

City of
Richmond

The logo for the City of Richmond features a stylized, thick black arrow that curves upwards and to the right, pointing towards the word "Richmond". The arrow's tail is on the left, and its head is on the right, with the word "Richmond" written in a bold, serif font across the arrow's shaft. Above the word "Richmond", the words "City of" are written in a smaller, sans-serif font.

OFFICE OF MAYOR GAYLE McLAUGHLIN
April 5, 2007

Lieutenant Governor John Garamendi
Mr. John Chiang, State Controller
Mr. Michael Genest, Director of Finance

Re: Bay Trail mitigation of State Lands Commission 30-year tidelands
lease to Chevron

Dear Chairman Garamendi and State Land Commissioners:

The City of Richmond and the East Bay Regional Park District (EBRPD) have worked hard for many years to complete the San Francisco Bay Trail linking six City parks, three regional parks, the Eastshore State Park and the Rosie the Riveter/WWII Home Front National Historical Park along Richmond's 32 miles of shoreline. As a result, Richmond now has completed 24 miles of San Francisco Bay Trail, more than any other city on the trail's planned 500-mile circuit.

Richmond's standout performance in completing the Bay Trail is in no small way due to private lands made available for building and maintaining this planned regional trail. For example, West County Wastewater District and Brickyard Landing Owners Association voluntarily provided Bay Trail public access easements across their private lands as a public service without any compensation required by the City of Richmond or East Bay Regional Park District. When necessary to close gaps, the City of Richmond and Contra Costa County have **required** companies to **provide land, and build and maintain** Bay Trail segments on **both private and off site public lands** in connection with approval of projects on private lands. This includes a three-mile loop trail around West County Landfill built and maintained by Republic Services Corp. and over a mile of Bay Trail on both private and public lands built by Toll Brothers in connection with approvals for their 149-unit Seacliff Estates residential project.

Our efforts to complete the Bay Trail in Richmond have been stymied by Chevron, which has refused to cooperate in closing the gap connecting our residential areas with Point Molate and the rest of the scenic Point San Pablo Peninsula where the City and EBRPD plan to construct over 4 miles of Bay Trail. Chevron has blocked our efforts to secure an essential public access easement across Chevron's land to complete the trail, despite a detailed engineering study that demonstrates the feasibility of this planned easement that was co-funded, ironically, by Chevron and our City and completed in 2001 under the guidance of Chevron, Caltrans, EBRPD and others.

Chevron's 6 years of recalcitrance led the City Council of Richmond on March 20 to adopt the attached Resolution 34-07 asking the State Lands Commission to require Chevron to provide the needed land and help fund closure of this Bay Trail gap as mitigation for the Commission's approval of a 30-year lease of the State's tidelands for Chevron's Long Wharf. This lease should not be granted without mitigation, as authorized by state law, to compensate the City and region for the adverse impacts associated with Chevron's blockage of the planned San Francisco Bay Trail.

The Commission is reviewing this lease for the first time since 1947. At that time, there were no requirements for CEQA review, the Bay Conservation and Development Commission with its mandate for improving public access had not been established, and State legislation calling for establishment of a Bay Trail and a Bay Water Trail had not been enacted. Chevron has enjoyed immense economic benefits from its exclusive use of the State's tidelands over the last 100 years, and cannot at this time argue that its continued use of those tidelands can be assumed, or is in any way vested through its past use. The Commission must look at this matter de novo, and determine whether a new lease is both

"conducive to public access", and "otherwise in the best interests of the state." Since the Commission's 1947 action, the legislature has established other priorities for the State's tidelands, including public access along those tidelands via the San Francisco Bay Trail and public access over the tidelands through the San Francisco Bay Water Trail.

The State Lands Commission has broad authority to require Chevron to mitigate the adverse impacts on State tidelands from its proposed 30-year lease. For over 100 years, California courts have recognized that "the lands lying between the lines of ordinary high and low tide, as well as that within a bay or harbor and permanently covered by its waters, belong to the state in its sovereign character and are held in trust for the public purposes of navigation and fishery. A public easement and servitude exists over these lands for those purposes." *People v. California Fish Company* (1913) 166 Cal. 576, 584. "Such land is held by the state in trust and for the benefit of the people. The right of the state is subservient to the public rights of navigation and fishery, and . . . the state can make no disposition of them prejudicial to the right of the public to use them for the purposes of navigation and fishery" *Ward v. Mulford* (1867) 32 Cal. 365, 372.

Under the Public Trust Doctrine, "[t]he state has an *affirmative duty . . . to protect public trust uses whenever feasible.*" *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 446, emphasis added. The doctrine protects not only the "traditional triad of uses" (navigation, fishing and water-related commerce) but also fish and wildlife habitat, ecological preservation, swimming, boating and general recreational and scientific uses, including preservation of tide and submerged lands as open space. *Id.*, 33 Cal.3d at 425; *Marks v. Whitney* (1971) 6 Cal.3d 251, 259 (Public Trust Doctrine embraces "the preservation of [tidelands] in their natural state . . . as ecological units for scientific study, as open space, . . . as habitat for birds and marine life, and [as] scenery."). As this Commission has explained in its exegesis on the Public Trust Doctrine, "trust lands belong to the public and are to be used to *promote public rather than exclusively private purposes.*" *Id.* at 3, emphasis added. Contrary to this settled law, Chevron has asked this Commission to grant it a 30-year lease of tide and submerged lands for its exclusive private use, *without* any significant mitigation of the resulting substantial adverse impact on the public's use and enjoyment of these trust lands and waters.

There is no question that Chevron's occupation of this public cove for its private commercial benefit greatly harms public trust uses. The Long Wharf's 4200-foot long causeway and 3440-foot long pier are posted "No Trespassing." They block passage by all watercraft, including sailboats, kayaks, canoes and motorboats, which travel north and south along the coast between Point Richmond and Point San Pablo. Chevron's blockage of public navigational, fishing and recreational use of this protected cove creates not merely a huge inconvenience, but an undeniably hazardous situation for boaters pushed into dangerous shipping lanes. Chevron's

occupation of this particularly scenic and placid cove forces public boaters to divert over one mile away from the cove's protected waters into the rough seas of a major Bay shipping channel, directly into the path of maneuvering tankers and their attendant tug boats preparing to dock at or leave the Long Wharf.

What is required under the Public Trust Doctrine here is that Chevron, in exchange for its private commercial benefit, provide an equivalent public benefit with respect to access to the area affected by the grant of the lease.

Chevron's continuous use of this public cove for its private industrial operation harms the public in other ways. Chevron's 24/7 industrial uses subject adjacent residential uses to nighttime noise and glare, and a steady dose of fumes and smoke from the tankers' enormous diesel engines and the wharf's droning oil pumps. The public's views of San Francisco Bay, Mount Tamalpais, the Tiburon Peninsula and Angel Island along several miles of the City's adjacent shoreline are dominated by Chevron's gargantuan industrial complex.

The Final EIR before the Commission mistakenly assumes that Chevron has the right to continue to exclude the public from these tidelands, and to occupy them with its wharf for exclusive refinery use, for 30 more years. Consequently, it declines to examine the impacts of Chevron's continued exclusive use of these public lands and waters. This ignores the usufructuary nature of Chevron's

interest in the public lands, and erroneously treats the public tidelands as if they were private property not subject to the trust. Because of this erroneous assumption, the EIR makes no attempt to provide the Commission with the information it needs to determine whether Chevron's exclusive use of these 68 acres of trust lands is in the best interests of the State. The EIR makes no effort to balance the new trust uses by the public that have arisen during Chevron's 60 years of exclusive use against Chevron's continued private use. Granting Chevron the right to use these public lands to the exclusion of the public for the next 30 years is far too important a decision to rest on such a cursory analysis as that contained in the EIR, which simply assumes that the wharf will continue to be used by Chevron, rather than evaluating alternatives which would rebalance the competing trust uses.

The Final EIR also mistakenly assumed that the Commission's authority to require mitigation did not extend to lands not owned by the State. This understates the Commission's authority and duties under CEQA, the statutes and the Commission's own governing Public Trust Doctrine and Policy documents. The Commission can certainly require, as an alternative to refusing to enter into a new lease, that Chevron provide additional "consideration" for the lease in the form of granting shoreline access for the Bay Trail.

This Commission, as trustee of the public trust resources Chevron seeks to occupy for its immense economic benefit, has ample power – and a commensurate duty – to require Chevron's mitigation of the impacts of its operations on the public's use and enjoyment of these 68 acres of extraordinary public trust lands. Article X, section 4 of the California Constitution mandates this Commission's protection of these public assets: "No . . . corporation . . . shall be permitted to exclude the right of way to [tidelands, a . . . bay . . . or navigable water] whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water" Based on this unqualified grant of constitutional authority to forbid such private usurpation of public trust resources, "[t]he power of the state to control, regulate and utilize its navigable waterways and the lands lying beneath them, when acting within the terms of the trust, is absolute" *Personal Watercraft Coalition v. Marin County Board of Supervisors* (2002) 100 Cal.App.4th 129, 144-145, quoting from *Marks v. Whitney, supra*, 6 Cal.3d at 260-261, emphasis added.

The need for mitigation of Chevron's lease could not be more compelling. All local agencies and organizations that have commented on this lease agree that additional mitigation is imperative. EBRPD, Contra Costa County, Save The Bay, Point Richmond Neighborhood Council, East Bay Bicycle Coalition, Marin County Bicycle Coalition, Trails for Richmond Action Committee, West Contra Costa Transportation Agency Committee and the San Francisco Bay Conservation and Development Commission have all joined the City in urging this Commission to require Chevron to mitigate the adverse impacts of its 30-year lease on these extraordinary public trust resources. All support the City's request that Chevron provide access for the Bay Trail connector and associated improvements.

For these reasons, we respectfully urge the Commission to require Bay Trail mitigation for Chevron's 30-year lease in accordance with our City Council's Resolution 34-07.

Very truly yours,



Gayle McLaughlin
Mayor, City of Richmond

Encl.: Richmond City Council Resolution 34-07

cc: Paul Thayer
Nancy Skinner
Bruce Beyaert