

June 1, 2007

The Honorable John Garamendi
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

RE: Chevron Richmond Long Wharf Marine Terminal Lease Consideration

Dear Chairman Garamendi:

I am writing on behalf of the East Bay Regional Park District ("Park District") to urge that the California State Lands Commission ("Commission") *not* approve the renewal of the Chevron Long Wharf Marine Terminal lease until all feasible mitigation measures have been explored for impacts resulting from the continued removal of these lands from public access and the impacts on land use planning for the Bay Trail. We urge the Commission to fully consider the feasibility of various Bay Trail routes that have been proposed in this area as a condition of any lease approval.

The Park District operates three shoreline parks in the vicinity of Chevron properties and operates significant portions of the Bay Trail in both Alameda and Contra Costa counties. The importance of the Bay Trail as the public policy of the State of California is recognized in the legislative mandate of SB 100 which required the Association of Bay Area Governments to create a plan for a bicycle and pedestrian trail around the perimeter of the San Pablo and San Francisco Bays. An important link in the Bay Trail is a safe and secure connection between Point Molate to the north and Point Richmond to the south. The major impediment to this linkage is Chevron's marine terminal operations, including pipelines, which cross state tidelands to serve Chevron's upland refinery.

Unfortunately, the Environmental Impact Report ("EIR") prepared for the Chevron Long Wharf Marine Terminal lease project has erroneously concluded that there are no significant impacts on land use, despite the existence of land use plans calling for Bay Trail and public access across Chevron properties in the vicinity of the Long Wharf Marine Terminal. In reaching its conclusion, the EIR states that "issues related to land use associated with the Refinery and planned trail segments are not within the jurisdiction of the CSLC." (EIR Impact LU-2, p. 4.5-15.) The EIR goes on to say that the Commission is not required "to mitigate even where impacts occur with respect to properties not owned by it." (Finalizing Addendum, Response to Comment 3-15 (p. 3-21).) This flawed approach, that jurisdiction of the Commission somehow obviates the need to identify feasible mitigation measure for direct and indirect project impacts, was decisively rejected by our California Supreme Court in the recent case of *City of Marina v. Trustees of the California State University* (2006) 39 Cal.4th 341. Notably, this case was decided *after* the draft EIR for the Long Wharf Marine Terminal was published. Because the approach taken in the Long Wharf Marine Terminal EIR is so similar to that disapproved of by the Court, a short discussion of the *City of Marina* case is warranted.

In *City of Marina*, the project was the expansion of a California State University campus at Ford Ord in Monterey Bay. There, the EIR identified a number of off-campus traffic and infrastructure impacts. Nonetheless, the Trustees did not mitigate the offsite impacts, finding instead that that mitigation was not their responsibility because they: 1) could not legally contribute to fund mitigation of the impacts (an assertion rejected by the Court); and 2) they lacked the power to construct infrastructure improvements on land they do not own. The Court concluded that the Trustee's asserted lack jurisdiction over off-campus property was "beside the point." (*City of Marina, supra*, at pp. 366-367.) "CEQA does not . . . as we have explained, limit a public agency's obligation to mitigate or avoid significant effects to effects occurring on the agency's own property." (*Id.* at p. 367.) "CEQA requires a public agency to mitigate or avoid its projects' significant effects . . . 'on the environment' (citations omitted), with 'environment' defined for these purposes as 'the physical conditions which exist *within the area which will be affected by a proposed project.*" (*City of Marina, supra*, at p. 160 [emphasis in original] citing Pub. Resources Code, §21002.1 and 21060.5.) Thus, the Court concluded that if the Trustees could not adequately mitigate or avoid off-campus effects by performing acts on the campus, then other feasible mitigation measures *such as payments to a third party to perform the mitigation* had to be explored.

Similarly here, it is insufficient for the EIR to disclaim responsibility for impacts that are directly or indirectly caused by the renewal of the Chevron Long Wharf Marine Terminal lease simply because the impacts may occur on properties outside the jurisdiction of the Commission. These upland properties are owned by the project applicant, Chevron, and it is indisputably within Chevron's power to mitigate impacts caused by the continued lack of public access to the State's sovereign lands. Even if trail dedication is not appropriate or feasible, then *all other* potentially feasible mitigation measures must be explored in the EIR in order to have a legally sufficient EIR under CEQA.¹

Another troubling aspect of the Long Wharf Marine Terminal EIR is that, without expressly so stating, it treats Chevron's use of the state tidelands as a vested right and minimizes the public's interest in these lands. Chevron has *no right* to continue its private operations across state tidelands. (See *Western Oil and Gas Ass'n. v. California State Lands Commission* (1980) 105 Cal.App.3d 554, 563 [the Commission "is not compelled under tidelands trust to lease at all"]; *Higgins v. City of Santa Monica* (1964) 62 Cal.2d 24, 29 [decision to allow or disallow development of tidelands is discretionary and depends on an assessment of the public interest.]) Whether and upon what conditions to approve a lease lies within the sound discretion of the Commission to act in the best interest of the state. (Pub. Resources Code, §§6301 and 6501.2.) In deciding the best interest of the state, the Commission's regulations require, among

¹ The EIR also ignores conflicts with existing land use plans by stating such land use conflicts are part of the existing baseline because no increase in operations is proposed. (EIR, p. 4.5-14, lines 31-36) This approach is flawed and leads to the unsupported conclusion that there are no impacts on land use planning. Consider for example if, hypothetically, Richmond's General Plan designated the Chevron properties for future open-space or residential development (rather than industrial or heavy industrial), the EIR could not conclude that the project's conflict with the General Plan was insignificant. Likewise, a number of existing land use plans, including the Richmond General Plan, have identified the need for a Bay Trail connection in the vicinity of the Long Wharf Marine Terminal. The renewal of the Long Wharf Marine Terminal lease, without appropriate mitigation, has significant direct and indirect impacts on the ability to complete that connection. The conclusion in the EIR that the impacts on land use are insignificant is not supported by substantial evidence.

other things, that consideration be given as to whether a project is “(d) conducive to public access” and “(e) consistent with environmental protection.” (Cal. Admin. Code, Tit. 2, §2802.) These regulations reflect that the “the objective of the public trust has evolved in tandem with the changing public perception of the values and uses of waterways.” (*National Audubon Soc. v. Superior Court* (1983) 33 Cal.3d 419, 435)

The renewal of the lease by the Commission means that Chevron shall have exclusive use of a significant portion of the San Francisco Bay for another thirty years, effectively depriving another generation of access to and use of these public waters and shoreline. The Park District is not opposed to Chevron’s continued Long Wharf Marine Terminal operations *so long as* the impacts of the loss of access to the tidelands and shoreline are fully mitigated. One appropriate means of minimizing that loss is the provision of other access to the public, either through trail dedication or other means, in the project vicinity. It is most certainly within the power of the Commission to condition its approval of the lease in such a manner.

The Park District has had a long and successful history in working with both the Commission and Chevron. The Park District recognizes and understands Chevron’s security requirements as well as operational concerns for this important petroleum refinery. I remain confident that, with the direction of the Commission, the important interests of the public can be addressed in a manner that also meets Chevron’s concerns. The Park District remains available to do what it can to work cooperatively and creatively with all parties to reach a mutually acceptable solution to this longstanding problem of public access. Thank you for your consideration.

Sincerely,



Pat O'Brien
General Manager

cc: East Bay Regional Park District Board of Directors
Bill Lindsay, City Manager, City of Richmond
Paul D. Thayer, Executive Officer, California State Lands Commission
Dean O’Hair, Chevron Richmond Refinery External Affairs Manager, Chevron Corp.