce the impacts to less than significant. The mitigation measures are inadequate without performance standards, schedules, monitoring responsibilities, or reporting requirements.

Air Quality (Sections 3.4 & 4.4)

Affected Environment

- In Table 3.4-1, the 8-hour ozone National Ambient Air Quality Standard (NAAQS) is listed as 0.08 parts per million (ppm). This should be updated to reflect the most recent 8-hour NAAQS of 0.075 ppm for ozone.

Environmental Consequences

- The conformity analyses for the various alternatives (Draft EIS/EIR Tables 4.4-1, 4.4-2, 4.4-3, 4.4-4, 4.4-5, 4.4-6, 4.4-7, 4.4-8, 4.4-9, and 4.4-10) compare annual emissions from construction and operations to the federal conformity *de minimis* thresholds, but do not determine if the emissions are regionally significant. A federal action that does not exceed the *de minimis* threshold rates may still be subject to a general conformity determination if the sum of direct and indirect emissions would exceed 10 percent of the emissions of the non-attainment or maintenance area. If emissions would exceed 10 percent, the project is considered "regionally significant" and thus general conformity rules apply.

- Construction Emissions: The PM₁₀ and PM_{2.5} unmitigated/mitigated construction emissions for the years 2009 and 2010 are slightly (up to a few tons a year) less than the values included in Appendix R for the project alternatives.
- Construction Emissions: Including unmitigated and mitigated values in the construction emission tables (Draft EIS/EIR Tables 4.4-1, 4.4-3, 4.4-5, 4.4-7, and 4.4-9) is confusing since the mitigation measures incorporated are not described/cited in the respective tables. After reviewing Appendix R, it appears that the mitigation measures incorporated into the construction emission tables were specifically input into URBEMIS, some of which were not specified under Mitigation Measure 3-25 including (1) diesel particulate filter (DPF) 1st tier mitigation, and (2) diesel oxidation catalyst for construction equipment. It was also difficult to determine if the 2,730 daily construction worker trips (described in Appendix S) were included in the URBEMIS analysis. Finally, the Air Quality analysis did not account for barge/truck export of 2.7 million cubic yards of material (described in Appendix S, which also conflicts with the 1.38 million cubic yards of material described in Section 2.0).
- Operational Emissions: Including unmitigated and mitigated values in the operational emission tables (Draft EIS/EIR Tables 4.4-2, 4.4-4, 4.4-6, 4.4-8, and 4.4-10) is confusing since the mitigation measures incorporated are not described/cited in the respective tables. Each of these tables shows that the “mitigated” emissions exceed the Bay Area Air Quality Management District (BAAQMD) threshold, though the respective impact determines the impact after mitigation to be less than significant. After reviewing Appendix R, it appears that the only mitigation measures incorporated into these tables were input into URBEMIS, which include a 2% trip reduction from local retail and a 0.43% trip reduction from transit and shuttle services. These mitigated values should be taken out of the tables entirely, or included in the total mitigation reductions to make them more clear. In addition, these URBEMIS mitigations double count some trip reductions (i.e., apply additional trip reduction %) since trip reduction measures (such as ferry service, shuttles and buses, and pass-by trips) have already been included in the Trip Generation data (Appendix S).
- Operational Emissions: The Trip Generation used in the URBEMIS analyses is for the “Daily” scenario and does not include additional trips specified for the “Saturday” scenario (Appendix S doesn’t specify what trip volumes would occur on Sunday). This omission would equate to approximately 285,376 (5,488 additional trips * 52 Saturdays per year) up to 570,752 (to account for Sunday as well) annual trips that were not accounted for in the analysis.
- Finally, based on the transportation/traffic review comments, issues with the trip generation and traffic volumes would change the estimated emissions from motor vehicles and could worsen the air quality impact.

Cumulative Impacts

- Operational Emissions: The comments above for the project operational emission analysis issues apply to the cumulative air quality analysis as well for criteria pollutant emissions. In addition, the Draft EIS/EIR does not include the cumulative impact criteria specified by the BAAQMD (BAAQMD CEQA Guidelines, 1999). For long-term operational effects, the BAAQMD recommends a tiered approach to cumulative significance determination if a project does not individually have a significant operational air quality impact. According to the BAAQMD, no cumulative impact will be found where:
 1. The local general plan is consistent with the latest Clean Air Plan, which is currently the Bay Area 2005 Ozone Strategy (BAAQMD, 2006a); and
 2. The project is consistent with the local general plan.

- **Greenhouse Gas Emissions:** The greenhouse gas (GHG) emission estimates (included in the Tables 4.15-5, 4.15-13, 4.15-18, 4.15-23, and 4.15-28) did not include construction activity GHGs. In addition, the estimated energy usage of 4,500 kilowatt-hours (kWh) per month of electricity seems to be low, as do the associated indirect GHG emissions. As an example, for the Thunder Valley Casino Expansion project (Draft TEIR by Analytical Environmental Services, February 2008, State Clearinghouse #2007062072), the existing casino of 237,040 square feet (mix of casino, retail, etc.) reportedly used 26,100,000 kWh per year of electricity in 2006 (or roughly 2,175,000 kWh per month). In comparison, the Point Molate project proposes a 277,520 square foot casino, not including the hotel and retail space. Assuming that the project would require 26,100,000 kWh/year (similar to the Thunder Valley Casino, which would be a low estimate), the indirect GHGs from the project would be approximately 9,540 tons per year for Alternative A (versus 8 tons per year listed in the Draft EIS/EIR). These emissions should be re-evaluated or the discrepancy between reports should be explained.

Mitigation Measures

- There appears to be some double counting of vehicle trip and associated emissions reductions. For instance, under Mitigation Measure 3-18, item “d” relates to Smart Land Use (to reduce/internalize trips) and Traffic Demand Management, which were already incorporated into the trip generation assumptions described in Appendix S. Also, Mitigation Measure 3-18 item “c” (development to exceed Title 24 requirements) was included as mitigation in the URBEMIS model and described in Mitigation 3-25. Taking additional criteria pollutant percent reductions from these measures overstates the reductions and understates the emissions.
- Mitigation Measure 3-19 requires substantial criteria pollutant emissions reductions (shown in Table 5-1) for project operations. The document should discuss how this measure would be feasible. Since operational emissions are long-term, would the Tribe be required and willing to pay for this mitigation (at least potential Emission Reduction Credits) every year for the life of the project?

Biological Resources (Sections 3.5 & 4.5)

Environmental Consequences

- Development alternative impacts associated with special-status fish species, including development of Alternative A (Impact 4.5.4), do not address potential impacts to native fish species (including federally listed species) based on water quality concerns from project site run-off.
- As stated in Mitigation Measure 4-12, wetland mitigation shall be accomplished through the creation of seasonal wetlands within open space preserves, which shall be established on site at agency-approved locations. However, it appears on-site mitigation area locations have not been established. Wetland habitat creation areas should be analyzed to determine if they are suitable for agency requirements, and should be identified within the study area prior to public distribution of the Final EIS/EIR.
- Several mitigation measures refer to avoidance of sensitive biological features if feasible, including Mitigation Measure 4-11 (wetlands and other waters of the U.S.), Mitigation Measure 4-5 (beach strand habitat), and Mitigation Measure 4-4 (mixed riparian habitat). However, according to Tables 4.5-1 through 4.5-5 (Anticipated Impacts to Habitat Types per Alternative) and Figures 2-3, 2-4, and 2-5, the general project footprint for alternatives has been designed. Feasibility of avoidance should already be determined through this analysis, and determination of effect should have been completed. If anticipated acreage impacts to

sensitive habitats have a potential to change from what has been disclosed in the EIS/EIR, then the determination of effect is not accurate. In particular, under Mitigation Measure 4-5, impacts to beach strand habitat (if avoidance is not feasible) may lead to adverse effects to the western snowy plover (*Charadrius alexandrinus nivosus*), then the determination of effect made by the BIA and U.S. Fish and Wildlife Service (USFWS) under Section 7 of the ESA would be inaccurate, and thus formal consultation would need to be reinitiated.

- According to the EIS/EIR the wetland delineation report identified approximately 3.055 acres of potentially jurisdictional wetlands, 1.224 acres of potentially jurisdictional other waters, and 140.000-acres of navigable waters within the project site study area. This delineation is subject to U.S. Army Corps of Engineers.” USACE verification under Section 404 of the CWA. However, there has been no mention of whether the report has been submitted to the USACE for verification. A verified delineation map is required to determine proposed project fill/discharge into jurisdictional waters of the U.S.
- Although a finding of *not likely to adversely affect* candidate, threatened, or endangered species was provided by the USFWS in February, 2009, the EIS/EIR does not provide correspondence/documentation with the National Marine Fisheries Service (NMFS) regarding potential effects to federally listed anadromous fish species including green sturgeon (*Acipenser medirostris*), Central California Coast Coho salmon (*Oncorhynchus kisutch*), Central California Coast steelhead (*Oncorhynchus mykiss*), Central Valley steelhead (*Oncorhynchus mykiss*), Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*), and winter-run Chinook salmon (*Oncorhynchus tshawytscha*). In addition, correspondence/documentation with NMFS regarding potential effects to the Pacific Coast groundfish Essential Fish Habitat (EFH), coastal pelagic species EFH, and the Pacific salmon EFH under the Magnuson-Stevens Fishery Conservation and Management Act has not been provided in the EIS/EIR. Consultation and compliance under Section 7 of the Endangered Species Act is required prior to implementation of development alternatives for these federally-listed species/resources.

Cultural and Paleontological Resources (Sections 3.6 & 4.6)

Environmental Consequences

- Impact 4.6.2 refers to the removal of a contributing element (Building #17), and notes this as a significant impact. The current proposed mitigation of moving the building to an appropriate location within the historic district as determined through the Programmatic Agreement would not result in a less-than-significant impact. Additional mitigation should be included for Building #17, stating that:
 1. the City, in consultation with a qualified architectural historian, will decide on the appropriate location within the District,
 2. photo-documentation to Historic American Buildings Survey standards of the structure in its existing historic context will be produced prior to moving the resource, and
 3. public interpretation will be included at the new building’s location (such as kiosk or sign describing the resource, why it’s historic, and that it was moved from its original location).

Socioeconomic Conditions (Sections 3.7 & 4.7)

Affected Environment

- The discussion of the project site primarily describes the project’s vicinity (i.e. the City of Richmond). The discussion does not identify the population, employment and other

socioeconomic characteristics of any of the smaller neighboring communities nor that of the property itself where the proposed casino would be built. The project site discussion also fails to recognize the site's unique geographical setting which is relatively isolated and distinct from both the City of Richmond and Point Richmond communities. Currently there is no public transportation to the project site, and it remains relatively inaccessible from other neighboring communities. There is a similar significant geographical and socioeconomic divide between West Contra Costa County and Central/Eastern Contra Costa County. The Draft EIS/EIR claims that "since the socioeconomic effects would be most pronounced in the vicinity of the project site, the scope of the analysis focuses on impacts to Contra Costa County (County), and the City of Richmond (City)." While typically this would be straightforward, the proposed project's scale and location suggests that in actuality there would potentially be major leakage of economic effects to other areas within the region. The El Sobrante Hills physically divide the County and consequently the West and Central Contra Costa County areas and economies are relatively distinct in character. A more in depth and comprehensive environmental setting analysis should be provided which acknowledges that most of the Contra Costa County's existing population and economic activity is not located in West Contra Costa County but instead is located within Central and East Contra Costa County. Due to the geography and transportation access conditions, a greater proportion of employment and spending impacts may benefit areas such as Marin, Alameda and Solano County. Consequently, due to their comparative accessibility, the project site may be expected to have a similar or even greater level of economic relationship with businesses and workers in Alameda, Marin and Solano County. As a result, the current socioeconomic analysis overstates the economic benefits to Contra Costa County.

- The lack of information and analysis of the project site and surrounding communities results in a mischaracterization of the project's socioeconomic context. The Draft EIS/EIR presents only limited socioeconomic information on both the existence and character (i.e., unemployment, population and other socioeconomic characteristics) of the local populations that would be most affected. The inadequacy is particularly problematic as nearly all of these local communities qualify as "communities of concern" (i.e. minority and/or low income communities under the Environmental Justice analysis). By not recognizing these low income and minority populations in the socioeconomic analysis, the potential magnitude and relevance of the project's adverse socioeconomic impacts are under-represented.
- The setting section focuses on the City and County labor force (i.e. employable residents) but does not identify the number of jobs currently within the City and County. Additional information on local number of jobs should be provided. In addition, more recent unemployment and home value data should be provided to better represent the current economic conditions, which have changed greatly since 2006 due to the mortgage crisis.
- All financial data should be normalized (inflation adjusted) into common year terms or at least the applicable financial year of the data should be more clearly stated. For example, the median household income data in Table 3.7-6 and Table 3.7-9 differ - presumably due to the fact the reported income levels have not been adjusted for inflation. By not normalizing the poverty levels into more current dollar terms, the socioeconomic analysis is misleading both in understating actual current poverty thresholds and comparatively overstating the project's economic benefits.
- The analysis understates the economic and demographic character of the surrounding communities and City of Richmond. The analysis should more clearly identify the census tracts and related communities that have been determined to be "communities of concern" warranting additional environmental justice analysis. According to Table 3.7-18, 19 of the 20 census tracts in the project site's vicinity are minority communities. The combined population of these communities totals 110,577. Only Census Tract 3780 (which encompasses the project site and surrounding one to two mile vicinity) does not have a

predominantly minority population. Census Tract 3780 includes the relatively affluent community of Point Richmond. All the other Richmond and neighboring census tracts include minority communities and most are also low-income communities which warrant Environmental Justice consideration. The Draft EIS/EIR provides minimal characterization of these communities and their economies. As a result, the subsequent socioeconomic analysis does not fully consider the corresponding distribution of the project's economic benefits.

- The low income population analysis is unclear as the Draft EIS/EIR text identifies a total of seven low-income communities. However, in its evaluation of “the percentage of wages earned below the poverty thresholds” the Draft EIS/EIR mistakenly states that three census tracts have low-income communities when the previous sentence had identified four specific census tracts. A graphic characterizing the environmental justice status of the neighboring census tracts should be added. This would clearly demonstrate the relevance and importance of environmental justice concerns for the project. Currently, the Draft EIS/EIR provides minimal characterization of these communities and their economies. As a result, the subsequent socioeconomic analysis does not accurately identify the future distribution of the project's economic benefits.

Environmental Consequences

- Generally, the Draft EIS/EIR provides insufficient information and evidence to substantiate its projected economic benefits for the city and county economies. The socioeconomic impact analysis does not clearly and consistently distinguish between the regional and county economies. The analysis frequently conflates the two – particularly in its discussion of employment impacts.
- The Draft EIS/EIR repeatedly reports the casino's projected *gross* revenue, employment and other economic benefits of the project. However, *net* benefits are most relevant for understanding the real magnitude and nature of the project's socioeconomic impacts. More specific analysis is necessary to determine the nature and extent of the project's acknowledged adverse economic impacts to existing businesses (i.e., from project-related “cannibalization” effects). Approximately \$417 million of the project's projected future revenues (\$959 million) will be obtained from existing businesses. This amount of cannibalized sales is equivalent to approximately 43.5 percent of the casino's total sales.
- The analysis is extremely vague in its evaluation of the project's financial impacts on other businesses. It asserts that “(t)here is no alternative where a competing casino's existence is threatened.” However, there is no analysis supporting this claim. While casinos are generally high margin operations (evidenced by the proportion of revenues paid to the State), the magnitude of the project's estimated cannibalization effects are large – the \$174 million in revenues expected to be “displaced” from the five other greater San Francisco Casinos. The displaced revenue represents approximately 14 percent of the estimated current \$1,240 million “greater Richmond market” in 2007 (pg. 83, Appendix T) and as such would be an appreciable adverse revenue loss to be absorbed – especially given that proposed Point Molate casino's very large size would ensure that it will likely dominate the Bay Area casino market in the future.
- The Draft EIS/EIR currently provides insufficient information for reviewers to understand the source and nature of the cannibalized sales. The technical analysis (Appendix T) suggests that these sales would be acquired from other casinos in the Greater San Francisco, Sacramento and to a lesser extent other more distant casinos. However, this presumes that the nearly billion dollar casino operation would have no substitution or “sales shift” effects on existing and more local entertainment and hospitality businesses. This implies that the proposed casino will not compete with any existing local businesses for customers and sales.

However, in actuality it is extremely likely that sales will be drawn away from local businesses and even relatively minor sales cannibalized from local businesses could be expected to cause existing businesses (especially those struggling in Richmond's depressed local economy) to close. The existence of any future offset "spillover" effects are at times implied but have not been identified or estimated. Given Richmond's comparatively weak existing economy and the casino's "destinational" location, it seems likely that existing businesses in Richmond will gain little new businesses from any future casino visitors and it is far from clear that any new businesses would be sufficient to offset sales lost to the project's major casino, hospitality and retail businesses.

- Under Alternative A, the proposed casino is projected to generate \$36 million in Retail sales and \$49 million in future Accommodation & Food Services sales (Table 4.7-2). Unlike visitor's gaming spending which is typically more destinational (since there are limited alternative casino locations for gambling), the casino may be expect to compete with many existing local retail and hospitality businesses. As a result, if 43.5 percent of the casino sales in these revenue categories are cannibalized from local businesses, it might reasonably be expected that a substantial proportion of \$15.7 million in lost local retail sales and \$21.3 million in lost hospitality sales could be taken from existing Contra Costa County businesses. Consequently, it seems very surprising and contradictory to the socioeconomic impact analysis assertion that "(g)iven the large scale of development proposed under Alternative A, a negligible portion of revenue would be transferred from other local businesses."
- The socioeconomic analysis does not adequately explain the difference between the projected \$959 million in future casino revenues and the \$767 million in direct output impact estimated to directly benefit the Contra Costa County economy. It is unclear whether the difference is an adjustment recognizing economic leakage related to casino profit leakage out of Contra Costa County (discussed below).
- The information specifying project-related future employment benefits is misleading and seemingly inconsistent. The project's future employment benefits to City and County residents would be far less than those represented by the analysis. The Draft EIS/EIR analysis repeatedly states the total number of future jobs at the proposed casino. However, the Draft EIS/EIR analysis also projects that only 30 percent of these jobs will be taken by Contra Costa County residents – as a result the majority of the employment benefits will be gained by non-residents. Furthermore, more analysis is needed which includes the nature and extent of the project's acknowledged adverse economic impacts to existing businesses (i.e. from project-related "cannibalization" effects) to thereby determine the extent that the future project-related net new employment will, in fact, benefit City and County residents. The combined effects of predominantly employing non-Contra Costa County residents and the high proportion of cannibalized sales will ensure that any net employment gains to the City of Richmond and Contra Costa County will be only a small proportion of the project's total employment benefits.
- The analysis overstates the project's employment spending benefits to Contra Costa County. Although employees may spend some of their wages near their place of employment, they may be expected to spend the majority of their earnings at their place of residence. The distinction between near work and home spending is of heightened significance for the proposed project due to its relatively isolated location and setting. Currently, there are very limited retail or other local businesses in the project vicinity which can be expected to capture employee spending. As a result, a greater proportion of the casino's employee spending would be expected to "leak" out of the local economy. The analysis and IMPLAN findings should be adjusted to reflect the specific economic conditions of the project's setting.

- The analysis provides insufficient information on the future effectiveness of the project's proposed local hiring programs. The socioeconomic impact analysis only discusses in passing the Tribe's proposed local hiring program included as part of its MOU with the City of Richmond (Appendix C). Additional information on the Richmond Works and First Source program, local hiring commitments, and job training program support is necessary to support the assertion that the City of Richmond will in fact "capture a large portion of the direct, indirect and induced employment opportunities and wages." As mentioned in the previous comment, given that only 30 percent of all jobs are projected to be filled by Contra Costa County residents and that only 56.5 percent of the casino's future sales will actually be new sales (i.e. the net non-cannibalized earnings), the actual number of new employment for City of Richmond and Contra Costa County residents would in fact be only a small proportion of the 11,991 direct employment benefits shown in Table 4.7-5.
- Additional analysis is necessary to determine the potential effectiveness of future implementation of the project's proposed MOU agreement with the City of Richmond (Appendix C). From reviewing the proposed MOU agreement provisions it is unclear what employment results can be expected from the Tribe's pledge that "for initial hires it will hire at least one third of its operational non-management positions...from a pool of Richmond residents", which is conditional on the availability of adequately qualified individuals (Section 5.4 of the MOU). This goal appears to differ from the provisions detailed in the accompanying First Source Agreement (Exhibit F of the MOU). More specific information on job requirements and an evaluation of the local workforce population's suitability is necessary to determine realistically what proportion of the project related construction and operations employment can be expected to be filled by Richmond residents both initially and over the longer term.
- The analysis asserts total annual operational expenditure benefits for the project (see Table 4.7-2) totaling approximately \$1,552 million (this includes direct, indirect and induced output) and contends that "these purchases would be made primarily from existing vendors located in Contra Costa County, the City of Richmond and surrounding areas." This assertion is provided with minimal supporting evidence that County businesses would actually benefit from the projected goods and services expenditures and that considerable economic "leakage" would not occur. Similar to the employee spending discussion, given both the proposed casino's accessibility/proximity to other businesses in the region and the size and possibly specialized nature of several expenditure categories (e.g., advertising, gaming, insurance) it seems more likely that, without specific commitments, only a minor proportion of these economic benefits would be gained by the County – let alone the City of Richmond. It seems likely that the major portion of the direct spending "benefits" from the casino's purchases of goods and services will actually go to non-County businesses. The likelihood of this leakage is further increased (and likely not recognized by the IMPLAN model) since it is associated with a single very large business, which will be sought as a customer by support businesses throughout the Bay Area and whose needs will likely be beyond the capabilities for relatively small local suppliers to meet.
- The difference between the casino's gross revenues and its retained operational spending is not acknowledged and not estimated. The majority of profits (including payments to non-County resident tribal members), management fees, investor returns (including debt interest) and State Compact payments will likely transfer casino earnings out of Contra Costa County and thereby would generate negligible economic benefits for the County economy. The proportion of the casino's revenues that may be expected to directly leak out of the Contra Costa economy should be identified and the stated project benefits reduced accordingly (e.g. state compact payments, profits, debt service, and management fees).
- It is not clear whether the considerable indirect and induced output benefits attributed to the project can be captured by the local economy. For example, facilitated by the site

transportation accessibility and aggravated by the local area's depressed economy, it may be expected that much of the indirect accommodation spending will instead be spent outside the County at existing lodging establishments and areas with other tourist attractions. The Draft EIS/EIR does not provide any description of the local business sectors nor the IMPLAN model findings to substantiate that the County's existing or future hospitality sector would capture the indirect spending benefits estimated to be generated by the project. IMPLAN modeling is based on the existing or past structure of the economy (i.e., Economic Census Data). The addition of a new \$959 million casino could, in and of itself, alter the nature of the County's economic interrelationships due both to simply its size and the unique nature of its marketing pull and customer base. The dependability of IMPLAN's projections are based on some degree of interpretation as assumptions used as the data inputs applied to the model can have major effects on its results.

Problem Gambling

- The Draft EIS/EIR mischaracterizes the potential impact of the project so that its potential effects are substantially under-represented. The impact analysis claims that the project's proposed gaming opportunities "largely already exist(s) at Casino San Pablo, a Class II gaming facility" even though the analysis does acknowledge that Class II gaming facilities include bingo and non-banked card games and "specifically excludes slot machines and banked card games." Both the type of gaming (Class III) and magnitude of the proposed gaming activity at Point Molate Casino would result in a major increase in the availability of gaming activities for both the local residents and those living throughout Bay Area region. The proposed project is up to three times the size of the existing Casino San Pablo (which has a 40,000 square foot gambling floor, 25 tables and 1,100 bingo slot machines) with more "Vegas style" gaming attractions and amenities.
- The Draft EIS/EIR underestimates the project's potential problem gambling impact by suggesting that the proposed future Scotts Valley Casino in North Richmond has bearing on the issue. The analysis asserts that "the increase in problem gamblers within ten miles of the project site would be split between the two gaming facilities." However, elsewhere in the Draft EIS/EIR consideration of the Scotts Valley Casino is dismissed from the cumulative impact analysis as too speculative for inclusion despite the fact that the Scotts Valley Casino Final EIS was issued in March 2008. At a minimum, the Draft EIS/EIR should be consistent in its treatment of the proposed neighboring casino development in North Richmond. The Draft EIS/EIR should recognize the North Richmond casino presence and contributory effect throughout the economic impact analysis.
- The Draft EIS/EIR underrepresents the affected population for potential problem gambling impacts. The Draft EIS/EIR limits the affected population for problem gambling to only those living within 10 miles of the proposed project since it claims that "no study estimates the rate of increase for those residents living between 11 and 50 miles of a casino" and that the studies "focus on increases in communities that do not have existing casinos." Also the Draft EIS/EIR claims that the presence of the Class II gaming at Casino San Pablo and casinos in Sonoma County within 50 miles of the project justifies the conclusion that "there would not be any additional problem and pathological gambling instances for those residents living more than ten miles from the project site." As discussed in the previous comment Class III gaming opportunities represent distinct and more attractive new gaming opportunities – evidenced by the projected \$959 million in future project revenues (Table 4.7-2). Furthermore, as shown in Figure 3.7-2 the nearest competing Class III gaming is the River Rock Casino which is approximately a 70 mile drive from the project site (and is smaller with fewer non-casino amenities than the proposed project). Consequently, most Marin and many Solano residents would consider the project site as a more convenient gaming destination. Furthermore, Bay Area residents south and east of the casino site will

have Class III gaming within 50 miles of their homes for the first time. Appendix T estimates that the gaming market for the project is 4.9 million adults. Consequently, for consistency the estimate of the potential affected population should include some recognition of the potential for problem gambling to the very large population living in the 10 to 50 mile radius of the project.

- The analysis does not recognize and account for the increased vulnerability of local minority and low-income populations to problem gambling. Several prevalence studies indicate that these groups within affected communities are especially “at-risk” to incidences problem gambling (e.g. “2006 California Problem Gambling Prevalence Survey,” Volberg et al, 2006; “Risk Factors for Pathological Gambling,” Welte et al, 2004; “The Prevalence and correlates of DSM-IV Pathological Gambling in The National Comorbidity Survey Replication”, Kessler et al, 2008). It is unsurprising that casino gambling will have a greater adverse effect on lower income customers. Low income residents not only have the less disposable income and therefore can least afford it, but they also live closest and already have more limited alternative entertainment opportunities due to the depressed local economy. For example, low income and minority individuals may be particularly attracted to the casino given the potential for “cheap” alcohol which can be consumed while smoking, and the limited (and likely closure of) alternative neighborhood entertainment destinations. The issue is a particularly relevant concern for the Point Molate project since nearly all the communities located the eastern vicinity of the project are recognized as “communities of concern” by the Environmental Justice analysis. Accordingly, the Draft EIS/EIR analysis should recognize these communities of concern in a problem gambling treatment needs analysis. Such additional analysis will increase the estimated number of future problem gamblers seeking treatment.
- The Draft EIS/EIR determination of the potential treatment population is apparently limited to the Contra Costa County population living within ten miles of the casino. However, it is possible that non-resident problem gamblers (especially those “in-crisis” and residents in adjoining counties) may seek treatment services within the county closer to the casino location (i.e., Contra Costa) versus their home county – especially since their local programs will not be provided with additional resources.

Mitigation Measures

- The Draft EIS/EIR provides insufficient information to support the adequacy of its proposed mitigation for problem gambling impacts. The Draft EIS/EIR includes a mitigation measure (Section 5.2.6. Mitigation Measure 6-1) to address potential project-related social costs of problem gambling. However, no rationale or analysis is provided for the estimated need of two additional licensed counselor positions. Although this mitigation measure provides additional treatment resources, as discussed above there are substantial reasons for concern that the proposed mitigation may not prove to be adequate to fully address the future social and treatment costs.
- The mitigation measure for social costs should include provisions to track future local mental health treatment within the County so that any future gambling-related increases can be identified for mitigation by the project. Periodic reassessment of incurred local problem gambling and other related counseling treatment services costs should also be used to adjust the extent of the project’s mitigation to ensure that future tribal funding adequately matches future treatment service level changes. It is recommended that these cost estimates include additional pro-rata financial support for organizational/administrative costs in addition to the additional cost for counselors.
- Acknowledging the limited statistical data and uncertainty of the magnitude of future project related social costs, it seems appropriate that more pro-reactive and adaptive management

type of mitigation measures than those currently proposed should be used to reduce the social costs. Possible mitigation could include monitoring/tracking of patrons' spending and gambling behavior. Through credit card and customer loyalty programs, the casino will have considerable information on its customer gambling behavior. This information could be highly useful for both: (1) directing future identification of and intervention efforts with the most at risk and "over spending" patrons; as well as (2) providing data for treatment service providers. Privacy and the casino's business interest concerns can be respected by appropriate implementation of the program.

Transportation/Traffic (Sections 3.8 & 4.8)

Introduction

The review of the Draft EIS/EIR required the review of Appendix S (Transportation Documents). Appendix S provides two Traffic Impact Analysis reports on which the Draft EIS/EIR Transportation/Traffic Section is based (i.e., the Traffic Impact Analysis [2008 TIA] by DMJM Harris/AECOM (June 2008) and the Supplemental Traffic Impact Analysis [2009 STIA] by Abrams Associates (April 2009)). The Draft EIS/EIR cites both documents, but appears to rely on the 2009 STIA for the majority of the intersection and freeway operations analysis. The 2009 STIA introduces additional analysis for three intersections, two I-580 ramps and traffic level of service (LOS) on the Richmond/San Rafael Bridge, and also revises the percent share of project trip generation reduction factors (but does not change the overall percent reduction).

There are some instances where the 2009 STIA reports different LOS findings than those reported in the 2008 TIA. The differences tend to be predominantly with intersections or freeway facilities, where the 2008 TIA identified unacceptable operating conditions and the 2009 STIA reports the same intersection as operating acceptably (due, in one case, to an error in the 2008 TIA, but without any explanation in another case). There are also some instances where the 2008 TIA identifies a cumulative significant impact as a result of project traffic, but the 2009 STIA identifies the impact as occurring first in the cumulative base condition and not as the result of project traffic.

An overriding need is for the body of the Draft EIS/EIR to provide a full and clear description and discussion of the traffic analysis approach used and which TIA results are reported in the Draft EIS/EIR. Also needed is the rationale for a supplemental traffic study, the use of a second traffic consultant to produce the supplemental analysis and an explicit description of the differences in the analysis outcomes where they occur. The description must provide the actual data (traffic volume numbers) when they change and why they differ and not refer the reader to the appendix of one or the other Appendix S traffic studies. The use of two traffic studies which show different analysis outcomes at critical roadway facilities is confusing. The differences and the reasons for the differences must be transparent to the reader of the Draft EIS/EIR Transportation/Traffic section.

Affected Environment

- The regulatory setting of the Draft EIS/EIR Transportation/Traffic section basically is a straightforward identification of agencies that oversee the transportation system in the study area and description of the applicable goals and policies. The only flaw is the outdated timeline for the updated Richmond General Plan (i.e., the reference in the July 2009 Draft EIS/EIR to an expected release of the Draft General Plan in December 2008 [seemingly in

time for inclusion in the Draft EIS/EIR], but the Draft General Plan was actually released in July 2009, days after the Draft EIS/EIR was published). The FEIS needs to address any changes to the goals and policies in the Transportation Element from those presented in the Draft EIS/EIR.

- **Inconsistent LOS Results** - The existing conditions peak hour intersection LOS findings (Table 3.8-4) and peak hour freeway operations (Table 3.8-5) are from the 2009 STIA by Abrams Associates (Appendix S). The 2008 TIA prepared by DMJM Harris/AECOM reports the identical results for the 28 study intersections common to both TIAs, with the exception of intersection # 21-Richmond Parkway and Gertrude Avenue (LOS E - PM peak hour) and intersection # 24-Richmond Parkway and Blume Drive/WB I-80 On/Off Ramps (LOS E – PM peak hour). The Draft EIS/EIR reports the acceptable LOS from the 2009 STIA at these two locations, stating that there was a mistake (in the AECOM study) on the northbound through volume at intersection #21. This volume was corrected (with a new traffic count taken in March 2009). This resulted in improved LOS at this intersection. However, an explanation is needed for the improved operations at intersection #24 from unacceptable LOS E (AECOM) to acceptable LOS D (Abrams).
- **Incomplete Analysis** - The Draft EIS/EIR setting provides an incomplete description of peak hour westbound traffic operations at the I-580 Richmond/San Rafael Toll Plaza. It reports an acceptable (per the County standards) LOS E conditions (Table 3.8-5), based on a stated capacity threshold of 4,225 vehicles per hour (erroneously reported as “per lane”), and traffic volumes (counted in December 2008) of 3,768 vehicles (AM peak hour) and 3,828 vehicles (PM peak hour). This analysis approach does not capture or measure the frequent westbound queuing from the toll plaza as far back as the Richmond Parkway (with delays of up to five minutes) that occurs during weekday and Saturday peak periods. This reoccurring existing condition could have consequences on both the construction and operational phases of the project alternatives, and the FEIS needs to include a queuing analysis at the toll plaza and a measure of vehicle delay as a result of toll plaza queuing conditions.

Environmental Consequences

- **Construction Traffic** – The impact during project construction is identified in as less than significant, based on the rationale that daily construction-related trips (by construction workers and trucks) would represent only a portion of the total operational trips for the project. The comparison of construction vehicle activity to project operations activity is not meaningful. Construction trips present the introduction of large slow moving vehicles into and out of existing traffic streams throughout the course of a day. These trucks increase the potential for delays, congestion and collision. Construction traffic of this magnitude presents potential safety issues for existing traffic flows and will need to be actively monitored and managed. The Draft EIS/EIR provides three mitigation measures (Mitigation 7-1 through 7-3) that would address a number of potential safety concerns including the development of a Construction Coordination Plan for the City of Richmond and a Soil Disposal Plan. Mitigation would also address the need to coordinate with emergency service providers in advance of construction activities and insure that emergency vehicles would have access on all study area roads at all times. Technically, if the introduction of approximately 2,800 construction trips were a less than significant impact, there would be no need to propose mitigation measures. The Draft EIS/EIR must identify the Alternative A through D construction vehicle activity as a significant impact to be addressed and reduced to a less than significant status with the implementation of Mitigation Measures 7-1 through 7-3. The project sponsors would also provide Caltrans with the Construction Coordination Plan and Soil Disposal Plan for their review and comment.
- **Project Trip Generation** - The analysis of the project trip generation in the Draft EIS/EIR is flawed in that it significantly underestimates the potential traffic generation that could be

reasonably expected from the proposed project. The Draft EIS/EIR provides estimates of Trip Generation for Alternative A (Table 4.8-3) and Alternative B (Table 4.8-6). The tables are footnoted to indicate the 2008 TIA as the source. Additional table footnotes indicate that the hotel and retail trip generation are based on ITE *Trip Generation* 7th Edition, and that the trip generation is reduced by 70 percent (hotel) and 50 percent (retail) to account for internal interaction between the casino and hotel/retail uses. Given the relatively isolated location and limited hotel, retail or other local businesses in the project vicinity, the percent reductions could be considered conservative. The Draft EIS/EIR presents the Alternative A and B trip generation estimates for weekday and Saturday peak hours without providing a discussion of the further trip reductions assumed in the TIAs that result from the project providing ferry service to and from the site, Transportation Demand Management (TDM) measures and from the assumption that a portion of project casino trips would be pass-by trips (vehicles already in the area that are part of the background traffic, deciding to divert from their intended destination (home, work, shopping) to access the project sites retail or gaming uses). The project trip generation related to the retail component is also reduced based on the pass-by trip phenomenon. These trip generation reduction assumptions reduce Alternative A PM peak hour trips by 57.3 percent and Saturday peak hour trips by 58.5 percent. As noted, the Draft EIS/EIR does not mention the use of any of these assumptions other than a table footnote sourcing the 2008 TIA. The Draft EIS/EIR does not provide sufficient discussion or empirical data that would support the use of these type of reductions or support the percentage amounts attributed to these reduction assumptions. The trip generation reduction factors used in the analysis of the potential traffic impacts of the project underestimate the amount of weekday and Saturday daily and peak hour trips that could be reasonably expected to be generated by a project of this size. The use of the ferry service, public transit and pass-by trip adjustment factors have been optimistically applied in terms of what might be reasonably expected considering the somewhat remote location of the site, the lack of accessible transit opportunities, the time and expense associated with implementation of a major ferry service operation and the potential for expansion of public bus service to the site. The use of the pass-by trip factor for the casino is not supported by empirical data and the pass-by trip use related to the project retail component is not supported by ITE recommended practices. Each of the trip generation reduction assumptions are discussed in comments below.

- Transit Use** - The Draft EIS/EIR assumes that 10 percent of weekday and Saturday daily and peak hour trips will be made on transit, and that the project will provide shuttle service connecting the project to transit hubs (Richmond and Del Norte BART Stations). The project site is not served by transit and will not likely be served by AC Transit upon start of project operations. Given the somewhat remote site location, the lack of direct transit service and the availability of 7,560 on-site parking spaces, the estimate of 10 percent transit may be high. However, it is likely that a percentage of project employees would use transit if a dependable shuttle service were available. The Draft EIS/EIR should provide a comprehensive analysis of potential transit users to the site (e.g., based on existing Bay Area employment data that considers rates of transit use for employment centers that provide shuttle services, and on rates of transit use to access entertainment/resort uses). The 2008 TIA inaccurately refers to the use of transit by project visitors/employees as a TDM reduction. Use of transit by project visitors and employees is correctly characterized as a mode choice. TDM plans are initiated by agencies and employers to facilitate carpooling, transit use, bicycling and other modes of alternative commute travel as opposed to use of the single occupant vehicle. TDM plans can be successful at reducing vehicle trips among employees, but do not have much application for reducing visitor trips. It is not appropriate to reduce project trip generation estimates based on the proposed implementation of TDM programs because participation in TDM is voluntary, and as such there is no way to accurately estimate vehicle trip reductions that may result from such a plan.

- **Pass-by Trips** - The Draft EIS/EIR trip generation analysis for Alternatives A and B applies a 10 percent reduction to account for pass-by trips that would travel to the casino. A pass-by trip is a well defined concept that explains how a certain percentage of trips to a given land use (generally retail) are not being generated (attracted) by the land use, but instead are trips that are already on the road adjacent to the land use and stop there based on convenience and not intent. In other words, for the pass-by trip, the particular retail use is not a destination and the pass-by trip would be on the road in this location whether or not the land use was located here. The *Trip Generation Handbook, An ITE Proposed Recommended Practice*, October 1998 is very clear that “Pass-by trips are made as intermediate stops on the way from an origin to a primary destination without a route diversion. Pass-by trips are attracted from traffic passing on an adjacent street or roadway that offers direct access to the generator. Pass-by trips are not diverted from another roadway.” A diversion of traffic from the I-580 freeway, Richmond Parkway, Castro Street or Cutting Boulevard to Point Molate via Western Drive to the project site would not meet the definition of a pass-by trip. The 10 percent reduction of casino vehicle trips assumed in the Draft EIS/EIR trip generation analysis cannot be claimed as the result of pass-by trips. ITE recognizes another type of trip referred to as the diverted linked trip. A diverted linked trip is a trip that is attracted from the traffic volume on the roadway within the vicinity of the generator, but that requires a diversion from the roadway to another roadway to access the site. This description is a better fit for potential diverted trips in the area, however, ITE cautions that “diverted linked trips are often difficult to identify [, and t]herefore diverted linked trips should be treated similarly to primary (project generated) trips.” No data (e.g., surveys of casino users) is presented in the Draft EIS/EIR that supports the premise that up to 10 percent of casino visitors would arrive at the site on impulse, diverting to the casino in route to a primary destination. Without collaborating data, no reduction to casino trips can be assumed based on pass-by or diverted trip activity. The 28.3 percent pass-by trip reduction applied to the project’s retail component for weekday and Saturday daily and peak hour trips likewise can not be assumed in the analysis of any of the Project Alternatives in the Draft EIS/EIR. The use of the concept of pass-by trips as a means of reducing trips related to this project does not meet the recognized industry standard (ITE) of what constitutes a pass-by trip and therefore pass-by trips can not be used to justify a reduction to estimates of project trip generation.
- **Ferry Service** - The Draft EIS/EIR identifies the implementation of a ferry service that would operate between the project site, San Francisco and Vallejo. The Draft EIS/EIR describes operation of a project ferry service under Alternative A (page 4.8-12) that would accommodate 3,000 round trip (6,000 trip ends) passengers per day, with a maximum of 30 ferry landings per day. The Draft EIS/EIR uses estimates of project trip generation for the casino that assume a 25 percent reduction to weekday and Saturday daily and peak hour trips as a result of the ferry service operation, but does not provide a discussion or data that supports that trip reduction. The AECOM 2008 TIA (Appendix S) provides a breakdown of trip generation estimates and reduction assumptions for Alternatives A through D (Table 5.5 in the 2008 TIA shows the estimates for Alternative A), indicating that the ferry service would be expected to carry 4,295 daily passengers during the weekdays and 6,470 passengers on Saturdays. This level of activity would result in roughly 1.7 million ferry passengers per year. The Draft EIS/EIR analysis of the Project Alternative trip generation and subsequent analysis of peak hour intersection and freeway operations assume that a ferry service capable of transporting between 4,300 to 6,500 daily passengers would be operational concurrent with the operation of the project. This use of a project site ferry service operation to make adjustments to project trip generation estimates is not defensible and can not be used in the Draft EIS/EIR as a justification for reducing project trip generation. The overarching question is whether or not the implementation of ferry service at the project site would be available when the project becomes operational, and if so, would the service be capable of transporting thousands of passengers on a daily basis. If the answer

to these questions is currently unknowable, or if the answer is no, then the Draft EIS/EIR cannot assume the trip reductions related to ferry service. The Draft EIS/EIR proposes a ferry service operation that would be smaller, yet in some ways comparable, in scope, capacity and operations to the existing Golden Gate Ferry service. The Golden Gate Ferry service currently transports 2 million passengers per year. The project would generate up to 30 ferry landings per day compared to 50 daily landings by the Golden Gate service; however, the project would likely have ferry operations that exceeded the average daily mileage traveled by the Golden Gate service due to planned longer trips from Vallejo and possibly trips from south of San Francisco. Golden Gate Ferry service has been in operation for about 40 years, has an annual operating budget of 22 million dollars and generates fare returns that cover roughly 40 percent of the annual operating costs. Mounting a ferry operation at the project site that is comparable in scope and capacity to the existing Golden Gate service regardless of where the capacity comes from (private contractor or excess capacity available on existing public ferry operations) would be a major undertaking in terms of time, cost, agency coordination and required permitting and environmental clearance. The scope of the ferry service presented in the Draft EIS/EIR and used as justification for a reduction of project vehicle trip generation is not a reasonably foreseeable element of the project in the near term. The necessary background analysis that would indicate the feasibility of providing up to 30 ferry landings per day associated with Draft EIS/EIR Alternatives A and B has not been conducted even at a preliminary level. The assumption of a 25 percent ferry ridership share for casino generated trips is derived primarily from data developed in the Gaming Market Assessment prepared for the proposed project. This is not an appropriate source on which to estimate potential ferry ridership. An estimate of 25 percent of all casino trips being made via ferry is extremely optimistic for this mode of travel even under best case scenarios. The AECOM 2008 TIA suggests that a large amount of capacity has been discovered on the current ferry system, and that project bound ferry users could be “back loaded” on existing commuter ferries without having to contribute to any major increases in the size of the existing ferry operations. The feasibility of back loading passengers on existing ferry services needs to be rigorously analyzed before any assumptions can be made regarding the use of existing commuter service by the proposed project. A key consideration would be the availability of commuter ferries during peak commute periods. During peak commute periods, commuter ferry services are constrained and must adhere to and meet specific schedules. The diversion of commuter ferries during peak commute periods would be highly unlikely. The capabilities of private ferry service providers need to be examined, described and assessed in terms of capabilities and available capacity that could be used by the project. The land side logistics associated with a 6,000 passenger per day ferry service also must be assessed. Where will ferry users park? Where will they board ferry? What will be the average travel times? What are the estimated fares associated with this service? An independent analysis of potential ridership for the proposed project ferry service must be developed prior to assuming any reduction in project generated trips associated with such a service.

Cumulative Impacts

- Inconsistent LOS Results - The Draft EIS/EIR reports the findings for the Background Cumulative Conditions (existing traffic plus traffic from all (local) approved but not yet constructed developments) and Cumulative Year 2025 Conditions based on the findings of the 2009 STIA. However, there are differences in LOS calculations between the 2008 TIA and 2009 STIA (Appendix S), and explanations of those differences, and why the Draft EIS/EIR used the 2009 STIA results instead of the 2008 TIA results, must be provided in the Draft EIS/EIR. Specifically, in the 2009 TIA, Intersection #1 (Richmond Parkway and Redwood Way/WB I-580 On/Off Ramps) and Intersection #22 (Richmond Parkway and Parr Boulevard) are reported to operate at unacceptable LOS (PM peak hour) without and with

Alternative A traffic. However, the same two intersections are described in the 2008 TIA as operating at acceptable LOS (PM peak hour) conditions without project traffic, and that the addition of project traffic would cause the intersections to fail.

- Cumulative Analysis Year - The Draft EIS/EIR needs to provide an explanation for the use of 2025 as the cumulative analysis year, as opposed to 2030 which is the typical buildout horizon for project traffic analysis in Contra Costa and Marin Counties. The Contra Costa County Transportation Authority Travel Demand Model provides daily and peak hour traffic forecast for a build out year 2030.
- Freeway Analysis - The Draft EIS/EIR is deficient because it does not provide an analysis of Saturday freeway segments and bridge operations for cumulative background and “plus project” conditions. The project under Alternatives A and B is estimated to generate significantly higher (35 percent for Alternative A) peak hour and daily trips on Saturdays than on weekdays. Unless weekday PM peak-hour volumes are more than 35 percent higher than weekend peak hour volumes, it’s possible that cumulative plus project volumes could be higher (and project impacts worse) during the weekend peak hour than during the weekday PM peak hour. The Draft EIS/EIR needs to present documentation to support the absence of weekend intersection freeway segment LOS analysis.

Appendix S

- Appendix S Transportation Documents provides a 2008 TIA by DMJM Harris/AECOM and a 2009 STIA by Abrams Associates. The 2009 STIA provides additional analysis for three intersections, two I-580 ramps and traffic LOS estimates for the Richmond/San Rafael Bridge. The 2009 STIA LOS analysis for intersections and freeway segments is used in the Draft EIS/EIR. The analysis of Alternatives A through D trip generation and trip distribution used in the Draft EIS/EIR is from the 2008 TIA. A review of these reports shows much of the traffic analysis is in agreement between the documents, but that there are differences in findings. Some of the differences occur at intersections and freeway segments where one analysis has identified a significant impact and the other using what appears to be the same or similar data shows a different result. A comparative review of the documents can cause confusion and needs to be addressed. A brief write up either in the body of the Draft EIS/EIR or as a cover letter to the Appendix would be helpful in understanding why the 2009 STIA was conducted, how data from the 2008 TIA was used in the 2009 STIA and what new data was introduced as a result of preparing the supplemental report. Key differences in findings should be identified and briefly explained. Intersections or segments where significant or unacceptable operations differ should be documented and explained.

Land Use and Planning (Sections 3.9 and 4.9)

Affected Environment

- The document states that the City of Richmond General Plan is being updated and that a public draft is anticipated to be released in December of 2008; it should be noted that the draft has been released (page 3.9-5). Currently, the EIS/EIR uses 1994 General Plan designations and policies; although the City of Richmond General Plan Update has not yet been adopted, it is probable that the General Plan Update will be adopted by the time of project approval; therefore this section should be updated to include the available draft General Plan Update.
- The navy facilities discussion on page 3.9-20 should refer the reader to Section 3.12, “Hazards and Hazardous Materials” for additional information on the items mentioned.

- The Chevron discussion on page 3.9-21 should refer the reader to Section 3.12, “Hazards and Hazardous Materials” for additional information on the potential dangers of Chevron operations surrounding the project site.

Environmental Consequences

- Although the City of Richmond General Plan Update has not yet been adopted, the draft General Plan Update has been released. It is probable that the General Plan Update will be adopted by the time of project approval; therefore this section should be updated to include the available draft General Plan Update.
- Page 4.9-8, 4.9-9, 4.9-14 & 4.9-17. City of Richmond General Plan Consistency. The document correctly states that land placed into trust would not be subject to local general plans or zoning ordinances. However, NEPA requires an analysis of the effects of the proposed project on adopted land use plans. The document must still discuss whether the proposed project will impair the effectiveness of the land use plan, and what measures are available to resolve the conflict (CEQ Regulations, 40 CFR 1502.16[c]).

Cumulative Impacts

- The cumulative discussion as it relates to land use and planning impacts should be updated using anticipated growth estimates available in the City of Richmond draft General Plan Update.

Utilities and Public Services (Sections 3.10 & 4.10)

Environmental Consequences

- The impacts analysis does not discuss the benefit or savings from adoption of the water conservation measures recommended as mitigation.
- Upgrades to the existing on-site and off-site East Bay Municipal Utility District (EBMUD) water distribution lines should be determined in order to evaluate impacts. Simply paying a fair share of upgrades fails to analyze impacts associated with replacement of existing lines.
- The EIS/EIR does not quantify the existing capacity of the Richmond Municipal Sewer District wastewater treatment plant or collection system. Further, the impact analysis does not discuss potential impacts to the distribution system. As stated for water, simply paying a fair share of upgrades fails to analyze impacts associated with replacement of existing lines or construction of new lines.

Mitigation Measures

- The document does not provide details on the location, extent, or energy savings from on-site fuel cells recommended as mitigation.
- The MSA provides for an on-site fire station but does not address mitigation for increased demands on equipment and staff and does not address ambulance transportation. Provisions were provided for police staff and equipment demands.

Noise (Sections 3.11 & 4.11)

Affected Environment

- The first paragraph, second sentence of Section 3.11, Noise mistakenly references air quality.

- Short-term noise measurement was taken at 11 A.M. at Site 3 with the dominant noise source in the area being traffic on I-580 (page 3.11-9). The section does not explain why 11 A.M. was chosen over A.M. or P.M. peak hours where traffic noise would be at its max and would result in an increase in ambient noise in the project area.
- Figure 3.11-1 shows the locations of background noise measurements. As seen in Figures 2-8 and 2-14, proposed sensitive receptors are located approximately 180 feet southeast of where the measurements were taken. Due to closer proximity to I-580 and other possible noise sources, the measurements fail to capture background noise in an area where sensitive receptors are proposed. Ambient noise levels are needed to ensure compliance with community noise exposure as presented in Table 3.11-1.

Environmental Consequences

- Section 4.11.1 on pages 4.11-3 and 4.11-4: Vibration is compared to VdB (ground-borne noise), however as the significance thresholds on page 4.11-2 state, the exposure of persons to generation of excessive ground-borne vibration must also be analyzed. There are two thresholds in the 2006 FTA document, the potential building damage threshold of 0.2 PPV and the annoyance threshold of 80 RMS.³
- Impacts 4.11.2 and 4.11.4: Alternatives B and D include residential development. The document should clarify if residences would be occupied during construction. If so, construction noise and vibration at these proposed sensitive receptors will need to be analyzed.
- Finally, based on the transportation/traffic review comments, issues with the trip generation and traffic volumes would change the estimated noise from motor vehicles and could worsen the noise impact.

Hazards and Hazardous Materials (Sections 3.12 & 4.12)

Affected Environment

- Contra Costa Health Services Department should be included in the regulatory setting but separate from the City of Richmond discussion.
- Overall, the environmental setting is confusing and fails to *clearly* explain the actions of the Navy through the Base Realignment and Closure Act (BRAC) and Defense Base Realignment and Closure Act (DBRAC) process. This may be due to the format where certain topics are brought to light and discussed under the description of the Phase I Environmental Site Assessment. For instance, it is not until page 3.12-15 that it is revealed that parcels 2-14, 24, 27, and 28 were transferred to the City of Richmond as part of the Environmental Baseline Survey (EBS) process in September 2003. The setting would benefit from a concise chronological summary of the investigation, remediation, and transfer actions that have been undertaken by the Navy for the property. In addition, this section should clearly explain the roles of each regulatory agency in the closure process. For example, as written, it is difficult to distinguish between the responsibility of Contra Costa County and its approval of “structural closure” and the “regulatory closure” required by the RWQCB.
- It is unclear as to what the document considers the environmental baseline for hazardous materials issues. The following statement appears on page 3.12-8: “In addition to the ESA, an evaluation of the efficacy of previously executed remediation was performed to develop a baseline for comparison of each project alternative and potential impacts associated with

³ Federal Transit Administration, Transit Noise and Vibration Impact Assessment, May 2006.

development of the project site.” The statement appears to indicate that the baseline for analysis is the level of remediation completed thus far. The baseline needs to be clarified as to whether the environmental baseline is the level of remediation completed thus far or whether it is remediation that would be completed subsequently.

- Page 3.12-15 begins by stating that the Navy has cleaned 19 of the 20 50,000 gallon underground storage tanks (USTs), which occupy 180 acres as parcels 2 through 14, 24, 27, and 28, and has transferred these parcels to the City of Richmond. Then, the third paragraph describes a Corrective Action Plan (CAP) that would close and clean up the USTs and then states that the Navy *intends* [emphasis added] to close by capping in place all USTs that are regulated under the State Water Resources Control Board (SWRCB) UST Regulations. The remainder of the paragraph describes the CAP, the monitoring plan and preparation of a management plan upon early transfer of Point Molate NFD. The fourth paragraph then states that structural closure was completed and approved by Contra Costa County in 2005 and then goes on to say that the “RWQCB has authorized regulatory closure of USTs 1, 7, 9, 10, 11, 16, 17, and 20 leaving USTs 2-6, 8, 12-15, 18, and 19 not yet receiving regulatory closure. This section is confusing because it does not clearly lay out the process of the tank closure, the Navy’s responsibilities, or the chronology of events.
- Fuel Product Action Levels (FPAL) should be further explained on page 3.12-17. Specifically, which agency established them, whether they are enforceable, and what regulatory action does exceedance of a FPAL trigger.
- The following comment references the IR-02: Sandblast Grit Disposal Areas discussion on page 3.12-18. (1) The discussion of sandblast grit should contain a description of the metals present in the sandblast grit. (2) As written it is not known when and by whom the confirmation samples were collected and analyzed. (3) It is unclear why confirmation samples were compared to Primary Remediation Goals (PRGs) and not the Environmental Screening Levels (ESLs) set forth by the RWQCB to assess the need for additional study at contaminated sites. PRGs are less restrictive than the ESLs. (4) The discussion of confirmation sampling does not appear consistent with the Phase I text in Appendix P. For example, the Draft EIS/EIR states that 18 cubic yards of sandblast grit was removed in 1997 but there is no mention of that in the Phase I. The Phase I states that 30 yards were removed from area IR-02 in 1998 but there is no mention of that removal in the Draft EIS/EIR. Discrepancies and lack of information between the Phase I and the Draft EIS/EIR would call into question the accuracy of the Draft EIS/EIR and its ability to present a setting that adequately describes the existing conditions. The information presented in the Phase I should be reviewed and accurately reported in the Draft EIS/EIR.
- This discussion on a potential Anhydrous Ammonia leak should include a description of potential human health and ecological risks from exposure (top of page 3.12-25).

Environmental Consequences

- It would benefit the analysis of the impacts if the discussion of proposed mitigation could be enhanced to compare and contrast the environmental remediation presented in Section 2.1.5 of the Draft EIS/EIR. As presented, it is unclear whether the proposed mitigation is intended to supplement the remediation efforts proposed as part of the project. Also, it raises the fundamental question as to why, when remediation is proposed as part of the project, is there a need for mitigation measures involving soil management, monitoring and remediation actions to reduce the significant impacts.
- The Analysis Methodology section (page 4.12-1) discusses the “Navy’s Compliance Program; however, this term was not previously used in the document. The text in this passage suggests that this is a formal program similar to the Installation Restoration Program. This should be clarified.

- Page 4.12-5, Impact 4.12-1 – *Disposal*. It is curious that while this impact is determined to be less than significant, mitigation is proposed in Section 5.2.11 to reduce impacts. It is not clear as to what impacts need to be addressed and what mitigation measures from Section 5.2.11, specifically, is proposed. This should be clarified.
- Impact 4.12-2 – *Construction*. The document should clarify which specific mitigation measure in Section 5.12.11 is prescribed for this impact.
- In the discussion of area IR-01 (Former Waste Disposal Area) in the Phase I ESA, AMEC Geomatrix states that free phase hydrocarbon product has been present in the groundwater within IR-01 for at least the past four years but there has been no action implemented to remove or contain it. In addition, AMEC Geomatrix states that the Water Board case worker has indicated concern for the Navy’s inability to document containment of impact within the former landfill area. Also, AMEC Geomatrix states that it had not been provided with the required conceptual contingency plan to prevent discharge of fuel contaminants from to the San Francisco Bay. The impact analysis appears silent on these issues and may indicate a discrepancy between the finding of the Phase I ESA and the impact analysis. This should be clarified.
- The impact analysis in the Draft EIS/EIR for IR-01 is confusing because it first states that remedial actions have taken place and capping the landfill has eliminated exposure pathways. The analysis states that land use restrictions will ensure cap integrity and there is no intended development near the landfill. The discussion goes on to say the post-closure monitoring is underway and post closure reviews would be conducted, as well. Then, for some reason, the analysis determines that there could be a potentially significant impact if the soil cap and land use restrictions were not maintained according to the Post Closure Maintenance and Monitoring Plan (PCMMP) but then states that the cap would be maintained because no development would occur. The analysis concludes that no significant human health or environmental impacts would occur but prescribes mitigation. There does not appear to be an impact. It is not clear why mitigation is prescribed if the impact analysis determines that there is no impact; this seems inconsistent and calls into question the validity of impact analysis. And again, it is not clear *which* mitigation measure in Section 5.2.11 is applicable.
- Areas A and B (Historic District). The conclusion of this impact discussion states, “[p]otentially significant human health impacts would be reduced to less-than-significant levels through the development and implementation of a site specific soil management plan (SMP). Implementation of a SMP is included as mitigation in Section 5.0”. This statement is not substantiated with evidence to demonstrate that development and implementation of an SMP would reduce impacts to less than significant. Merely developing and implementing a plan, such as the SMP, is no guarantee that impacts would be reduced to a less-than-significant level. Without performance standards, this mitigation measure is inadequate.
- *IR-02 Areas C, D, and E*. The Phase I ESA prepared by AMEC Geomatrix states that while metals in samples are below ESLs, lead concentrations in some samples exceed the hazardous waste screening criteria. AMEC Geomatrix concluded that additional analysis may be required if soil is excavated from this area. Considering this, it is unclear why development and implementation of a SMP is not required for areas C, D, and E. Again, this calls into question the consistency between the Phase I ESA and the impact analysis in the Draft EIS/EIR.
- *Treatment Ponds Area*. The AMEC Geomatrix Phase I ESA states that while a groundwater containment/extraction system is in operation to intercept free floating product and impacted groundwater, no down gradient wells are installed to ensure that the system is operating as intended. Mitigation measure 5.2.11-7 does not appear to require installation of additional wells. These wells would be necessary to determine when the system is no longer required.

Additionally, the impact should indicate the specific mitigation measure applicable to this impact rather than referring the reader to Section 5.2.11.

- *Underground Storage Tanks – Hillside Areas.* It would seem that in order to obtain unrestricted use and regulatory closure of underground tanks 2 through 6, 8, 12 through 15, 18, and 19, the tanks would have to be removed completely and the area around the tanks would need to be remediated. Removal of a 2 million gallon underground tank would require considerable excavation that may have secondary environmental impacts. Please discuss and clarify what is meant by unrestricted use and regulatory closure for the 2 million gallon USTs.
- In all cases, the impact analyses must be specific as to what mitigation measure applies to the significant impact.

Mitigation Measures

- Mitigation Measure 11-1. It is unclear by the text of the measure how the proposed SMP would protect workers from exposure to undiscovered hazardous materials because the mitigation measure describes the contents of the SMP, not necessarily the protocols, procedures, and performance standards of the SMP. A mere plan does not protect workers; implementation of safety procedures, monitoring protocols and response actions need to be described and become elements of the mitigation measure. As presented, the mitigation measure does not provide adequate information to determine whether significant impacts would be reduced to less than significant with this mitigation measure. Measure 11-1 should be revised to describe the proposed protective actions, procedures, and monitoring thresholds, not just what the plan will contain and who would implement it. Further, the use of a photo ionization detector (PID) may not be sufficient because there are some substances, like methane, that PIDs do not detect. Restricting the measure to use of a PID would not be adequate mitigation.
- Mitigation Measure 11-1, Construction (c). A mitigation measure can not refer to provisions in another mitigation measure. Revise part c to include all BMPs referred to in Mitigation Measure 2.1.
- Mitigation Measure 11-1, Operation (a). This measure is too generic and should include specific performance standards and thresholds. Refer to state laws regulating storage and use of pesticides to make this measure more specific and restrictive.
- Mitigation Measure 11-2. The text of this measure describes an emergency response plan, not the procedures, protocols and performance standards that must be followed to reduce the risk and reduce the impact. This is not an adequate mitigation measure and should be revised to provide implementable actions that are designed to reduce risk.
- Mitigation Measure 11-3. Clean up levels for the sites must be stated and should become performance standards in this measure.

Aesthetics (Sections 3.13 & 4.13)

Environmental Consequences

- While the document includes visual renderings of the proposed project and alternatives (Figures 2-4 and 2-5, 2-7 and 2-8, etc.), these figures provide only views from the pier of the project area and from an aerial image. The report identifies, and provides photographs for existing views experienced by ferry commuters traveling between Vallejo and San Francisco; however, there are no visual renderings of the project or alternatives from these views or renderings of the project and alternatives with recommended landscape mitigation.

Indirect and Growth-Inducing Impacts (Sections 3.14 & 4.14)

- As discussed for Socioeconomic Conditions (Section 3.7 and 4.7), the growth impact analysis only considered the casino’s projected gross economic and employment impacts. It is not clear if the projected economic development benefits attributed to the project consider actual net impacts (i.e. recognizing the considerable sales cannibalization and very small portion of project employees (i.e. less than 30 percent) that will actually live in Contra Costa County). The magnitude and nature of the casino’s “inherent touristic value” that would result in the net addition of identified new commercial businesses within the City of Richmond is unidentified. Furthermore, unlike most other sites where associated spillover development can be readily accommodated, Point Molate’s relatively isolated location, may not facilitate local development opportunities. If the casino is highly “destinational” then most casino visitors may be expected to just pass through the City of Richmond (or come from across the Richmond Bridge) and therefore spend little in the local economy.

Cumulative Impacts (Sections 3.15 & 4.15)

- The cumulative section analyzed a time frame extending to 2010 (with the exception of transportation and air quality which are analyzed for 2025). It is unreasonable to assume that the project would be developed in 2010 given the expected environmental and construction schedule.
- The City of Richmond General Plan discussion is outdated (page 4.15-4) stating that the Draft EIR for the General Plan is anticipated to be released in late summer 2008. The draft General Plan is currently available for public review and should be incorporated into the analysis.
- Given the available data and anticipated schedule of development the cumulative section must be substantially revised to account for an extended time frame to meet the “hard look” standard for evaluating impacts. Data and projections for population, housing, employment (among other areas) through 2020 are available from several sources. The Contra Costa County General Plan and supporting environmental documentation include a planning horizon to 2020. The Association of Bay Area Governments has forecasts for several issue areas through 2035. Additionally, the City of Richmond is currently preparing the Draft EIR for the City’s General Plan and, as a lead agency, could provide data to analyze an extended timeframe.