

MEMORANDUM

DATE: March 19, 2024

TO: Paul Buddenhagen, Executive Director

FROM: John Kennedy, General Counsel

SUBJECT: **Comments Of City Of Emeryville As Successor Agency To The Emeryville Redevelopment Agency To Alameda County Department Of Environmental Health Regarding Request For Regulatory Case Closure Of Former Chevron Asphalt Plant And Bulk Terminal Located At 1520 Powell Street, Emeryville, CA:**

- **Cleanup Program Site Case No. RO0002535;**
- **GeoTracker Global ID SLT2007076;**
- **Chevron #20-6265**

RECOMMENDATION

Staff recommends the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency (“Successor Agency”) consider the information in this staff report and the attached memorandum from its environmental engineering consultant, EKI Environment & Water (“EKI”), and concur with the submission of comments set forth in EKI’s memorandum to the Alameda County Department of Environmental Health (“ACDEH”) regarding the Revised Conceptual Site Model and Request for Closure, dated June 28, 2023, for the former Chevron Asphalt Plant and Bulk Terminal, Chevron Site No. 206265, 1520 Powell Street, Emeryville, California (“Former Chevron Property¹”). And, further, concur with staff’s recommendation to reject the offer to inherit groundwater wells installed by Chevron and located within Powell Street.

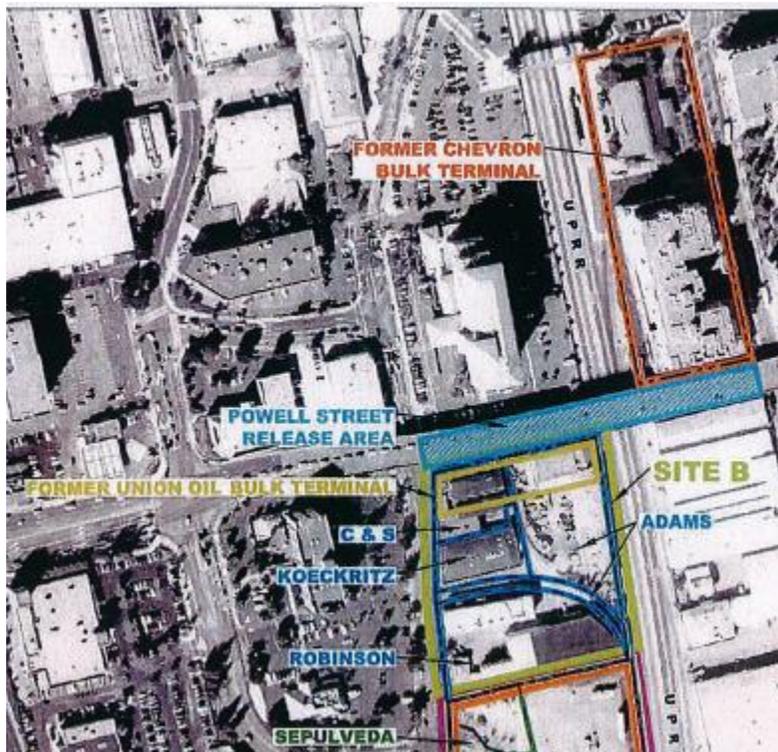
BACKGROUND

Former Chevron Asphalt Plant and Bulk Terminal

The location of the Former Chevron Property encompasses the area currently occupied by the Amtrak Train Station, constructed in approximately 1993, and Terraces residential condominium complex, constructed in approximately 1999. Previous historical land uses at the Former Chevron Property included a fueling terminal and asphalt testing laboratory, above ground storage tanks, piping, barrel storage areas, other handling equipment, a paint shop, auto repair shop, a stove and oil warehouse; also, a portion of the site was leased to a solvent handler. Below is a map showing the location of the Former Chevron

¹ In deference to naming convention used among interested stakeholders, environmental consultants and regulatory agencies, and as used in historical technical reports, the property in question is referred to as the “Former Chevron Property”.

Property.



In connection with the redevelopment of the Former Chevron Property, more than 40,000 cubic yards of contaminated soil was excavated and disposed of off-site; the majority of the excavation (approximately 80%, 32,000 CY) occurred in 1999 to construct the parking garage and Terraces residential condominiums on the southern portion of the Former Chevron Property. The chemicals of concern (COCs) in soil include TPH (total petroleum hydrocarbons), TCE (trichloroethylene), and PCBs (polychlorinated biphenyl). The foregoing notwithstanding, the data shows that residual soil contamination remains along the southwestern and southern edge of the Former Chevron Property and is collocated with remaining CVOC impacted shallow groundwater. In addition, the impacts in soil associated with the southwest corner of the Former Chevron Property also extend off-site onto the Union Pacific Railroad property where the TCE concentrations of 15,000 micrograms per kilograms were detected in soil.

South Bayfront Site B

In early 2004, the former Redevelopment Agency commenced actions to acquire and remediate the properties known collectively as South Bayfront Site B for redevelopment into a mixed-use endcap to the South Bayfront Site A project. South Bayfront Site B lies downgradient from the Former Chevron Property. In March 2008, the California Environmental Protection Agency, Department of Toxic Substance Control (“DTSC”) approved the Feasibility Study/Remedial Action Plan (“FS/RAP”) for South Bayfront Site B

and, in June 2008, the Redevelopment Agency awarded a contract for soil remediation of hazardous materials contamination at South Bayfront Site B. Soil remediation activities were completed in the Fall of 2009 and the Soil Remediation Completion Report was approved by DTSC on June 15, 2010.

As part of the eminent domain actions filed to acquire four of the five parcels comprising South Bayfront Site B, the Agency also initiated an action utilizing the Polanco Redevelopment Act to recover its costs of hazardous materials remediation from responsible parties. On July 23, 2010, in the matter of Emeryville Redevelopment Agency v. Howard F. Robinson and Jeanne C. Robinson, PG&E, Wilson Associates, Chevron Corporation, Union Oil, Sherwin-Williams Company, Mary Lou Adam as Trustee, Christopher D. Adam, Hilary A. Jackson; Bank of America, trustee of Koeckritz Trust, Alameda County Superior Court, Consolidated Case Nos. RG-06-267600, RG-06-267594, RG-07-332012, the Alameda County Superior Court approved an Order On Joint Motion For Good Faith Determination Of Settlement and Settlement Allocations (“Settlement Order”) approving the settlements with several defendants and approving the allocation of \$22,400,000 in settlement proceeds. The Settlement Order approved the Chevron USA/Union Oil Settlement Agreement, the Koeckritz Settlement Agreement, the Robinson Settlement Agreement, and the Adam Settlement Agreement.

With respect to groundwater remediation, the approved FS/RAP anticipated that the Redevelopment Agency would implement a remedy involving the construction of a containment trench around the northeast edge of South Bayfront Site B and then continuously pump the contaminated groundwater and treat it before disposal. The FS/RAP identified the Former Chevron Property as a potential up-gradient source of contamination to South Bayfront Site B.

The FS/RAP also contained bioremediation as an alternative remedial approach to the containment trench. Based on the results of the soil remediation and its favorable impact to groundwater, the Redevelopment Agency and DTSC agreed to pursue the bio-remediation concept rather than the construction of the containment trench and pumping and treating of contaminated groundwater.

Likewise, the Chevron USA/Union Oil Settlement Agreement, providing for a \$15,500,000 payment to the Redevelopment Agency, was also predicated on the application of this alternative remedy within an area known as East Powell, subject to DTSC’s approval. East Powell is the portion of the Powell Street Release Area, shown in the site map above, located east of the Union Pacific Railroad tracks. Note that the Redevelopment Agency did not take on the responsibility to remediate residual contaminated soil mass, if any, under the buildings now on the Former Chevron Property, beneath Powell Street, or at any other location other than South Bayfront Site B; only CVOCs in groundwater beneath East Powell are addressed.

Thereafter, to advance the bio-remediation remedy, pursuant to the Final Work Plan for Groundwater Pilot Study at East Powell (“Pilot Study”) approved by DTSC, the

Redevelopment Agency implemented a pilot study of enhanced reductive dechlorination (“ERD”), involving injecting organic amendments into the groundwater to address tetrachloroethene (“PCE”), trichloroethene (“TCE”), and its breakdown products, including vinyl chloride (“VC”). The Pilot Study involved the injection of approximately 20,000 gallons of EVO (emulsified vegetable oil) with buffer at twenty-two locations within East Powell in December 2011 and additional amendments in July 2012. Based on the very favorable results from the Pilot Study, DTSC approved the amendment to the FS/RAP and RDIP on June 24, 2013 to authorize the bioremediation of groundwater contamination across South Bayfront Site B, as well as within East Powell.

With respect to East Powell specifically, the FS/RAP Amendment acknowledged the favorable results from implementation of the Pilot Study, and thus only required monitored natural attenuation (MNA) (i.e. groundwater monitoring) for an assumed duration of 15 years to further document the effectiveness of EVO. Accordingly, and importantly, the FS/RAP Amendment provides that “[a]lthough no further actions other than MNA are anticipated for East Powell, injection of additional amendments or other additional remedial actions may be conducted by others as part of remediation of upgradient sources by other parties if CVOC concentrations increase significantly.” Therefore, the Successor Agency has fulfilled its remedial obligations at East Powell pursuant to the South Bayfront Site B FS/RAP Amendment.

DISCUSSION

The Chevron USA/Union Oil Settlement Agreement also contains a provision where the Redevelopment Agency and City agree “not to request” DTSC or any other regulatory agency, such as ACDEH, to “institute any proceedings or issue any orders that would result in Chevron, Chevron U.S.A. or Union Oil being required to institute environmental investigation or remediation activity or costs at Site B or the Powell Street Release Area or” the Former Chevron Property. Nevertheless, the Successor Agency is not prohibited from commenting on the pending request for regulatory closure of the Former Chevron Property to address material factual inaccuracies.

As more thoroughly discussed in the attached memorandum prepared by EKI, there are two primary inaccuracies contained in the request for regulatory closure that must be addressed.²

First, there is the assertion that the Former Marchant/Whitney Site (FMW Site) is impacting the Powell Street area and the Former Chevron Property. The FMW Site is not impacting either area, as this assertion in the request for regulatory closure is not supported by the groundwater gradient directions nor the distribution of contaminants in the groundwater. Accordingly, any suggestion that TCE in groundwater at Powell Street and the Former

² Note that the February 15, 2024, letter from ACDEH regarding Case Closure Public Notification states that “[a]t the time of Case closure notification, the Site was evaluated to the current land use as a vacant lot”. This is likely a clerical error on the part of ACDEH because, as noted herein, the Former Chevron Property site is not vacant and has been occupied by a fully operational Amtrak train station and several hundred residential condominium units above structured parking for roughly 20 years.

Chevron Property has emanated from the FMW Site is devoid of any evidentiary support and must be rebuked.

Second, the request for closure asserts that the Successor Agency is remediating the groundwater in the Powell Street area. That is not the case and as noted above with respect to the FS/RAP Amendment for South Bayfront Site B, “*no further actions other than MNA are anticipated for East Powell.*” Accordingly, to the extent closure of the Former Chevron Property is based in whole or in part on the mistaken belief that the Successor Agency is addressing the off-site problem within Powell Street, ACDEH needs to reevaluate that decision.

Finally, a separate communication from Arcadis, Chevron’s environmental consultant, inquired whether the Successor Agency wanted to inherit their groundwater wells. The Successor Agency has fulfilled its remedial obligations at East Powell pursuant to the South Bayfront Site B FS/RAP Amendment and thus has no need for these wells. As a result, Successor Agency staff intend to decline the offer to inherit Chevron’s groundwater wells located within Powell Street.

RECOMMENDATION

It is recommended that the Successor Agency Board concur with the submission of comments set forth in EKI’s memorandum from the Successor Agency to ACDEH regarding the request for regulatory closure and issuance of a Remedial Action Completion Certificate for the Former Chevron Property. Given the interrelatedness of these sites, it is concerning that Case Closure Public Notification for the Former Chevron Property was not provided to DTSC. Therefore, a copy of the Successor Agency’s communication to ACDEH will be provided to DTSC. Further, since the Successor Agency has fulfilled its remedial obligations at East Powell pursuant to the South Bayfront Site B FS/RAP Amendment, the Successor Board is requested to concur with staff’s recommendation to reject the offer to inherit Chevron’s groundwater wells located within Powell Street.

Prepared by: John Kennedy, General Counsel

**APPROVED AND FORWARDED TO THE
CITY COUNCIL OF THE CITY OF EMERYVILLE AS SUCCESSOR AGENCY TO THE
EMERYVILLE REDEVELOPMENT AGENCY:**



Paul Buddenhagen, Executive Director

Attachments:

1. EKI Memorandum