

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION

111 GRAND AVENUE
OAKLAND, CA 94612
PHONE (510) 286-6053
FAX (510) 286-5559
TTY 771



*Flex your power!
Be energy efficient!*

December 27, 2012

CC004083
CC-4-R25
SCH#2012112061

Ms. Leigha Schmidt
Planning Division
City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565

Dear Ms. Schmidt:

Tuscany Meadows Subdivision (Chevron East property) – Notice of Preparation (NOP)

Thank you for continuing to include the California Department of Transportation (Caltrans) in the environmental review process for the project referenced above. We have reviewed the NOP and have the following comments to offer.

Traffic Impact Study (TIS)

One of Caltrans' ongoing responsibilities is to collaborate with local agencies to avoid, eliminate, or reduce to insignificance any potential adverse impacts from local development projects to the State highway facility operations or traveler safety. Based on the project location, Caltrans anticipates potential adverse impacts to State Route (SR) 4.

Therefore, a TIS or a lesser level of analysis may be required to assess the impact of this particular project on the adjacent road network, with specific attention to SR 4. We recommend using Caltrans' *Guide for the Preparation of Traffic Impact Studies (TIS Guide)* for determining which scenarios and methodologies to use in the analysis. The TIS Guide is a starting point for collaboration between the lead agency and Caltrans in determining when a TIS is needed. It is available at the following website address:

http://www.dot.ca.gov/hq/tpp/offices/ocp/igr_ceqa_files/tisguide.pdf.

If the proposed project will not generate the amount of trips needed to meet Caltrans trip generation thresholds, an explanation of how this conclusion was reached must be provided. Please contact us to coordinate preparation of the scope of the study with our office.

Lead Agency

As the lead agency, the City of Pittsburg (City) is responsible for all project mitigation, including any needed improvements to State highways. The project's fair share contribution, financing,

Ms. Leigha Schmidt/City of Pittsburg

December 27, 2012

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scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures.

This information should also be presented in the Mitigation Monitoring and Reporting Plan of the environmental document. Required roadway improvements should be completed prior to issuance of the Certificate of Occupancy.

Vehicle Trip Reduction

Caltrans encourages you to locate any needed housing, jobs and neighborhood services near major mass transit centers, with connecting streets configured to facilitate walking and biking, as a means of promoting mass transit use and reducing regional vehicle miles traveled and traffic impacts on the State highways.

We also encourage you to develop Travel Demand Management (TDM) policies to encourage usage of nearby public transit lines and reduce vehicle trips on the State Highway System. These policies could include lower parking ratios, car-sharing programs, bicycle parking and showers for employees, and providing transit passes to residents and employees, among others. For information about parking ratios, see the Metropolitan Transportation Commission (MTC) report *Reforming Parking Policies to Support Smart Growth* or visit the MTC parking webpage: http://www.mtc.ca.gov/planning/smart_growth/parking.

In addition, secondary impacts on pedestrians and bicyclists resulting from any traffic impact mitigation measures should be analyzed. The analysis should describe any pedestrian and bicycle mitigation measures and safety countermeasures that would in turn be needed as a means of maintaining and improving access to transit facilities and reducing vehicle trips and traffic impacts on State highways.

Mitigation Reporting Guidelines

The California Environmental Quality Act (CEQA) requires the adoption of reporting or monitoring programs when public agencies include environmental impact mitigation as a condition of project approval. Reporting or monitoring takes place after project approval to ensure implementation of the project in accordance with mitigation adopted during the CEQA review process.

Some of the information requirements detailed in the attached Guidelines for Submitting Transportation Information from a Reporting Program include the following:

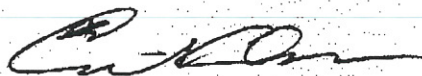
- Name, address, and telephone number of the CEQA lead agency contact responsible for mitigation reporting
- Type of mitigation, specific location, and implementation schedule for each transportation impact mitigation measure, and
- Certification section to be signed and dated by the lead agency certifying that the mitigation measures agreed upon and identified in the checklist have been implemented, and all other reporting requirements have been adhered to, in accordance with Public Resources Code Sections 21081.6 and 21081.7.

Ms. Leigha Schmidt/City of Pittsburg
December 27, 2012
Page 3

Further information is available on the following website:
http://www.dot.ca.gov/hq/tpp/offices/ocp/igr_ceqa.html.

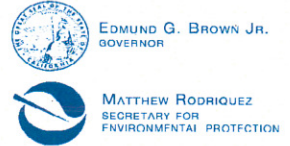
Should you have any questions regarding this letter, please call Brian Brandert of my staff at (510) 286-5505.

Sincerely,



ERIK ALM, AICP
District Branch Chief
Local Development - Intergovernmental Review

c: Scott Morgan (State Clearinghouse)



Central Valley Regional Water Quality Control Board

28 December 2012

Leigha Schmidt
City of Pittsburg
Planning Department
65 Civic Avenue
Pittsburg, CA 94565

CERTIFIED MAIL
7011 2970 0003 8939 9046

COMMENTS TO NOTICE OF PREPARATION FOR THE ENVIRONMENTAL IMPACT REPORT, TUSCANY MEADOWS PROJECT, CONTRA COSTA COUNTY

Pursuant to the City of Pittsburg, Planning Department's 29 November 2012 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the *Notice of Preparation for Environmental Impact Report* for the Tuscany Meadows Project, located in Contra Costa County.

Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore our comments will address concerns surrounding those issues.

Construction Storm Water General Permit

Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction Activities (Construction General Permit), Construction General Permit Order No. 2009-009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP).

For more information on the Construction General Permit, visit the State Water Resources Control Board website at:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml.

Phase I and II Municipal Separate Storm Sewer System (MS4) Permits¹

The Phase I and II MS4 permits require the Permittees reduce pollutants and runoff flows from new development and redevelopment using Best Management Practices (BMPs) to the maximum extent practicable (MEP). MS4 Permittees have their own development standards, also known as Low Impact Development (LID)/post-construction standards that include a hydromodification component. The MS4 permits also require specific design concepts for LID/post-construction BMPs in the early stages of a project during the entitlement and CEQA process and the development plan review process.

For more information on which Phase I MS4 Permit this project applies to, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/municipal_permits/.

Industrial Storm Water General Permit

Storm water discharges associated with industrial sites must comply with the regulations contained in the Industrial Storm Water General Permit Order No. 97-03-DWQ.

For more information on the Industrial Storm Water General Permit, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/industrial_general_permits/index.shtml.

Clean Water Act Section 404 Permit

If the project will involve the discharge of dredged or fill material in navigable waters or wetlands, a permit pursuant to Section 404 of the Clean Water Act may be needed from the United States Army Corps of Engineers (USACOE). If a Section 404 permit is required by the USACOE, the Central Valley Water Board will review the permit application to ensure that discharge will not violate water quality standards. If the project requires surface water drainage realignment, the applicant is advised to contact the Department of Fish and Game for information on Streambed Alteration Permit requirements.

If you have any questions regarding the Clean Water Act Section 404 permits, please contact the Regulatory Division of the Sacramento District of USACOE at (916) 557-5250.

Clean Water Act Section 401 Permit – Water Quality Certification

If an USACOE permit, or any other federal permit, is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications.

¹ Municipal Permits = The Phase I Municipal Separate Storm Water System (MS4) Permit covers medium sized Municipalities (serving between 100,000 and 250,000 people) and large sized municipalities (serving over 250,000 people). The Phase II MS4 provides coverage for small municipalities, including non-traditional Small MS4s, which include military bases, public campuses, prisons and hospitals.

Waste Discharge Requirements

If USACOE determines that only non-jurisdictional waters of the State (i.e., "non-federal" waters of the State) are present in the proposed project area, the proposed project will require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation.

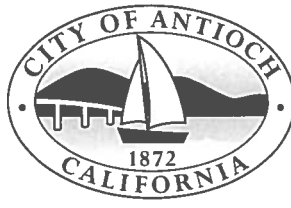
For more information on the Water Quality Certification and WDR processes, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/help/business_help/permit2.shtml.

If you have questions regarding these comments, please contact me at (916) 464-4684 or tcleak@waterboards.ca.gov.

A handwritten signature in black ink, appearing to read "Trevor Cleak", with a long horizontal flourish extending to the right.

Trevor Cleak
Environmental Scientist



December 27, 2012

Ms. Leigha Schmidt
City of Pittsburg
Development Services Department - Planning Division
65 Civic Avenue
Pittsburg, CA 94565

RE: Tuscany Meadows Subdivision (Chevron East Property)

Ms. Schmidt:

Thank you for providing the City of Antioch with the Notice of Preparation of an Environmental Impact Report for the Proposed Tuscany Meadows project, which is located south of Buchanan Road, west of Somersville Road. The City of Antioch preliminarily commented on the subject project with concerns related to the project design with letters dated: May 31, 2012, September 20, 2012, and November 29, 2012. The proposed project application includes a vesting tentative subdivision map for up to 917 low density residential single-family lots on approximately 135.6 acres, up to 365 multi-family units on 14.6 acres, and approximately 18.6 acres of parks and/or detention basins. The single-family lots would average approximately 4,400 square feet and range from 4,000 square feet to approximately 10,700 square feet in size.

The City of Antioch has the following comments regarding the preparation of the EIR for the Tuscany Meadows project.

Aesthetics

The impacts of the proposed water tank and its location should be analyzed with photo simulations. The City wants to ensure the tank will be entirely hidden and will not have any visual impacts as outlined in the City's General Plan.

As stated in earlier letters regarding the project design of Tuscany Meadows, a lot line adjustment shall be processed to include the Somersville Road right-of-way and at James Donlon Boulevard, west of Tuscany Meadows Drive to ensure the roadways stay within one jurisdiction. The roadways shall be analyzed for consistency with the City of Antioch's Design Guidelines and General Plan to ensure compliance for streetscape and street design. The current Somersville Road design does not provide an area of adequate width between the back of sidewalk and the proposed masonry wall.

Community Development Department
Planning Division

P.O. Box 5007 • 200 H Street • Antioch, CA 94531-5007 • Tel: 925-779-7035 • Fax: 925-779-7034 • www.ci.antioch.ca.us

Hazards and Hazardous Materials

The subject site is the former Chevron Los Medanos Tank Farm and is listed on the Department of Toxic Substance Control "Cortese" list. The following contaminants have been identified as being potential containments of concern on the site: isopropylbenzene, lead, naphthalene, petroleum, and volatile organics. The site is considered by the DTSC as a voluntary active cleanup site. This site should be studied in depth for containments with appropriate mitigation measures to ensure the site can be developed with residential uses. Impacts from the neighboring landfill should also be taken into consideration and analyzed.

The City of Antioch has several documents containing information on contamination of the subject property which will be useful in the preparation of the EIR. These documents are enclosed with this letter.

Hydrology and Water Quality

A full hydrological study showing the flow from the project into the City of Antioch should be included as part of the analysis. The City of Antioch would also like the opportunity to review and comment on this study. The stormwater flows shall be managed to provide stormwater treatment and post-development flow control, compliant with the provisions of C.3.

Public Services

The project should study the impacts to existing fire protection services and if new facilities will be required to serve the project. The EIR should also examine the Contra Costa County Fire Protection District's ability to serve to project in the short term as well as the long term in light of the budgetary issues the District has been facing and the announcement of the closing of four stations.

Noise

While the NOP indicates there will be studies for potential project-generated noise impacts such as the increase in vehicular traffic, construction, and operational noise; defined positions for measurements of the noise environment have not been indentified and the noise analysis should contain locations within the City of Antioch for the Environmental Impact Report due to the project being surrounded to the north, east, and south by Antioch. Further, the City of Antioch General Plan CNEL thresholds should be utilized for noise related impacts for measurement points within the City of Antioch.

Transportation and Traffic

Standard Oil Road is shown in both the City of Antioch's and the City of Pittsburg's General Plans from James Donlon Road to Delta Fair Boulevard. The traffic impact analysis should be inclusive of Standard Oil Road and determine the applicant's responsibility to construct the road as well as analyze and determine the timing of the road construction. The City of Antioch has a concern because the General Plan identifies Standard Oil Road as an arterial, which is not being proposed by the project applicant.

The following intersections to be studied as part of the traffic impact analysis: Buchanan Road/Somersville Road and State Route 4/Somersville Road as well as any traffic impacts to John Turner Elementary School and Mission Elementary School.

These comments are preliminary in nature and subject to revision and modification upon review of the Environmental Impact Report and the supporting studies.

If you have any questions regarding the City's requirements for this project, please contact me at (925) 779-6133 or mgency@ci.antioch.ca.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Mindy Gentry". The signature is fluid and cursive, with the first name "Mindy" written in a larger, more prominent script than the last name "Gentry".

Mindy Gentry
Senior Planner

Enclosure (1)

cc: Tina Wehrmeister, City of Antioch
Ron Bernal, City of Antioch

RECEIVED

NOV 5 2007

CITY OF ANTIOCH
CITY CLERK

by mail

November 2, 2007

Via Certified Mail – Return Receipt Requested

TO ALL PROSPECTIVE DEFENDANTS
(See Exhibit Attached Hereto)

Re: NOTICE OF INTENT TO COMMENCE ACTION UNDER RCRA TO EFFECT
CLEANUP OF HAZARDOUS AND/OR SOLID WASTE CONTAMINATION AT
PROPERTY LOCATED NEAR SOMERSVILLE ROAD, THE OLD ANTIOCH
LANDFILL AND THE GBF/PITTSBURG LANDFILL IN CONTRA COSTA COUNTY,
CALIFORNIA

Dear Prospective Defendants:

This letter serves as notification, as required by 42 U.S.C. § 6972, that West Coast Home Builders, Inc., SPPI-Somersville, Inc. and Somersville Gentry, Inc. (collectively, "the Companies") intend to commence an action under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, *et seq.*, against the various parties identified in Exhibit A hereto (the "Responsible Parties").

West Coast Home Builders, Inc. owns property located between Somersville Road and Buchanan Road, in an unincorporated area known as Los Medanos in Contra Costa County, California. Specifically, West Coast Home Builders, Inc. owns Assessor Parcel Number 089-150-013 that occupies approximately 170 acres. SPPI-Somersville, Inc. and Somersville-Gentry, Inc. own parcels of property located between Somersville Road and the GBF/Pittsburg Landfill, in Contra Costa County, California. Somersville-Gentry, Inc. owns APN 076-010-034 that occupies approximately 4 acres. SPPI-Somersville, Inc. owns APN 076-010-030, APN 076-010-031 and APN 076-010-032 that collectively occupy approximately 20 acres. The parcels held by the Companies are referred to in this notice as the "Property".

The action will seek a clean-up order of all, or some, areas of the Property which have been contaminated by hazardous and/or solid wastes, which were generated, transported or otherwise handled by the Responsible Parties. In addition, the action will be for declaratory relief, costs of suit (including attorney's fees and expert witness' fees), and other available relief. Because the Responsible Parties' disposal involves a violation of RCRA, this action will be brought ninety days after service of this notice.

These claims arise in part from surface contamination from municipal waste from the Old Antioch Landfill. The Property is northeast of, and adjacent or near to, the Old Antioch Landfill. The Old Antioch Landfill is located on both sides of Markley Creek east of Somersville Road and occupies APN 076-021-015 (13.20 acres) and 076-021-014 (3.85 acres). The Old Antioch

Landfill was operated by the City of Antioch and is still owned by the city. The Old Antioch Landfill, which operated from the early 1900s until its closure in 1968, accepted municipal solid waste and for part of its history operated as a burn dump. Early landfill operations burned waste prior to final discharge; later operations discharged unburned waste. It was unlined. The landfill was closed in 1968 with a cover of approximately 12-inches of clayey soil.

In 1996, 1997 and 1998, slope failures and erosion in the south bank of Markley Creek on City of Antioch property discharged waste into the creek. The City removed the waste and repaired the soil. Subsequent investigations of Markley Creek by Contra Costa County Environmental Health Department staff detected at least four additional small slope failures exposing waste in the south bank of Markley Creek and exposed waste in the north bank at the "mound area."

The California Regional Water Quality Control Board, Central Valley Region (the "Regional Board"), ordered site characterizations. In August 2002, the City of Antioch submitted to the Regional Board the *Site Characterization Report, Old Antioch Landfill*. The report demonstrated that waste had been discharged on both sides of Markley Creek. The waste is composed of mixed burn and unburned municipal waste. In places, the south bank of Markley Creek is composed entirely of waste (over 30 feet) with a thin cover of soil. In the north bank there is at least 20 feet of mixed burned and unburned municipal waste in the "mound" area. The waste is covered with 1 to 3 feet of clayey soil.

In September 2002, the Tom Gentry California Company, which owned the Property prior to the Somersville Companies, submitted to the Regional Board the *Site Characterization Report Gentry Property*. The report demonstrated that 1 to 5 feet of waste has been deposited over the entire area of APN 076-010-034, which was then owned by the Tom Gentry California Company. Waste is thickest nearest the Old Antioch Landfill and thins to the east. The waste is covered with 6 inches to 3 feet of clayey soil. Further, the bed of Markley Creek is laden with municipal and other waste.

On January 7, 2003, the Regional Board issued Cleanup and Abatement Order No. R5-2002-0736, requiring the City of Antioch, the Tom Gentry of California Company, and GBF Holdings LLC to cleanup the Markley Creek area. On or about July 19, 2006, the Regional Board issued an Administrative Civil Liability Complaint ("ACL"), Complaint No. R5-2006-0512, to the City of Antioch and Somersville-Gentry Inc. proposing that these parties pay a \$300,000 penalty for failure to comply with the prior administrative order.

Somersville-Gentry, Inc. and the City of Antioch, faced with separate Administrative Civil Liability Complaints issued by the Regional Water Quality Control Board, Central Valley Region, for enforcement of the 2003 Cleanup and Abatement Order, have entered separate settlement agreements with the Regional Board requiring completion of the Markley Creek corrective action within two years. The settlement between the City of Antioch and the Regional Board requires the city to remediate the portion of Markley Creek on property owned by the city. The settlement between Somersville-Gentry, Inc. and the Regional Board requires Somersville to complete remediation of the Markley Creek on Somersville-Gentry's property, which is downstream of the city's property. The Companies anticipate the clean up will cost in excess of \$3 million.

Although Somersville-Gentry Inc. has entered into this settlement agreement, it seeks a court order requiring the parties who contaminated Markley Creek to clean up the creek.

These claims also arise in part from surface and groundwater contamination from the GBF/Pittsburg Landfill. The Property is adjacent or near to the former GBF/Pittsburg Landfill, which lies to the Property's south. The GBF/Pittsburg Landfill is or was comprised of the Pittsburg Landfill and the GBF Landfill. This landfill, or part of it, was used as a disposal area for hazardous materials during the 1960s and 1970s, and for the disposal of municipal waste, including hazardous materials, until approximately 1992 under the name Contra Costa Sanitary Landfill. The GBF/Pittsburg Landfill is the source of groundwater contamination on and under the Property and surface contamination.

The various technical reports for the GBF/Pittsburg Landfill site detail the history of the GBF/Pittsburg Landfill(s). This history includes ownership by the J. Prewett family from 1904 to 1974, by the GBF Company from 1974 to 1977, by Silvio and Mary Garaventa from 1977 to 2001, and by GBF Holdings LLC from January 2001 to the present. This history also includes operation of landfills by the City of Pittsburg, the Pittsburg Disposal Service, the Pittsburg Disposal & Debris Box Service, Inc., PITSIL, Contra Costa Waste Service, and Industrial Tank, Inc. Substantial records obtained by the Department of Toxic Substances Control or related agencies document that the Prospective Defendants, or many of them, generated substantial hazardous wastes that were deposited and released at the landfill. The hazardous wastes and other wastes released onto the landfill and which have migrated to surrounding properties including the Property are designated "hazardous" by RCRA and HHS, and the applicable regulations thereunder.

The soil and groundwater on the Property are now contaminated with hazardous wastes which were released and disposed of by the Prospective Defendants. These hazardous wastes, include, but are not limited to, PCE, TCE, vinyl chloride, cis-1,2-DCE, and 1-2-DCP. The Prospective Defendants' disposal of these hazardous wastes presents an "imminent and substantial endangerment to health or the environment" within the meaning of RCRA, 42 U.S.C. § 6972(a)(1)(B). The hazardous wastes that the Prospective Defendants released onto the Property contaminants pose significant health risks to humans and other animals. The action may also be for violation of the Hazardous Waste Management provisions of 42 U.S.C. § 6901, *et seq.*, including Sections 6922, 6924, and 6928, and the applicable regulations thereunder, including but not limited to 40 C.F.R. Parts 262 and/or 264 as such parts were and are in effect a select times herein.

The California Environmental Protection Agency ("Cal/EPA") has been informed of the contamination of the soil and groundwater at the Premises and is currently supervising the investigation of the pollution emanating from GBF/Pittsburg Landfill(s). A Remedial Action Plan was approved for the GBF/Pittsburg Landfill(s) site which provides for extraction wells to be placed to protect the Property from further contamination.

The Prospective Defendants, or many of them, are familiar with the contamination issues on this property due to their involvement in the pending litigation captioned *SPPI-Somersville*,

Inc., Somersville-Gentry, Inc. v. TRC Companies, Inc., GBF Holdings LLC, No. C 04-2648 SI (Northern District, California), *West Coast Home Builders, Inc. v. Aventis Cropscience USA Inc., et al.*, No. C 04-2225 SI (Northern District, California), other related litigation, and the remediation of the GBF/Pittsburg Landfill(s). The Prospective Defendants, or many of them, are also familiar with the matter due to being named as respondents to the Second Remedial Action Order issued by the Department of Toxic Substances Control on or about July 28, 1993. The prospective defendants are already aware of the contamination on the Property due to the Remedial Action Plan dated June 1997 for the nearby landfill site which shows the extent of the plume emanating from the landfill and other technical studies.

This private action is an effort to obtain a clean-up order for the soil contamination of the Property, to obtain declaratory relief, costs of suit (including reasonable attorneys' fees and expert witness' fees) and related damages arising out of the contamination for which the Responsible Parties are jointly and severally responsible. This letter is intended to place the recipients on notice that the Companies intend to commence this action in the Federal District Court for the Northern District of California, ninety days after service of this notice.

This Notice is made on behalf of West Coast Home Builders, Inc., SPPI-Somersville, Inc. and Somersville Gentry, Inc., attention Jeanne Pavao, Esq. and Robert Rossi, Esq., P.O. Box 4113, Concord, CA 94524. The Somersville Companies's legal counsel in this action is Archer Norris, attention Peter W. McGaw and John L. Kortum, 2033 North Main Street Suite 800, Walnut Creek, California 94596 – Telephone number (925) 930-6600.

ARCHER NORRIS

Peter McGaw by EWS

Peter W. McGaw
Attorneys for WEST COAST HOME BUILDERS,
INC., SPPI-SOMERSVILLE, INC. and
SOMERSVILLE-GENTRY, INC.

EXHIBIT A

City of Antioch
Ashland Inc.
Aventis Cropscience USA Inc.
Beazer East, Inc.
Mary Grace Prewett Bertsch
Boeing Satellite Systems, Inc.
Caterpillar Inc.
Chevron USA, Inc. successor to Standard Oil of California, Inc.
Colgate-Palmolive Company
Contra Costa Waste Service, Inc.
Cooper Industries, Inc.
Crompton Corporation
Crown Beverage Packaging, Inc.
E.I. Du Pont De Nemours and Company
Estate of Silvio Garaventa, Sr.
Exxon Mobil Corporation
Fairchild Semiconductor Corporation
Fibreboard Corporation
GBF Holdings LLC
Mary C. Garaventa
Silvio Garaventa Jr.
Gaylord Container Corporation
Great Western Chemical Company
Hewlett Packard Company
Lockheed Martin Corporation
Nestle USA Inc.
Occidental Chemical Corporation
Ocean View Capital, Inc.
Paccar, Inc.
Pittsburg Disposal & Debris Box Service, Inc.
Harold William Prewett
Pro Tec Chemical Co., Inc.
Quebecor Printing San Jose, Inc.
Raychem International Corporation
Shell Oil Company
Shuller International, Inc.
Henry Simonsen
TRC Companies, Inc.
The Dow Chemical Company
USX Corporation
Union Oil Company of California
Union Pacific Railroad Company

*United States Department of Defense
United States Department of the Army
United States Department of the Navy
Witco Corporation*

TO ALL PROSPECTIVE DEFENDANTS

Ashland Inc.
Agent For Service Of Process
Corporation Service Company Which Will Do Business In California As CSC - Lawyers
Incorporating Service
PO Box 526036
Sacramento, CA 95852

Aventis Cropscience Usa Inc. Which Will Do Business In California As ACS USA Inc.
CT Corporation System
818 West Seventh St.
Los Angeles, CA 90017

Beazer East, Inc.
Agent For Service Of Process.
C T Corporation System
818 West Seventh St
Los Angeles, CA 90017

Boeing Satellite Systems, Inc.
Agent For Service Of Process
Corporation Service Company Which Will Do Business In California As CSC - Lawyers
Incorporating Service
PO Box 526036
Sacramento, CA 95852

Caterpillar Inc.
Agent For Service Of Process
C T Corporation System
818 West Seventh St
Los Angeles, CA 90017

Chevron, USA, Inc. Successor to Standard Oil of California
The Prentice-Hall Corporation System, Inc.
PO Box 526036
Sacramento, CA 95852

The City Clerk of the City of Antioch
PO Box 5007
Antioch, CA 94531-5007

The City Clerk of the City of Pittsburg
City of Pittsburg Civic Center
65 Civic Avenue
Pittsburg, CA 94565

Colgate-Palmolive Company
Agent For Service Of Process
C T Corporation System
818 West Seventh St
Los Angeles, CA 90017

Contra Costa Waste Service, Inc.
Agent For Service Of Process
Craig F Anderson
1320 Willow Pass Rd Ste 500
Concord, CA 94520

Cooper Industries, Inc.
Agent For Service Of Process
C T Corporation System
818 West Seventh St
Los Angeles, CA 90017

Crown Beverage Packaging, Inc.
Agent For Service Of Process
C T Corporation System
818 West Seventh St
Los Angeles, CA 90017

The Dow Chemical Company
Agent For Service Of Process
C T Corporation System
818 West Seventh St
Los Angeles, CA 90017

E. I. Du Pont De Nemours And Company
Agent For Service Of Process
C T Corporation System
818 West Seventh St
Los Angeles, CA 90017

Exxon Mobil Corporation
Agent For Service Of Process
Corporation Service Company Which Will Do Business In California As CSC - Lawyers
Incorporating Service
PO Box 526036
Sacramento, CA 95852

Fairchild Semiconductor Corporation
Agent For Service Of Process
Corporation Service Company Which Will Do Business In California As CSC - Lawyers
Incorporating Service
PO Box 526036
Sacramento, CA 95852

Gaylord Container Corporation
Agent For Service Of Process
C T Corporation System
818 West Seventh St
Los Angeles, CA 90017

GBF Holdings LLC
Agent For Service Of Process
Deems Padgett
1590 Solano Way Ste A
Concord, CA 94520

Hewlett-Packard Company
C T Corporation System
818 West Seventh St
Los Angeles, CA 90017

Lockheed Martin Corporation
Agent For Service Of Process
Corporation Service Company Which Will Do Business In California As CSC - Lawyers
Incorporating Service
PO Box 526036
Sacramento, CA 95852

Nestle USA, Inc.
Agent For Service Of Process
C T Corporation System
818 West Seventh St
Los Angeles, CA 90017

Occidental Chemical Corporation
Agent For Service Of Process
C T Corporation System
818 West Seventh St
Los Angeles, CA 90017

Ocean View Capital, Inc.
Agent For Service Of Process
C T Corporation System
818 West Seventh St
Los Angeles, CA 90017

Paccar Inc.
Agent For Service Of Process
The Prentice-Hall Corporation System, Inc.
PO Box 526036
Sacramento, CA 95852

Pittsburg Disposal & Debris Box Service, Inc.
Agent For Service Of Process
Craig F Andersen
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C T Corporation System
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Agent For Service Of Process
Corporation Service Company Which Will Do Business In California As CSC - Lawyers
Incorporating Service
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Sacramento, CA 95852

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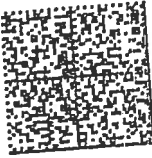
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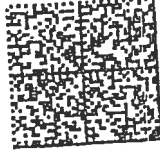
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Attorneys for Plaintiffs SPPI-SOMERSVILLE INC.,
SOMERSVILLE-GENTRY INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SPPI-SOMERSVILLE INC.,
SOMERSVILLE-GENTRY INC.

Plaintiffs,

vs.

TRC COMPANIES, INC.; GBF HOLDINGS
LLC;

CITY OF ANTIOCH; CITY OF
PITTSBURG;

CONTRA COSTA WASTE SERVICE,
INC.; ESTATE OF SILVIO GARAVENTA,
SR.; MARY C. GARAVENTA, AS
ADMINISTRATRIX OF THE ESTATE OF
SILVIO GARAVENTA, SR.; MARY C.
GARAVENTA; SILVIO GARAVENTA,
JR.; MARY C. GARAVENTA, AS
TRUSTEE OF THE GARAVENTA
FAMILY TRUST; PITTSBURG DISPOSAL
& DEBRIS BOX SERVICE, INC.;
HAROLD WILLIAM PREWETT; MARY
GRACE (PREWETT) BERTSCH;

ASHLAND INC.; AVENTIS
CROPSCIENCE USA INC.;

BEAZER EAST, INC.; BOEING
SATELLITE SYSTEMS, INC.;

CATERPILLAR INC.; CHEMICAL &
PIGMENT CO.; COLGATE-PALMOLIVE

NO. C 04-2648 SI

THIRD AMENDED COMPLAINT FOR:

1. RECOVERY OF RESPONSE COSTS UNDER CERCLA § 107;
2. CONTRIBUTION UNDER CERCLA;
3. INJUNCTIVE RELIEF UNDER RCRA
4. DECLARATORY RELIEF UNDER FEDERAL LAW;
5. PRIVATE CONTINUING NUISANCE;
6. CONTINUING TRESPASS;
7. NEGLIGENCE;
8. NEGLIGENCE PER SE;
9. ULTRAHAZARDOUS ACTIVITY;
10. INVERSE CONDEMNATION;
11. DECLARATORY RELIEF UNDER STATE LAW.

**JURY TRIAL
DEMANDED**

ARCHER NORRIS
ATTORNEYS AT LAW
WALNUT CREEK

A0157015/625715-2

1 THIRD AMENDED COMPLAINT FOR RELIEF UNDER CERCLA, RCRA
AND STATE LAW - C 04-2648 SI

1 COMPANY; COOPER INDUSTRIES,
2 INC.; CROMPTON CORPORATION;
3 CROWN BEVERAGE PACKAGING, INC.;

4 THE DOW CHEMICAL COMPANY;
5 E.I. DU PONT DE NEMOURS AND
6 COMPANY; EXXON MOBIL
7 CORPORATION;

8 FAIRCHILD SEMICONDUCTOR
9 CORPORATION;

10 GAYLORD CONTAINER
11 CORPORATION; GREAT WESTERN
12 CHEMICAL COMPANY;

13 HEWLETT PACKARD COMPANY;
14 HEXCEL CORPORATION;

15 J&G DISPOSAL; LOCKHEED MARTIN
16 CORPORATION; NESTLE USA, INC.;

17 OCCIDENTAL CHEMICAL
18 CORPORATION; OCEAN VIEW
19 CAPITAL, INC.

20 PACCAR INC.; PRO TEC CHEMICAL
21 CO., INC.;

22 QUEBECOR PRINTING SAN JOSE, INC.;

23 RAYCHEM INTERNATIONAL
24 CORPORATION;

25 SHELL OIL COMPANY; SHULLER
26 INTERNATIONAL, INC.; HENRY
27 SIMONSEN;

28 UNION OIL COMPANY OF
CALIFORNIA; UNION PACIFIC
RAILROAD COMPANY; UNITED
STATES DEPARTMENT OF THE ARMY,
UNITED STATES DEPARTMENT OF
DEFENSE, DEFENSE LOGISTICS
AGENCY; UNITED STATES
DEPARTMENT OF THE NAVY; USX
CORPORATION;

and WITCO CORPORATION,

Defendants.

1 Plaintiffs SPPI-SOMERSVILLE INC., SOMERSVILLE-GENTRY INC. ("Plaintiffs" or
2 the "Somersville Entities") allege as follows:

3 NATURE OF THE ACTION

4 1. The Somersville Entities own four parcels of property (the "Property" or
5 "Plaintiffs' Property") adjacent or near to the Contra Costa Sanitary Landfill (the "CCSL
6 Landfill") and the Old Antioch Landfill, which are both near Antioch, California. The
7 Somersville Entities are also assignees of rights held by the previous owner of the subject
8 properties, Tom Gentry California Company, and by this Complaint the Somersville Entities
9 assert those assigned rights as well. The CCSL Landfill is or was comprised of the Pittsburg
10 Landfill and the GBF Landfill. The CCSL Landfill, or part of it, was used as a disposal area for
11 hazardous materials during the 1960s and 1970s, and for the disposal of municipal waste,
12 including hazardous materials, until approximately 1992. The CCSL Landfill is the source of
13 groundwater contamination on and under the Property. The CCSL Landfill and the Old Antioch
14 Landfill are also the source of surface contamination on the Plaintiffs' Property. This
15 contamination prevents the Somersville Entities from developing the Property, or part of it, to the
16 highest and best use available were it without such contamination. The Somersville Entities bring
17 this action under the Comprehensive Environmental Response, Compensation, and Liability Act
18 ("CERCLA"), as amended, 42 U.S.C. §§ 9607 and 9613, to recover response costs and
19 contribution, and under the Resource Conservation and Recovery Act ("RCRA"), as amended, 42
20 U.S.C. § 6972 and related sections. The Somersville Entities also allege state claims for
21 nuisance, trespass, negligence and ultrahazardous activity against Defendants arising from the
22 contamination on the Property and seek injunctive and other relief. The Somersville Entities
23 further allege a claim for inverse condemnation against the City of Antioch and the City of
24 Pittsburg.

25 JURISDICTION AND VENUE

26 2. The jurisdiction of this Court over the subject matter of this action is predicated on
27 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1367 (supplemental jurisdiction), 42 U.S.C. §

1 9613(b) (CERCLA), and 42 U.S.C. § 6972(a) (RCRA).

2 3. Venue in the Northern District of California is based on 28 U.S.C. § 1391(b)
3 (venue proper in district in which a substantial part of the events giving rise to the claim occurred)
4 and 42 U.S.C. § 9613(b) (venue where release occurred).

5 4. Pursuant to Local Rule 3-2(d) of the Northern District, assignment to the Court in
6 San Francisco or Oakland is appropriate because this action arises in Contra Costa County.

7 RELATED CASES

8 5. This action is related to *Members Of The GBF/Pittsburgh Landfill(s) Respondents*
9 *Group, et al. v. Contra Costa Waste Service, Inc.*, Case No. C 96-03147 SI (filed Sept. 3, 1996),
10 which has been closed.

11 6. This action is also related to *West Coast Home Builders, Inc. v. Ashland Inc., et*
12 *al.*, Case No. C 01-4029 SI, United States District Court, Northern District of California (filed
13 Oct. 25, 2001), which is now closed. The present action involves different plaintiffs and different
14 impacted property than the property at issue in Case No. C 01-4029, but the present action
15 involves the same CCSL Landfill, some of the same defendants, and, in part, the same
16 contamination emanating from the CCSL Landfill. The present action also involves different
17 contamination emanating from the CCSL Landfill and the Old Antioch Landfill.

18 7. This action is also related to *West Coast Home Builders, Inc. v. Aventis*
19 *Cropscience USA Inc., et al.*, Case No. C 04-2225 SI, United States District Court, Northern
20 District of California (filed June 7, 2004), now pending in this court. The present action involves
21 different plaintiffs and different impacted property than the property at issue in Case No. C 04-
22 2225 SI, but the present action involves the same CCSL Landfill, some of the same defendants
23 and, in part, the same contamination emanating from the CCSL Landfill. The present action also
24 involves different contamination emanating from the CCSL and the Old Antioch landfills.

25 8. This action is also related to *SPPI-Somersville, Inc., Somersville-Gentry, Inc. v.*
26 *Chevron U.S.A., Inc.*, Case No. CV 07-5824 SI, United States District Court, Northern District of
27 California, filed November 15, 2007. The Chevron defendant in this related case was a prior

1 owner of the properties involved in this action.

2 **PARTIES TO THE ACTION**

3 **The Plaintiffs**

4 9. Plaintiff SPPI-SOMERSVILLE INC. is a closely held corporation organized and
5 existing under the laws of the state of California. Its main office is located in Concord, California
6 and its principal place of business is also California.

7 10. Plaintiff SOMERSVILLE-GENTRY INC. is a closely held corporation organized
8 and existing under the laws of the state of California. Its main office is located in Concord,
9 California and its principal place of business is also California.

10 **The Present Owner-Operator Defendants**

11 11. On information and belief, Plaintiffs allege that defendant GBF HOLDINGS LLC
12 is a California limited liability company. GBF HOLDINGS LLC was formed on or about
13 January 24, 2001.

14 12. On information and belief, Plaintiffs allege that defendant TRC COMPANIES,
15 INC. is a Delaware corporation.

16 13. Defendant CITY OF ANTIOCH is a municipality located in Contra Costa County,
17 California. Plaintiffs presented a notice of tort claim to the CITY OF ANTIOCH on June 30,
18 2006, which attached, among other items, several tolling agreements between, on one hand,
19 Plaintiffs' predecessor-in-interest and the Plaintiffs and, on the other hand, the CITY OF
20 ANTIOCH. Plaintiffs have not received any denial of claim from the city and so the claim is
21 deemed denied under California Government Code § 912.4.

22 **The Former Owner-Operator Defendants**

23 14. On information and belief, Plaintiffs allege that defendant CONTRA COSTA
24 WASTE SERVICE, INC. is a California corporation.

25 15. On information and belief, Plaintiffs allege that defendant ESTATE OF SILVIO
26 GARAVENTA, SR. is the legal successor to Silvio Garaventa, Sr., an individual, who is
27 deceased.

1 Chemical, Inc., an Ohio corporation.

2 25. On information and belief, Plaintiffs allege that defendant AVENTIS
3 CROPSCIENCE USA INC., a Delaware corporation, was formerly known as RHONE-
4 POULENC, INC., a New York corporation, and is successor to Stauffer Chemical Company.

5 26. On information and belief, Plaintiffs allege that defendant BEAZER EAST, INC.
6 is a Delaware corporation that was formerly known as Koppers Company, Inc.

7 27. On information and belief, Plaintiffs allege that defendant BOEING SATELLITE
8 SYSTEMS, INC. is a Delaware corporation, and is the successor to Hughes Electronics
9 Corporation.

10 28. On information and belief, Plaintiffs allege that defendant CATERPILLAR INC.
11 is a Delaware corporation.

12 29. On information and belief, Plaintiffs allege that defendant CHEMICAL &
13 PIGMENT COMPANY is a California corporation.

14 30. On information and belief, Plaintiffs allege that defendant COLGATE-
15 PALMOLIVE COMPANY is a Delaware corporation.

16 31. On information and belief, Plaintiffs allege that defendant COOPER
17 INDUSTRIES, INC. is an Ohio corporation, and is the successor to Campbell Chain Company, a
18 Delaware corporation.

19 32. On information and belief, Plaintiffs allege that defendant CROMPTON
20 CORPORATION is a Delaware corporation, and is the successor to U.S. Peroxygen, which was a
21 California corporation.

22 33. On information and belief, Plaintiffs allege that defendant CROWN BEVERAGE
23 PACKAGING, INC. is a Delaware corporation, and is the successor to Continental Can
24 Company, Inc., a Delaware corporation.

25 34. On information and belief, Plaintiffs allege that defendant THE DOW
26 CHEMICAL COMPANY is a Delaware corporation, and is the successor to Dow Chemical
27 U.S.A.

1 35. On information and belief, Plaintiffs allege that defendant E.I. DUPONT DE
2 NEMOURS AND COMPANY is a Delaware corporation.

3 36. On information and belief, Plaintiffs allege that defendant EXXON MOBIL
4 CORPORATION is a New Jersey corporation, and is the successor to Humble Oil & Refining
5 Company, which was a Delaware corporation.

6 37. On information and belief, Plaintiffs allege that defendant FAIRCHILD
7 SEMICONDUCTOR CORPORATION is a Delaware corporation and that FAIRCHILD
8 SEMICONDUCTOR CORPORATION OF CALIFORNIA is a Delaware corporation.

9 38. On information and belief, Plaintiffs allege that defendant GAYLORD
10 CONTAINER CORPORATION is a Delaware corporation, and is a successor to Crown
11 Zellerbach.

12 39. On information and belief, Plaintiffs allege that defendant GREAT WESTERN
13 CHEMICAL COMPANY is a Washington corporation.

14 40. On information and belief, Plaintiffs allege that defendant HEWLETT-PACKARD
15 COMPANY is a Delaware corporation.

16 41. On information and belief, Plaintiffs allege that defendant HEXCEL
17 CORPORATION is a Delaware corporation.

18 42. On information and belief, Plaintiffs allege that defendant J & G DISPOSAL, INC.
19 was a California corporation.

20 43. On information and belief, Plaintiffs allege that defendant LOCKHEED MARTIN
21 CORPORATION is a Maryland corporation.

22 44. On information and belief, Plaintiffs allege that defendant NESTLE USA, INC. is
23 a Delaware corporation, and is the successor to Nestle Food Company and Libby, McNeill &
24 Libby.

25 45. On information and belief, Plaintiffs allege that defendant OCCIDENTAL
26 CHEMICAL CORPORATION is a New York corporation, and is the successor to Diamond
27 Shamrock Chemicals Corporation.

1 46. On information and belief, Plaintiffs allege that defendant OCEAN VIEW
2 CAPITAL, INC. is a Delaware corporation, and is a successor to Triangle Wire & Cable, Inc.
3 which was a Delaware corporation.

4 47. On information and belief, Plaintiffs allege that defendant PACCAR INC. is a
5 Delaware corporation, and is successor for Peterbilt Motors Company.

6 48. On information and belief, Plaintiffs allege that defendant PRO TEC CHEMICAL
7 COMPANY, INC. is a California corporation.

8 49. On information and belief, Plaintiffs allege that defendant QUEBECOR
9 PRINTING SAN JOSE, INC. is a Delaware corporation, and is the successor to Arcata Graphics
10 Company.

11 50. On information and belief, Plaintiffs allege that defendant RAYCHEM
12 INTERNATIONAL CORPORATION is a California corporation, and is the successor to
13 Raychem Corporation, a California corporation, and Raychem Corporation, a Delaware
14 corporation.

15 51. On information and belief, Plaintiffs allege that defendant SHELL OIL
16 COMPANY is a Delaware corporation.

17 52. On information and belief, Plaintiffs allege that defendant SHULLER
18 INTERNATIONAL, INC. is a Delaware corporation, and is successor to Manville Sales
19 Corporation.

20 53. On information and belief, Plaintiffs allege that defendant HENRY SIMONSEN is
21 an individual and a citizen of the State of California.

22 54. On information and belief, Plaintiffs allege that defendant UNION OIL
23 COMPANY OF CALIFORNIA is a California corporation, and is doing business as UNOCAL,
24 and is the successor to Collier Carbon & Chemical.

25 55. On information and belief, Plaintiffs allege that defendant UNION PACIFIC
26 RAILROAD COMPANY is a Delaware corporation, and is successor to Southern Pacific
27 Transportation Company, which was a Delaware corporation.

1 At some point in July 2001, the Tom Gentry California Corporation discovered that municipal
2 solid waste had spilled from one or more of the adjacent landfills or otherwise been deposited
3 onto the Property, contaminating at least the surface of the parcel APN 076-010-034. Further,
4 municipal waste deposited into and around Markley Creek in the vicinity of the Property has
5 contaminated the Property. The California Regional Water Quality Control Board has since
6 issued an order requiring certain parties to this action to remediate the impact of this municipal
7 solid waste on Markley Creek, which transverses the parcels owned by the Somersville Entities.

8 The CCSL Landfill

9 65. The eastern portion of the Property is adjacent to and north of the CCSL Landfill.
10 In this area, groundwater flows in the general direction from the south to the north, and therefore
11 transports contaminants emanating from the CCSL Landfill into the groundwater on and under
12 the Property.

13 66. The CCSL Landfill is an approximately 88-acre area located in an unincorporated
14 area of Contra Costa County near the cities of Antioch and Pittsburg. The CCSL Landfill is
15 comprised of (a) the former GBF Landfill (the eastern 63-acre parcel), and (b) the former
16 Pittsburg Landfill (the western 25-acre parcel), both of which were consolidated into (c) an 88-
17 acre overlying solid waste landfill that was operated as the Contra Costa Sanitary Landfill. The
18 CCSL Landfill ceased accepting wastes in 1992.

19 67. On information and belief, Plaintiffs allege that from approximately 1947 to 1963,
20 E.A.H. Prewett, as Trustee, held the fee interest in the property that became the CCSL Landfill
21 property. A 1/6 interest was held in trust for Mary Grace (Prewett) Bertsch and a 1/6 interest was
22 held in trust for Harold William Prewett, until 1960, when each assumed a 1/4 interest in trust.
23 From 1963 to 1973, Harold William Prewett and Mary Grace (Prewett) Bertsch each owned a 1/4
24 fee ownership interest in the CCSL Landfill property.

25 68. On information and belief, Plaintiffs allege that Harold William Prewett and Mary
26 Grace (Prewett) Bertsch (along with E.A.H. Prewett) leased some or all a portion of the CCSL
27 Landfill property to Contra Costa Waste Service, Inc. and the City of Pittsburg "for use as a waste

1 disposal site." Contra Costa Waste Service, Inc. leased the GBF Landfill property from the
2 Prewett family in or about 1960 for the purpose of conducting a refuse disposal business.

3 69. On information and belief, Plaintiffs allege that in 1963, CCWS leased from the
4 Prewetts, pursuant to a written lease, a portion of the CCSL Landfill property for a "business of
5 disposing of garbage, rubbish, industrial refuse and waste, including industrial liquid waste, and
6 other such non-putrescible materials," among other things. The term of the November 1, 1963
7 lease was from November 1, 1963 to April 30, 1970.

8 70. On information and belief, Plaintiffs allege that on November 1, 1967, CCWS
9 entered into another lease with the Prewetts for a portion of the CCSL Landfill property, again
10 "for the purpose of conducting a refuse disposal business and business of disposing of garbage,
11 rubbish, industrial refuse and waste, including industrial liquid waste, and other such non-
12 putrescible materials." In signing the November 1, 1967 lease, Mr. Garaventa, on behalf of
13 CCWS, warranted that the "Lessee [CCWS] presently possesses a permit to use the said described
14 property for the purposes as herein provided from the County of Contra Costa and other
15 appropriate governmental and regulatory authorities." The term of the November 1, 1967 lease
16 was from November 1, 1967 to June 30, 1977.

17 71. On information and belief, Plaintiffs allege that from July 1, 1957, to December
18 28, 1973, the City of Pittsburg leased the Pittsburg Landfill from the Prewetts "for the purpose of
19 dumping, processing, salvaging and/or burying municipal refuse and garbage."

20 72. On information and belief, Plaintiffs allege that on December 28, 1973, the
21 Pittsburg Landfill was sold by the Prewetts to Silvio Garaventa, Sr. and Italo Ferrando dba G.B.F.
22 Company who assumed the existing July 1, 1973 lease between the Prewetts and the City of
23 Pittsburg.

24 73. On information and belief, Plaintiffs allege that from July 1, 1973 to June 30,
25 1981, the City of Pittsburg leased the Pittsburg Landfill from Silvio Garaventa, Sr. and Italo
26 Ferrando dba G.B.F. Co. "for purposes of dumping, processing, salvaging and/or burying refuse,
27 garbage and solid waste."

1 IT constructed unlined disposal "ponds" for liquid wastes which eventually covered the majority
2 of the landfill's 63-acre site. Between 1960 and approximately 1973, IT disposed of
3 approximately 80 million gallons of liquid toxic waste into these ponds. The disposed liquids
4 included chlorinated solvents, waste acids, beryllium metal, PCBs, oils, benzene, lead, mercury,
5 and vinyl chloride. Approximately 50% of these liquids has now infiltrated into the vadose zone.

6 81. On information and belief, Plaintiffs allege that in order to abate an air pollution
7 problem, IT advocated before the Bay Area Air Pollution Control District ("Air District") that
8 industrial and municipal solid waste be dumped in the ponds to soak up the liquid toxic waste.
9 This remedy was approved and CCWS began to dump municipal waste at the GBF Landfill as
10 well as construction debris, wood, and cardboard.

11 **The Pittsburg Landfill**

12 82. On information and belief, Plaintiffs allege that the Prewett family leased what
13 became known as the Pittsburg Landfill to the City of Pittsburg from 1952 (or earlier) to 1973 for
14 use as a disposal site for municipal household waste.

15 83. On information and belief, Plaintiffs allege that after acquisition of the Landfill by
16 the GBF Company in 1973, the Pittsburg Landfill continued to accept municipal waste, including
17 some hazardous chemicals and industrial liquid wastes, until at least 1978.

18 84. On information and belief, Plaintiffs allege that the Pittsburg Landfill continued to
19 operate as a solid waste facility after 1978 to 1987, when it was consolidated with the GBF
20 Landfill to form the Contra Costa Sanitary Landfill, which was owned and operated by CCWS.

21 **Groundwater Monitoring and DTSC Order**

22 85. On information and belief, Plaintiffs allege that contaminants have migrated
23 through the groundwater from the GBF Landfill. Accordingly, the Department of Toxic
24 Substances Control ("DTSC") ordered IT, CCWS and numerous other entities to investigate and
25 remediate the groundwater-borne contamination at the GBF Landfill by an order dated September
26 25, 1987, and amended June 6, 1988 and July 28, 1993.

27 86. As reported in the July 28, 1993 remedial action order, six groundwater

1 monitoring wells were installed on the Landfill in or about May 1986. All six sample wells tested
2 had levels of hazardous substances exceeding the Maximum Contaminant Levels ("MCLs"), that
3 generally reflect applicable drinking water standards. In or about April and May 1990, ten
4 groundwater monitoring wells were installed in the uppermost water-bearing zone, and six
5 monitoring wells and one piezometer were installed in the water-bearing zone underlying the
6 uppermost water-bearing zone. Those wells also revealed that the groundwater contains levels of
7 hazardous substances in excess of the MCLs. Hazardous substances detected in excess of the
8 MCLs included the following: Arsenic, Benzene, Cadmium, Carbon Tetrachloride, Chloroform,
9 Chromium (total), 1,1-Dichloroethane, 1,1-Dichloroethylene, 1,2-Dichloroethylene, 1,2-
10 Dichloropropane, Lead, Mercury, Perchloroethylene, Selenium, Silver, Trichloroethylene, and
11 Vinyl Chloride.

12 87. As reported in the July 28, 1993 Remedial Action Order, the DTSC determined
13 that as a result of the water-borne contaminants, "removal and remedial action is necessary at the
14 IT [Landfill] because there may be an imminent and/or substantial endangerment to the public
15 health or welfare or to the environment." The order also determined that the "actual and/or
16 threatened release of hazardous substances at the [Landfill] also constitutes a public nuisance as
17 defined in California Civil Code Sections 3479 and 3480." DTSC also noted in the 1993 order
18 that three residential developments were proposed for construction in the vicinity of the Landfill
19 and that the "population at risk due to contaminated groundwater includes potential near-site
20 downgradient residents who may utilize shallow groundwater and potential off-site downgradient
21 users of water-supply wells."

22 88. The July 28, 1993 Remedial Action Order also required the owners, operators,
23 generators and other potentially responsible parties named as respondents in the order to prepare a
24 remedial investigation/feasibility study, a remedial action plan, and a remedial design plan, as
25 well as other documents. The order clearly indicated that alternatives for treatment of the
26 contaminated groundwater be considered and, if feasible, implemented.

27 89. Pursuant to the 1993 Remedial Action Order and amendments thereto,

1 investigation of the condition of the soil and groundwater on and under the CCSL Landfill and
2 surrounding properties was commenced. This investigation disclosed that contamination had
3 leached from the CCSL Landfill and had left the boundary of the CCSL Landfill property and,
4 without Plaintiffs' knowledge or permission, had traveled onto and under Plaintiffs' property.

5 90. In June 1997, the DTSC issued a Remedial Action Plan ordering the owners,
6 operators, generators and other potentially responsible parties to undertake certain remedial
7 actions in connection with the CCSL Landfill. These remedial actions include actions that, if
8 implemented, are designed to, and will, abate any condition of pollution, nuisance and trespass
9 created by the CCSL Landfill on and under Plaintiffs' Property.

10 91. The remedial actions required by the 1997 Remedial Action Plan are reasonable
11 and feasible; however, as of the filing of this action, Defendants have failed to implement the
12 requirements of the 1997 Remedial Action Plan and have failed to take adequate or appropriate
13 steps to remediate and abate the condition of pollution, nuisance and trespass created on and
14 under Plaintiffs' Property.

15 **The Old Antioch Landfill**

16 92. The Property is also located northeast of, and adjacent or near to, the Old Antioch
17 Landfill. The Old Antioch Landfill was operated by the City of Antioch and is still owned by the
18 city. The Old Antioch Landfill is located on both sides of Markley Creek east of Somersville
19 Road in the southeast ¼ Section 27, T2N, R1E. The Old Antioch Landfill occupies APN 076-
20 021-015 (13.20 acres) and 076-021-014 (3.85 acres).

21 93. The Old Antioch Landfill, which operated from the early 1900s until its closure in
22 1968, accepted municipal solid waste and for part of its history operated as a burn dump. Early
23 landfill operations burned waste prior to final discharge; later operations discharged unburned
24 waste. It was unlined. The landfill was closed in 1968 with a cover of approximately 12-inches
25 of clayey soil.

26 94. Aerial photographs dating back at least as far as 1953 show land use patterns for
27 the Pittsburg and Antioch landfills and the 034 parcel. These photographs show, among other

1 information, distribution of refuse over the 034 parcel during the late 1950s and the 1960s that is
2 apparently related to the operations on the Pittsburg Landfill and the Antioch Landfill.

3 95. In 1996, 1997 and 1998, slope failures and erosion in the south bank of Markley
4 Creek on City of Antioch property discharged waste into the creek. The City removed the waste
5 and repaired the soil. Subsequent investigations of Markley Creek by Contra Costa County
6 Environmental Health Department staff detected at least four additional small slope failures
7 exposing waste in the south bank of Markley Creek and exposed waste in the north bank at the
8 "mound area."

9 96. The California Regional Water Quality Control Board, Central Valley Region (the
10 "Regional Board"), ordered site characterizations. In August 2002, the City of Antioch submitted
11 to the Regional Board the Site Characterization Report, Old Antioch Landfill. The report
12 demonstrated that waste had been discharged on both sides of Markley Creek. The waste is
13 composed of mixed burn and unburned municipal waste. In places, the south bank of Markley
14 Creek is composed entirely of waste (over 30 feet) with a thin cover of soil. In the north bank
15 there is at least 20 feet of mixed burned and unburned municipal waste in the "mound" area. The
16 waste is covered with 1 to 3 feet of clayey soil. The report identified, among other matters, the
17 presence of elevated lead and copper levels subject to classification as hazardous waste.

18 97. In September 2002, the Tom Gentry California Company submitted to the
19 Regional Board the Site Characterization Report Gentry Property. The report demonstrated that 1
20 to 5 feet of waste has been deposited over the entire area of APN 076-010-034, which was then
21 owned by the Tom Gentry California Company. Waste is thickest nearest the Old Antioch
22 Landfill and thins to the east. The waste is covered with 6 inches to 3 feet of clayey soil. The
23 report noted, among other matters, the presence of elevated lead levels subject to classification as
24 hazardous waste.

25 98. On January 7, 2003, the Regional Board issued Cleanup and Abatement Order No.
26 R5-2002-0736, requiring the City of Antioch, the Tom Gentry of California Company, and GBF
27 Holdings LLC to cleanup the Markley Creek area.

1 99. The Regional Board Cleanup and Abatement Order addresses some, but not all, of
2 the surface contamination on the four acres of APN 076-010-034. The contamination not
3 addressed by the Regional Board order prevents the Companies from developing the Property, or
4 part of it, to the highest and best use available were it without such contamination.

5 100. On or about July 19, 2006, the Regional Board issued an Administrative Civil
6 Liability Complaint ("ACL"), Complaint No. R5-2006-0512, to the City of Antioch and
7 Somersville-Gentry Inc. proposing that these parties pay a \$300,000 penalty for failure to comply
8 with the prior administrative order. This complaint has been settled by both the City of Antioch
9 and Somersville-Gentry Inc. As a condition of settlement a schedule was put in place for the
10 remediation of Markley Creek. As part of the remediation, Shaw Environmental, Inc. performed
11 further characterization on the Markley Creek streambed, and identified the presence of elevated
12 levels of lead subject to classification as hazardous waste.

13 **FIRST CAUSE OF ACTION**

14 **(Recovery of Response Costs Pursuant to CERCLA)**

15 **(Against All Defendants)**

16 101. Plaintiffs refer to and reallege paragraphs 1 through 100 of this Complaint and
17 incorporate them herein by this reference.

18 102. Plaintiffs and Defendants are "persons" as defined by CERCLA § 101(21), 42
19 U.S.C. § 9601(21).

20 103. At relevant times identified herein, Defendants, or some of them, were the
21 "owners" and/or "operators" of the CCSL Landfill and the Old Antioch Landfill, within the
22 meaning of Section 107(a)(1) and (2). The CCSL Landfill and the Old Antioch Landfill each
23 were a "facility" as defined by CERCLA § 101(9), 42 U.S.C. § 9601(9), at the time hazardous
24 materials were disposed of at the Landfill and at the Property.

25 104. Defendants, or some of them, are persons who arranged for the treatment or
26 disposal of hazardous substances at the Landfill within the meaning of Section 107(a)(3) of
27 CERCLA, 42 U.S.C. § 9607(a)(3).

1 105. Defendants, or some of them, are "transporters" of hazardous substances within
2 the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

3 106. The CCSL Landfill, the Old Antioch Landfill and the Property are, and at all times,
4 relevant hereto were, a "facility" as defined by CERCLA § 101(9), 42 U.S.C. § 9601(9).

5 107. The elements, compounds, mixtures, solutions and substances discovered on the
6 CCSL Landfill, the Old Antioch Landfill and at the Property and identified herein are "hazardous
7 substances" within the meaning of CERCLA § 101(14), 42 U.S.C. § 9601(14).

8 108. The actions by Defendants with regard to these hazardous substances constituted a
9 "release" at the facility within the meaning of CERCLA § 101(22), 42 U.S.C. § 9601(22).

10 109. Each Defendant did, over extended periods of time, own, possess, generate,
11 handle, transport and/or dispose of, and/or arrange for disposal of those hazardous substances in
12 such a manner at the CCSL Landfill, the Old Antioch Landfill and at the Property so as to cause
13 hazardous substances to be released or threaten to release into the environment.

14 110. The release and/or threatened release of hazardous substances by the Defendants
15 have caused and continue to cause Plaintiffs to incur response costs. As used in this Complaint,
16 the term "response costs" means the costs of "removal" and "remedial actions" of hazardous
17 substances, as those terms are defined in CERCLA § 101(23) and (24), 42 U.S.C. § 9601(23) and
18 (24), and all other costs to respond to releases of hazardous substances, as defined under
19 CERCLA § 101(25), 42 U.S.C. § 9601(25). Such costs include, but are not limited to, costs
20 incurred to monitor, assess and evaluate the release and/or threatened release of hazardous
21 substances.

22 111. Plaintiffs will incur substantial response costs in developing and implementing the
23 appropriate response actions.

24 112. All such response costs incurred and that will be incurred have been and will
25 continue to be necessary and consistent with the National Contingency Plan ("NCP") as set forth
26 in 40 C.F.R. Part 300.

27 113. Pursuant to 42 U.S.C. § 9607(a), the Defendants, and each of them, are jointly and

1 severally liable to Plaintiffs for all necessary response costs incurred by Plaintiffs in responding
2 to the release or threatened release of hazardous substances. Plaintiffs are in no way responsible
3 or liable for the release or threatened release of hazardous substances on or at the CCSL Landfill,
4 the Old Antioch Landfill or at the Property and, as compared to the defendants who actively and
5 intentionally disposed of hazardous substances at the CCSL Landfill, the Old Antioch Landfill
6 and at the Property, are blameless.

7 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

8 **SECOND CAUSE OF ACTION**

9 (Contribution Pursuant to CERCLA)

10 (Against All Defendants)

11 114. Plaintiffs refer to and reallege paragraphs 1 through 113 of this Complaint and
12 incorporate them herein by reference.

13 115. As compared to the Defendants, who actively and intentionally disposed of
14 hazardous substances at the CCSL Landfill, the Old Antioch Landfill and at the Property,
15 Plaintiffs are blameless. Plaintiffs' liability, if any, stems from the fact that they are the owner of
16 the Property that Defendants' waste disposal activities have contaminated.

17 116. Defendants are liable or potentially liable parties under Section 107(a) of
18 CERCLA, 42 U.S.C. § 9607(a) and have been sued under that section in the first cause of action
19 herein.

20 117. Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), provides that "[a]ny person may
21 seek contribution from any other person who is liable or potentially liable under section 9607(a)
22 of this title, during or following any civil action under section 9606 of this title or under section
23 9607(a) of this title." Further, pursuant to case law interpreting CERCLA, Plaintiffs are entitled
24 to seek contribution, implied under Section 107(a) or express under Section 113(f), from each
25 Defendant for the costs they have incurred and will incur in connection with the response actions
26 at the Property.

27 118. Defendants, and each of them, are liable to Plaintiffs for contribution pursuant to

1 CERCLA, for some or all amounts expended by Plaintiffs as response costs and amounts that
2 Plaintiffs will expend as response costs in the future.

3 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

4 **THIRD CAUSE OF ACTION**

5 **(Resource Conservation And Recovery Act)**

6 **(Against All Defendants Identified On Exhibit A Of This Complaint)**

7 119. Plaintiffs refer to and reallege paragraphs 1 through 118 of this Complaint and
8 incorporate them herein by reference.

9 120. Section 7002(a) of the Resource Conservation and Recovery Act ("RCRA"),
10 codified at 42 U.S.C. § 6972(a), provides, in relevant part, that any person may bring an action

11 (B) against any person, including the United States . . . who
12 has contributed or who is contributing to the past or present
13 handling, storage, treatment, transportation, or disposal of any solid
or hazardous waste which may present an imminent and substantial
endangerment to health or the environment

14 The district court shall have jurisdiction, without
15 regard to the amount in controversy or the citizenship of the parties,
16 . . . to restrain any person who has contributed or who is
17 contributing to the past or present handling, storage, treatment,
18 transportation, or disposal of any solid or hazardous waste referred
to in paragraph (1)(B), to order such person to take such action as
may be necessary, or both, . . . and to apply any appropriate civil
penalties under section 6928(a) and (g) of this title.

19 121. Each of the defendants named in this cause of action is a "person" as that term is
20 defined in RCRA Section 1004(15), codified at 42 U.S.C. § 6903(15).

21 122. RCRA Section 1004(3), codified at 42 U.S.C. § 6903(3), defines "disposal" as
22 follows:

23 the discharge, deposit, injection, dumping, spilling, leaking, or
24 placing of any solid waste or hazardous waste into or on any land or
25 water so that such solid waste or hazardous waste or any constituent
thereon may enter the environment or be emitted into the air or
discharged into any waters, including ground waters.

26 123. RCRA Section 1004(27), codified at 42 U.S.C. § 6903(27), defines "solid waste"
27 as follows:

1 any garbage, refuse, sludge from a waste treatment plant, water
2 supply treatment plant, or air pollution control facility and other
3 discarded material, including solid, liquid, semisolid, or contained
4 gaseous material resulting from industrial, commercial, mining, and
5 agricultural operations, and from community activities, but does not
6 include solid or dissolved material in domestic sewage, or solid or
7 dissolved materials in irrigation return flows or industrial
8 discharges which are point sources subject to permits under section
9 1342 of Title 33, or source, special nuclear, or byproduct material
10 as defined by the Atomic Energy Act of 1954, as amended (68 Stat.
11 923) [42 U.S.C. § 2011 et seq.].

12 124. The contaminants identified at the Property, including without limitation, the
13 surface waste containing metals (e.g., lead) and the subsurface groundwater containing hazardous
14 chemicals are "solid wastes" within the meaning of 42 U.S.C. § 6903(27) that have been disposed
15 of within the meaning of 42 U.S.C. § 6903.

16 125. The California Environmental Protection Agency, Department of Toxic
17 Substances Control, one of the agencies charged by statute with making such determinations in
18 California, has determined that the contaminants identified at the Property may present an
19 imminent and substantial endangerment to health or the environment.

20 126. Each of the defendants named in this cause of action has contributed to the past
21 disposal of the solid wastes which may present an imminent or substantial endangerment to health
22 or the environment and accordingly should be ordered to take appropriate actions to abate the
23 endangerment to health and the environment.

24 127. On November 2, 2007, Plaintiffs sent by registered mail, return receipt requested,
25 the notice required by RCRA Section 7002(b)(2)(A), 42 U.S.C. § 6972(b)(2)(A), to the
26 Defendants listed in Exhibit A to this Complaint, with copies to the Administrator of the United
27 States Environmental Protection Agency and to the State of California (through the Director of
the Department of Toxic Substances Control). This Third Amended Complaint is filed more than
90 days after the mailing and receipt of Plaintiffs' notice letter.

128. Plaintiffs will promptly serve a file-endorsed copy of this Third Amended
Complaint on the Attorney General of the United States and on the Administrator of the United
States Protection Agency once it has been filed with the Court.

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WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

FOURTH CAUSE OF ACTION
(Declaratory Relief Under Federal Law)
(Against All Defendants)

129. Plaintiffs refer to and reallege paragraphs 1 through 128 of this Complaint and incorporate them herein by reference.

130. A dispute has arisen and an actual controversy exists between Plaintiffs and Defendants in that Plaintiffs claim that Defendants, and each of them, jointly and severally, are obligated to indemnify Plaintiffs against, and reimburse Plaintiffs for, all necessary response costs and any other costs and attorneys fees heretofore or hereafter incurred by Plaintiffs in responding to the release or threatened release of hazardous waste, solid waste and/or hazardous substances or in taking any other removal or remedial action as a result of Defendants' acts and conduct complained of herein. Defendants deny such obligation.

131. Substantial costs will be incurred by Plaintiffs over time and after conclusion of this action. Unless declaratory relief is granted, it will be necessary for Plaintiffs to commence many successive actions against Defendants, and each of them, to secure compensation for the costs incurred and damages sustained, and damages that will be sustained, thus requiring a multiplicity of suits.

132. Plaintiffs are entitled to, and hereby seek, a judicial determination pursuant to the Federal Declaratory Relief Act, 28 U.S.C. § 2201, of Plaintiffs' rights to contribution and reimbursement from and indemnification by Defendants, and each of them, for all costs, jointly and severally, which Plaintiffs have and will incur resulting from Defendants' Release of wastes into the environment.

WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

FIFTH CAUSE OF ACTION

(Private Continuing Nuisance – Against All Defendants, Except Federal Defendants)

133. Plaintiffs refer to and reallege paragraphs 1 through 132 of this Complaint and incorporate them herein by reference.

134. At all times herein mentioned, the Defendants used and/or maintained said premises or conducted their business and operations in an unnecessary, unreasonable, and injurious manner that allowed wastes to be accumulated at the CCSL Landfill, the Old Antioch Landfill and into the surface and sub-surface soils and groundwaters, including into the soils and groundwaters of the Property.

135. The aforementioned disposal by Defendants constitutes a nuisance within the meaning of California Civil Code § 3479 in that the wastes disposed of at the CCSL Landfill, the Old Antioch Landfill created and creates a condition which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property and interferes with Plaintiffs' comfortable enjoyment of the Property.

136. The wastes, in the surface and sub-surface soils at, and groundwater beneath, the Property have commingled to create a single, indivisible harm to and potential endangerment of public health, welfare and the environment. The wastes have continuously migrated and spread in the soils and waters at the Property since their initial release and their impact has varied over time.

137. The Plaintiffs, as the record title owners of the Property, have been injured as a result of Defendants' release, discharge and/or disposal of wastes into the Property.

138. Defendants are strictly and jointly and severally liable for abatement of the single indivisible endangerment to the environment and resulting interference with the Plaintiffs' free use and enjoyment of property, constituting a private nuisance in that the Plaintiffs have been denied, and will continue to be denied, free use of the Property. Despite the remediation activities described herein, said wastes threaten to release further into the environment and thus continue to cause losses and damage to Plaintiffs.

1 139. Defendants are on notice of the damage caused by the nuisance but Defendants
2 have failed and refused, and continue to fail and refuse, to timely and properly abate the nuisance
3 or to compensate the Plaintiffs for damages suffered.

4 140. As a further proximate result of the nuisance, the Plaintiffs have been deprived of
5 the full use and enjoyment of the Property and have suffered and will continue to suffer damages
6 by reason of loss of use of the Property caused by its contaminated condition. In addition, the
7 Plaintiffs have incurred, and will continue to incur, substantial amounts in administrative, legal
8 and technical fees to assess responsibility for and respond to the contamination at the Property.
9 The amount of said damages shall be in accordance with proof at trial.

10 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

11 **SIXTH CAUSE OF ACTION**

12 **(Continuing Trespass - Against All Defendants, Except Federal Defendants)**

13 141. Plaintiffs refer to and reallege paragraphs 1 through 140 of this Complaint and
14 incorporate them herein by reference.

15 142. At all times herein mentioned, the Defendants used and/or maintained the CCSL
16 Landfill, the Old Antioch Landfill, or conducted their business operations in such an unnecessary,
17 unreasonable and injurious manner that allowed wastes to be accumulated at the CCSL Landfill,
18 and at the Old Antioch Landfill, and leach into the surface and sub-surface soils and
19 groundwaters and onto and under the Property.

20 143. The aforementioned disposal by Defendants caused and constituted and continues
21 to cause and constitute a physical invasion of Plaintiffs' Property and interference with Plaintiffs'
22 possession of said Property thereby constituting a continuing trespass despite the remediation
23 activities described herein.

24 144. The wastes in the groundwater beneath the Property have commingled to create a
25 single, indivisible harm to and potential endangerment of public health, welfare and the
26 environment. The wastes have continuously migrated and spread in the soils and waters at the
27 CCSL Landfill, and the Old Antioch Landfill, and at the Property since their initial release and

1 their impact has varied over time.

2 145. The Plaintiffs, as the record title owners of the Property, has been injured as a
3 result of Defendants' release, discharge and/or disposal of wastes into the CCSL Landfill, and at
4 the Old Antioch Landfill, and onto and under the Property.

5 146. Defendants are strictly and jointly and severally liable for abatement of the single
6 indivisible endangerment to the environment and resulting trespass to, on, and under Plaintiffs'
7 property.

8 147. As a proximate result of the trespass by the Defendants, the Plaintiffs have been
9 deprived of the full use and enjoyment of the Property and have suffered and will continue to
10 suffer loss of use of the Property caused by its contaminated condition. In addition, the Plaintiffs
11 have incurred, and will continue to incur, substantial amounts in administrative, legal and
12 technical fees to assess responsibility for and respond to the contamination at and emanating from
13 the Landfill. The amount of said damages shall be in accordance with proof at trial.

14 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

15 **SEVENTH CAUSE OF ACTION**

16 **(Negligence - By Plaintiffs Against All Defendants, Except Federal Defendants)**

17 148. Plaintiffs refer to and reallege paragraphs 1 through 147 of this Complaint and
18 incorporate them herein by reference.

19 149. Defendants had a duty to Plaintiffs to exercise due care in controlling, monitoring,
20 maintaining, and operating the Landfill, and in storing and disposing of various toxic chemicals at
21 the Landfill.

22 150. Defendants failed to exercise their duty of due care by releasing and allowing the
23 release of hazardous substances and other waste onto and into the Landfill and the Property as
24 detailed above.

25 151. As a direct and proximate result of Defendants' breach of duty, hazardous
26 substances and other waste have been released directly on and into the Property.

27 152. This release of hazardous substances and other waste resulting from Defendants'

1 misconduct has caused damages to Plaintiffs, as set forth above, including other consequential,
2 incidental and general damages to be proven at trial.

3 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

4 **EIGHTH CAUSE OF ACTION**

5 **(Negligence Per Se - Against All Defendants, Except Federal Defendants)**

6 153. Plaintiffs refer to and reallege paragraphs 1 through 152 of this Complaint and
7 incorporates them herein by reference.

8 154. Defendants' failure to exercise due care in controlling the release of hazardous
9 substances and other waste violates various state and federal statutes, rules and regulations, as
10 detailed in this Complaint, the purpose of which are to set a standard of care or conduct to protect
11 Plaintiffs and others in its class and its property and the environment from the type of improper
12 activities engaged in by Defendants. Therefore, such improper activities and violations constitute
13 negligence per se.

14 155. Defendants have failed to comply with provisions of federal and state
15 environmental laws:

- 16 a. violation of prohibitions on the disposal of hazardous, high-moisture, designated
17 and/or liquid waste (23 Cal. Code of Regs. §§ 2510 through 2533; 14 Cal. Code of
18 Regs. §§ 17407.5, 17407.6, 17742, 17743; Pub. Res. Code §§ 43020, 43021,
19 44002; Water Code §§ 13260, 13261, 13263, 13264, 13265, 13267, 13268,
20 13301);
- 21 b. violations of hazardous waste screening requirements (23 Cal. Code of Regs. §
22 2510; 14 Cal. Code of Regs. § 17258.20; Pub. Res. Code §§ 43020, 43021, 44002;
23 Water Code §§ 13260, 13261, 13263, 13264, 13265, 13267, 13268, 13301);
- 24 c. violations of requirements for the prompt and proper documentation, reporting and
25 remediation of hazardous waste disposal (23 Cal. Code of Regs. §§ 2550.10,
26 2550.12; 14 Cal. Code of Regs. § 17414; Pub. Res. Code §§ 43020, 43021,
27 44002);

- 1 d. failure to take prompt corrective action (23 Cal. Code of Regs. § 2550.12; 14 Cal.
2 Code of Regs. §§ 17258.73, 17258.74; Pub Res. Code §§ 43020, 43021, 44002);
- 3 e. violation of leachate collection, monitoring and control requirements (23 Cal.
4 Code of Regs. §§ 2543, 2545, 2550.0 through 21550.12; 14 Cal. Code of Regs. §
5 17704; Pub. Res. Code §§ 43020, 43021, 44002; Water Code §§ 13260, 13261,
6 13263, 13264, 13265, 13267, 13268, 13301);
- 7 f. violation of drainage, erosion, slumping and related requirements (23 Cal. Code of
8 Regs. § 2546; 14 Cal. Code of Regs. §§ 17407.4, 17708, 17710; Pub. Res. Code
9 §§ 43020, 43021; Water Code §§ 13260, 13261, 13263, 13264, 13265, 13267,
10 13268, 13301);
- 11 g. violation of prohibitions on the allowance of ponding (23 Cal. Code of Regs. §
12 2546; 14 Cal. Code of Regs. § 17715; Pub. Res. Code §§ 43020, 43021, 44002;
13 Water Code §§ 13260, 13261, 13263, 13264, 13265, 13267, 13268, 13301);
- 14 h. violation of permit and/or closure plan slope restrictions (14 Cal. Code of Regs. §
15 17678; Pub. Res. Code §§ 43020, 43021, 44002; Water Code §§ 13260, 13261,
16 13263, 13264, 13265, 13257, 13268, 13301);
- 17 i. violation of height limitations (23 Cal. Code of Regs. § 2510; Pub. Res. Code §§
18 43020, 43021, 44002; Water Code §§ 13260, 13261, 13263, 13264, 13265, 13267,
19 13268, 13301);
- 20 j. violation of cover requirements (23 Cal. Code of Regs. § 2544; 14 Cal. Code of
21 Regs. §§ 17258.21, 17677, 17678, 17682, 17684; Pub. Res. Code §§ 43020,
22 43021, 44002; Water Code §§ 13260, 13261, 13263, 13264, 13265, 13257, 13268,
23 13301);
- 24 k. violation of groundwater monitoring and facility reporting requirements (23 Cal.
25 Code of Regs. § 2550.0 through 2550.12; 14 Cal. Code of Regs. §§ 17258.29,
26 17638; Pub. Res. Code §§ 43020, 43021, 44002; Water Code §§ 13260, 13261,
27 13263, 13264, 13265, 13267, 13258, 13301);

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- l. failing to repair or replace monitoring wells (23 Cal. Code of Regs. § 2550.0 through 2550.12; Pub. Res. Code §§ 43020, 43021, 44002; Water Code §§ 2550.0 through 2550.12; Pub. Res. Code §§ 43020, 43021, 44002; Water Code §§ 13260, 13261, 13263, 13264, 13265, 13267, 13268, 13301);
- m. violation of prohibitions against the creation of nuisance and/or pollution (23 Cal. Code of Regs. § 2510; 14 Cal. Code of Regs. §§ 17408.5, 17701; Pub. Res. Code §§ 43020, 43021, 44002; Water Code §§ 13260, 13261, 13263, 13264, 13265, 13257, 13268, 13301);
- n. violation of landfill gas collection and monitoring requirements (BAAQMD Reg. 8, Rule 34; 14 Cal. Code of Regs. §§ 17258.23, 17258.24, 17705; Pub. Res. Code §§ 43020, 43021, 43030, 44002; Health & Safety Code § 40702);
- o. violation of limitations on the tonnage of waste to be received (23 Cal. Code of Regs. § 2510; Pub. Res. Code §§ 43020, 43021, 44002; Water Code §§ 13260, 13261, 13263, 13264, 13265, 13267, 13268, 13301); and
- p. improperly operating the Pittsburg Landfill and the GBF Landfill jointly as one site where each landfill was separately permitted (23 Cal. Code of Regs. § 2510; 14 Cal. Code of Regs. §§ 17603, 17606; Pub. Res. Code §§ 43020, 43021, 44002, 44004; Water Code §§ 13260, 13261, 13263, 13264, 13265, 13267, 13268, 13301).
- q. violation of other statutes and regulations governing Defendants' conduct not presently known to Plaintiffs.

156. As a direct and proximate result of Defendants' negligence per se, Plaintiffs have suffered damages as set forth above, including other consequential, incidental and general damages to be proven at trial.

WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

NINTH CAUSE OF ACTION

(Ultrahazardous Activity - By Plaintiffs Against All Defendants, Except Federal Defendants)

157. Plaintiffs refer to and reallege paragraphs 1 through 156 of this Complaint and incorporates them herein by reference.

158. The disposal, discharge and depositing of toxic chemicals as stated in this Complaint and other hazardous chemicals and other waste onto and into the environment constitutes an "ultrahazardous activity."

159. As a direct and proximate result of such discharge, depositing, storage or disposal, Plaintiffs have suffered damages as set forth above, including other consequential, incidental and general damages to be proven at trial for which defendants are strictly liable.

WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

TENTH CAUSE OF ACTION

(Inverse Condemnation - Against the City of Antioch and the City of Pittsburg)

160. Plaintiffs refer to and reallege paragraphs 1 through 159 of this Complaint and incorporates them herein by reference.

161. Defendants City of Antioch and City of Pittsburg are municipalities organized and existing under the laws of the State of California.

162. The City of Antioch and the City of Pittsburg owned and operated separate landfills abutting the Somersville Entities' Property and, in the course of that ownership and operation, deposited refuse and waste on the Property. Defendants' acts of depositing refuse and waste on the Property is a physical invasion of property constituting a taking of private property for public use.

163. Such refuse and waste is still present on the Property and, in part, is the subject of administrative orders requiring abatement or is otherwise susceptible of abatement.

164. As a result of this deposit of refuse and waste on the Property, the real property of Plaintiffs has been damaged in an amount not presently ascertainable. Plaintiffs will seek

1 permission to amend this complaint when the true amount of damages becomes known to
2 Plaintiffs.

3 165. Plaintiffs have not received any compensation on account of the above-described
4 damage to its properties.

5 166. Plaintiffs have incurred and will continue to incur attorney, appraisal, and
6 engineering fees for the prosecution of this action, which fees are recoverable under the authority
7 of Code of Civil Procedure § 1036.

8 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

9 **ELEVENTH CAUSE OF ACTION**
10 **(Declaratory Relief Under State Law – Against All Defendants, Except Federal Defendants)**

11 167. Plaintiffs refer to and reallege paragraphs 1 through 166 of this Complaint and
12 incorporate them herein by reference.

13 168. A dispute has arisen and an actual controversy exists between Plaintiffs and
14 Defendants in that Plaintiffs claim that Defendants, jointly and severally, are obligated to
15 indemnify Plaintiffs against, and reimburse Plaintiffs for, all response costs and any other costs or
16 other damages heretofore or hereafter incurred or suffered by Plaintiffs in removing the hazardous
17 materials, substances and wastes or taking any other removal or remedial action as a result of
18 Defendants' conduct complained of herein, and Defendants deny such obligation.

19 169. Substantial costs and damages will be incurred or suffered by Plaintiffs over time
20 and after conclusion of this action. Unless declaratory relief is granted, it will be necessary to
21 commence many successive actions against Defendants to secure compensation for damages
22 sustained, thus requiring a multiplicity of suits.

23 170. Plaintiffs desire a judicial determination pursuant to California Code of Civil
24 Procedure § 1060 of Plaintiffs' right to reimbursement and indemnification by Defendants for all
25 costs and damages heretofore or hereafter incurred or suffered by Plaintiffs as a result of
26 Defendants' conduct complained of herein.

27 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

First Cause of Action

1. For recovery from Defendants, jointly and severally, of all response costs that have been or will be incurred by Plaintiffs in response to the release and threatened release of hazardous substances from the Landfill and onto the Property and in the enforcement of CERCLA's statutory liability scheme, according to proof at trial;

2. For prejudgment interest pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a); and
3. For all costs of suit incurred herein.

Second Cause of Action

1. For total contribution from all Defendants for all response costs that have been or will be incurred by Plaintiffs in response to the release and threatened release of hazardous substances at the Property and in enforcement of CERCLA's statutory liability scheme, or in an amount this Court deems appropriate;

2. For prejudgment interest pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a); and
3. For all costs of suit incurred herein.

Third Cause of Action

1. For an entry of an order directing all Defendants listed on Exhibit A to this Complaint to implement the measures necessary to abate the endangerment to health and the environment to the satisfaction of DTSC, the Regional Water Quality Control Board, and any other regulatory agencies that may assert jurisdiction over the abatement of hazardous conditions at the Property;

2. For an award of litigation costs including attorneys' and expert witness' fees pursuant to 42 U.S.C. § 6972(e).

Fourth Cause of Action

1. For a declaration that Defendants, jointly and severally, are obligated to pay to Plaintiffs all future response costs and any other costs incurred by Plaintiffs hereafter in response,

1 removal or remediation efforts incurred pursuant to a DTSC-issued and/or court-approved
2 remedial action plan that is required by the NCP in order to properly respond to the disposal of
3 wastes and pollutants by Defendants.

- 4 2. For attorneys' fees as may be allowed by the statute or otherwise; and
- 5 3. For all costs of suit incurred herein.

6 **Fifth, Sixth, Seventh, Eighth and Ninth Causes of Action**

7 1. For a mandatory, preliminary and permanent injunction ordering the Defendants to
8 undertake, at their expense, all of the environmental engineering, investigation, studies,
9 maintenance, monitoring and response actions necessary to respond to, abate, remediate, maintain
10 and monitor fully and promptly the condition resulting from solid waste and hazardous waste
11 contamination at the Property and emanating from the Landfill;

12 2. For abatement, cleanup, maintenance and monitoring costs from Defendants,
13 jointly and severally, in an amount equal to all response costs and all other costs incurred by
14 Plaintiffs in response to the condition resulting from the discharge of contaminants by
15 Defendants, according to proof at trial;

16 3. For an order directing Defendants, and each of them, to pay for restitution to
17 Plaintiffs in an amount according to proof;

18 4. For compensatory damages according to proof, including, but not limited to,
19 diminution in value and/or compensation for loss of use of the Property;

20 5. For incidental and consequential damages according to proof, including
21 indemnification for fines and penalties assessed by any agency of the State or government;

22 6. For pre-judgment interest at the legal rate;

23 7. For attorneys' fees as may be allowed by statute or otherwise; and

24 8. For all costs of suit incurred herein.

25 **Tenth Cause of Action**

26 1. Damages in an amount to be determined at trial with interest thereon at the legal
27 rate from the date of those damages;

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- 2. Litigation expenses;
- 3. Costs of suit; and
- 4. Other relief that the Court considers proper.

Eleventh Cause of Action

- 1. For a declaration that Defendants, jointly and severally, are obligated to pay to Plaintiffs all future response costs, fines and penalties assessed by any agency of the State or government, and any other costs and damages incurred or suffered by Plaintiffs hereafter in response, removal or remediation efforts incurred in order to properly respond to the disposal of wastes and pollutants by Defendants;
- 2. For attorneys' fees as may be allowed by statute or otherwise; and
- 3. For all costs of suit incurred herein.

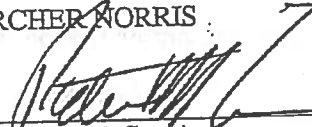
All Causes of Action

For such other and further relief as this Court deems just and proper.

Dated: March 9, 2008

Respectfully submitted,

ARCHER NORRIS



 Peter W. McGaw
 Attorneys for Plaintiffs
 SPPI-SOMERSVILLE INC. and
 SOMERSVILLE-GENTRY INC.

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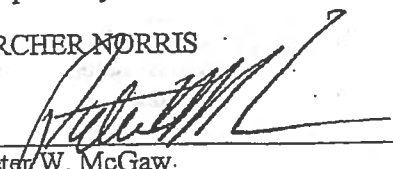
Demand for Jury Trial

Plaintiffs SPPI-SOMERSVILLE INC. and SOMERSVILLE-GENTRY INC. hereby demand a jury trial on all causes and claims susceptible to trial by jury.

Dated: March 6 2008

Respectfully submitted,

ARCHER NORRIS



Peter W. McGaw
Attorneys for Plaintiffs
SPPI-SOMERSVILLE INC. and
SOMERSVILLE-GENTRY INC.

EXHIBIT A

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Ashland Inc.
Agent For Service Of Process
Corporation Service Company Which Will Do Business In California As CSC - Lawyers
Incorporating Service
PO Box 526036
Sacramento, CA 95852

Beazer East, Inc.
Agent For Service Of Process
C T Corporation System
818 West Seventh St
Los Angeles, CA 90017

Boeing Satellite Systems, Inc.
Agent For Service Of Process
Corporation Service Company Which Will Do Business In California As CSC - Lawyers
Incorporating Service
PO Box 526036
Sacramento, CA 95852

Caterpillar Inc.
Agent For Service Of Process
C T Corporation System
818 West Seventh St
Los Angeles, CA 90017

Chevron, USA, Inc. Successor to Standard Oil of California
The Prentice-Hall Corporation System, Inc.
PO Box 526036
Sacramento, CA 95852

The City Clerk of the City of Antioch
PO Box 5007
Antioch, CA 94531-5007

The City Clerk of the City of Pittsburg
City of Pittsburg Civic Center
65 Civic Avenue
Pittsburg, CA 94565

Colgate-Palmolive Company
Agent For Service Of Process
C T Corporation System
818 West Seventh St
Los Angeles, CA 90017

Contra Costa Waste Service, Inc.
Agent For Service Of Process
Craig F Anderson
1320 Willow Pass Rd Ste 500
Concord, CA 94520

- 1 Crown Beverage Packaging, Inc.
Agent For Service Of Process
- 2 C T Corporation System
818 West Seventh St
- 3 Los Angeles, CA 90017

- 4 The Dow Chemical Company
Agent For Service Of Process
- 5 C T Corporation System
818 West Seventh St
- 6 Los Angeles, CA 90017

- 7 E. I Du Pont De Nemours And Company
Agent For Service Of Process
- 8 C T Corporation System
818 West Seventh St
- 9 Los Angeles, CA 90017

- 10 Exxon Mobil Corporation
Agent For Service Of Process
- 11 Corporation Service Company Which Will Do Business In California As CSC - Lawyers
Incorporating Service
- 12 PO Box 526036
Sacramento, CA 95852

- 13 Fairchild Semiconductor Corporation
Agent For Service Of Process
- 14 Corporation Service Company Which Will Do Business In California As CSC - Lawyers
Incorporating Service
- 15 PO Box 526036
Sacramento, CA 95852

- 17 GBF Holdings LLC
Agent For Service Of Process
- 18 Deems Padgett
1590 Solano Way Ste A
Concord, CA 94520

- 20 Hewlett-Packard Company
C T Corporation System
- 21 818 West Seventh St
Los Angeles, CA 90017

- 22 Lockheed Martin Corporation
Agent For Service Of Process
- 23 Corporation Service Company Which Will Do Business In California As CSC - Lawyers
Incorporating Service
- 24 PO Box 526036
Sacramento, CA 95852

26

27

- 1 Nestle USA, Inc.
Agent For Service Of Process
- 2 C T Corporation System
818 West Seventh St
- 3 Los Angeles, CA 90017

- 4 Occidental Chemical Corporation
Agent For Service Of Process
- 5 C T Corporation System
818 West Seventh St
- 6 Los Angeles, CA 90017

- 7 Paccar Inc.
Agent For Service Of Process
- 8 The Prentice-Hall Corporation System, Inc.
PO Box 526036
- 9 Sacramento, CA 95852

- 10 Pittsburg Disposal & Debris Box Service, Inc.
Agent For Service Of Process
- 11 Craig F Andersen
1320 Willow Pass Rd Ste 500
- 12 Concord, CA 94520

- 13 Mary Grace Prewett Bertsch
1536 Bryant Street
- 14 Palo Alto, CA 94301

- 15 Quebecor Printing San Jose, Inc.
CT Corporation
- 16 818 West 7th Street
Los Angeles, CA 90017

- 17 Raychem International Corporation
Agent For Service Of Process
- 18 C T Corporation System
818 West Seventh St
- 19 Los Angeles, CA 90017

- 20 Rheem Manufacturing Company
Agent For Service Of Process
- 21 Corporation Service Company Which Will Do Business In California As CSC - Lawyers
Incorporating Service
- 22 PO Box 526036
- 23 Sacramento, CA 95852

- 24 Schuller International, Inc.
2730 Gateway Oaks Drive STE 100
- 25 Sacramento, CA 95833

- 26
- 27

- 1 Shell Oil Company
Agent For Service Of Process
- 2 C T Corporation System
818 West Seventh St
- 3 Los Angeles, CA 90017
- 4 Union Oil Company Of California
Agent For Service Of Process
- 5 The Prentice-Hall Corporation System, Inc.
PO Box 526036
- 6 Sacramento, CA 95852
- 7 Union Pacific Railroad Company
Agent For Service Of Process
- 8 W H Poole
10031 Foothills Blvd #200
- 9 Roseville, CA 95747
- 10 Peter D. Keisler
U.S. Department of Justice
- 11 950 Pennsylvania Ave., NW
Washington DC 20530-0001
- 12 United States Department of Defense
Defense Logistics Agency
- 13 8725 John J. Kingman Road, Suite 2545
- 14 Fort Belvoir, VA 22060-6221
- 15 Secretary of Army
101 Army Pentagon
- 16 Washington DC 20310-0101
- 17 Secretary of the Navy
1000 Navy Pentagon
- 18 Washington DC 20350-1000
- 19 TRC Companies, Inc.
National Registered Agents, Inc.
- 20 12 Old Boston Post Road
Old Saybrook, CT 06475
- 21 USX Corporation
2730 Gateway Oaks Drive, Ste 100
- 22 Sacramento, CA 95833
- 23 WITCO Corporation
2730 Gateway Oaks Drive, Ste 100
- 24 Sacramento, CA 95833
- 25
- 26
- 27

1 Paul P. Spaulding, III (State Bar No. 083922)
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2 James H. Colopy (State Bar No. 172806)
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235 Montgomery Street, 17th Floor
5 San Francisco, CA 94104
Telephone: (415) 954-4400
6 Facsimile: (415) 954-4480

7 Peter W. McGaw (Bar No. 104691)
John L. Kortum (Bar No. 148573)
8 ARCHER NORRIS
2033 North Main Street, Suite 800
9 P.O. Box 8035
Walnut Creek, CA 94596
10 Telephone: (925) 930-6600
Facsimile: (925) 930-6620

11 Attorneys for Plaintiffs SPPI-SOMERSVILLE, INC.
12 and SOMERSVILLE-GENTRY, INC.

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 SPPI-SOMERSVILLE, INC. and
SOMERSVILLE-GENTRY, INC.,

16 Plaintiffs,

17 v.

18 TRC COMPANIES, INC.;
19 GBF HOLDINGS LLC, et al.,

20 Defendants.

21 SPPI-SOMERSVILLE INC. and
22 SOMERSVILLE-GENTRY INC.,

23 Plaintiffs,

24 v.

25 CHEVRON U.S.A., INC., as successor to
Standard Oil of California, Inc.,

26 Defendants.
27
28

Case No. C 04-2648 SI
(Consolidated with Case No. C 07-05824 SI)

**PLAINTIFFS' SECOND SUPPLEMENTAL
RULE 26 DISCLOSURES
(CONSOLIDATED ACTIONS)**

1 Plaintiffs SPPI-SOMERSVILLE INC. and SOMERSVILLE-GENTRY, INC. ("Plaintiffs"
2 or "SPPI") serve the following supplemental initial disclosures pursuant to Rule 26(a)(1) of the
3 Federal Rules of Civil Procedure. Because Plaintiffs have not completed their investigation of the
4 facts, witnesses or documents relating to this case, have not completed discovery, have not
5 completed an analysis of available data, and have not completed preparation for trial, the
6 following disclosure is made without waiving Plaintiffs' rights to supplement the disclosure to
7 include information that has been omitted through inadvertence, lack of information, or good-
8 faith oversight.

9 A. Rule 26(a)(1)(A)(i) Disclosures

10 *"the name and, if known, the address and telephone number of each individual likely to have*
11 *discoverable information — along with the subjects of that information — that the disclosing*
12 *party may use to support its claims or defenses, unless the use would be solely for*
13 *impeachment"*

14 For SPPI:

- 15 1. Albert D. Seeno, Jr.
16 Albert D. Seeno Construction Co.
17 4021 Port Chicago Highway
18 P.O. Box 4113
19 Concord, CA 94524-4113
20 Subjects: Acquisition of the properties; development plans for the properties; company
21 backgrounds; damages; real estate market.
- 22 2. Kathleen M. Blackard
23 formerly with Albert D. Seeno Construction Co.
24 (Contact through plaintiffs' counsel)
25 Subjects: Acquisition of the properties.
- 26 3. Jay F. Torres-Muga
27 Albert D. Seeno Construction Co.
28 4021 Port Chicago Highway
P.O. Box 4113
Concord, CA 94524-4113
Subjects: Environmental conditions of properties; development plans for the properties;
Markley Creek work; garbage removal work; damages.
4. Albert Seeno III
Discovery Builders
4061 Port Chicago Highway, Suite H
Concord, CA 94520
Subjects: Development of properties; Markley Creek work; garbage removal work;
bridge construction costs.

1 5. Louis Parsons
2 Discovery Builders
3 4061 Port Chicago Highway, Suite H
4 Concord, CA 94520
5 Subjects: Development of properties.

6 6. Jackie Seeno
7 Discovery Builders
8 4061 Port Chicago Highway, Suite H
9 Concord, CA 94520
10 Subjects: Development of properties.

11 For Tom Gentry California Company:

12 1. Joe Fadrowsky III
13 Tom Gentry California Company
14 560 N. Nimitz Hwy., Suite 211
15 Honolulu, Hawaii 96817
16 Subjects: Sale and transfer of properties; Regional Board actions concerning Markley
17 Creek and properties.

18 2. Norman Dyer
19 90 Lyford Drive, Apt. 5
20 Tiburon, CA
21 Subjects: Sale and transfer of properties.

22 For Shaw Environmental:

23 1. Alex Naughton
24 Soil Scientist
25 Shaw Environmental and Infrastructure
26 4005 Port Chicago Highway
27 Concord, CA 94520-1120
28 Subjects: Environmental conditions of properties; Markley Creek condition and work;
garbage removal work.

1. Debra Carey
Programs Manager
Shaw Environmental and Infrastructure
4005 Port Chicago Highway
Concord, CA 94520-1120
Subjects: Remedial design for Markley Creek; property and Creek hydrology issues.

3. J.C. Isham
Shaw Environmental and Infrastructure
4005 Port Chicago Highway
Concord, CA 94520-1120
Subjects: Environmental conditions of properties; Markley Creek condition and work;
garbage removal work; site hydrology issues.

1 For Kleinfelder, Inc.:

- 2 1. Curtis Lindskog
3 *Formerly:*
4 Regional Environmental Manager
5 Kleinfelder, Inc.
6 7133 Koll Center Parkway, Suite 100
7 Pleasanton, CA 94566
8 *Presently:*
9 Business Development Manager
10 Shaw Environmental and Infrastructure
11 4005 Port Chicago Highway
12 Concord, CA 94520-1120
13 Subjects: Environmental conditions of properties.

14 For Brown & Caldwell

- 15 1. Linda Roe
16 Brown and Caldwell
17 201 N. Civic Drive, Suite 115
18 Walnut Creek, CA 94596
19 Subject: Environmental conditions of Markley Creek & remedial plan; characterization of
20 Antioch Landfill.
21
22 2. William K. Faisst
23 Vice President
24 Brown and Caldwell
25 201 N. Civic Drive, Suite 115
26 Walnut Creek, CA 94596
27 Subject: Environmental conditions of Markley Creek & remedial plan; characterization of
28 Antioch Landfill.

1 For TRC And GBF Holdings LLC:

- 2 1. Deems Padgett, R.G., H.G., C.E.G.
3 Project Director
4 TRC
5 1590 Solano Way, Suite A
6 Concord, CA 94520
7 (925) 688-1200
8 Subjects: Groundwater monitoring data; status of remediation of landfill; future plans for
9 remediation; discovery of surface contamination on Gentry property.
10
11 2. Monika Krupa
12 Staff Scientist
13 TRC
14 1590 Solano Way, Suite A
15 Concord, CA 94520
16 (925) 688-1200
17 Subjects: Groundwater monitoring data; status of remediation of landfill; future plans for
18 remediation.

- 1 3. Amy Wilson, Ph.D., P.E.
2 Senior Project Engineer
3 TRC
4 1590 Solano Way, Suite A
5 Concord, CA 94520
6 (925) 688-1200
7 Subjects: Groundwater monitoring data; status of remediation of landfill; future plans for
8 remediation.
- 9 4. Dennis Maslonkowski, P.G., C.E.G.
10 Principal Hydrogeologist
11 TRC
12 1590 Solano Way, Suite A
13 Concord, CA 94520
14 (925) 688-1200
15 Subjects: Groundwater monitoring data; status of remediation of landfill; future plans for
16 remediation.
- 17 5. Stephen V. Huvane, P.E.
18 Project Manager
19 TRC
20 1590 Solano Way, Suite A
21 Concord, CA 94520
22 (925) 688-1200
23 Subjects: Markley Creek repair.

24 For Treadwell & Rollo:

- 25 1. Timothy P. Becker
26 *Formerly:*
27 Treadwell & Rollo, Inc.
28 555 Montgomery Street
Suite 1300
San Francisco, California 94111
Presently:
Principal Scientist
Environmental Guidance, Inc.
20885 Redwood Road, No. 340
Castro Valley, California 94546
Subjects: Environmental investigation of GBF/Pittsburg Landfill.
- 2. Philip T. Tringale, Ph.D., P.E.
President
Treadwell & Rollo, Inc.
555 Montgomery Street
Suite 1300
San Francisco, California 94111
Subjects: Environmental investigation of GBF/Pittsburg Landfill.

29 For Department of Toxic Substances Control:

- 30 1. Barbara J. Cook, P.E.
31 California Department of Toxic Substances Control, Region 2
32 700 Heinz Avenue, Suite 200
33 Berkeley, CA 94710

1 Subjects: Development of the Remedial Action Plan; current developments; regulatory
2 status; regulatory goals; permitted uses of property; site enforcement history; current
3 developments.

4 2. Karen Toth
5 Regional Senior Engineer
6 California Department of Toxic Substances Control, Region 2
7 700 Heinz Avenue, Suite 200
8 Berkeley, CA 94710
9 Subjects: Development of the Remedial Action Plan; regulatory goals; regulatory status;
10 permitted uses of property; site enforcement history; current developments.

11 3. William Brown
12 California Department of Toxic Substances Control
13 Region 2
14 700 Heinz Avenue, Suite 200
15 Berkeley, CA 94710
16 Subjects: Regulatory status; regulatory goals; permitted uses of property; current
17 developments.

18 For Regional Water Quality Control Board:

19 1. Ross D. Atkinson
20 California Regional Water Quality Control Board
21 11020 Sun Center Drive #200
22 Rancho Cordova, CA 95670
23 Subjects: Regulatory status; regulatory goals; permitted uses of property; site enforcement
24 history; remedial action plan requirements.

25 2. Victor J. Izzo
26 Senior Engineering Geologist
27 California Regional Water Quality Control Board
28 11020 Sun Center Drive #200
Rancho Cordova, CA 95670
Subjects: Regulatory status; regulatory goals; permitted uses of property.

3. Pamela Creedon
Executive Officer
California Regional Water Quality Control Board
11020 Sun Center Drive #200
Rancho Cordova, CA 95670
Subjects: Regulatory status; regulatory goals; permitted uses of property.

4. Wendy Wyels
Environmental Program Manager
California Regional Water Quality Control Board
11020 Sun Center Drive #200
Rancho Cordova, CA 95670
Subjects: Regulatory status; regulatory goals; permitted uses of property.

5. Stephen Rosenbaum
California Regional Water Quality Control Board
11020 Sun Center Drive #200
Rancho Cordova, CA 95670
Subjects: Regulatory status; regulatory goals; permitted uses of property; site enforcement

1 history.

2 For Contra Costa County Environmental Health Department:

3 1. Jeff Edwards
4 Senior Environmental Health Specialist
5 Contra Costa Environmental Health
6 2120 Diamond Blvd., Suite 200.
7 Concord, CA 94520
8 Subjects: Inspections of landfills; Markley Creek.

9 2. Vince Spencer
10 Senior Environmental Health Specialist
11 Contra Costa Environmental Health
12 2120 Diamond Blvd., Suite 200
13 Concord, CA 94520
14 Subjects: Inspections of landfills; Markley Creek.

15 3. Paul Schraeder
16 Contra Costa Environmental Health
17 2120 Diamond Blvd., Suite 200
18 Concord, CA 94520
19 Subjects: Inspections of landfills; Markley Creek.

20 For California Integrated Waste Management Board:

21 1. Frank Davies
22 Permitting & Enforcement Division
23 1001 I Street
24 PO Box 4025
25 Sacramento, CA 95812-4025
26 (916) 341-6000
27 Subjects: Inspections of landfills; Markley Creek; landfill closure.

28 2. Scott Walker
Permitting & Enforcement Division
1001 I Street
PO Box 4025
Sacramento, CA 95812-4025
(916) 341-6000
Subjects: Inspections of landfills; Markley Creek; landfill closure.

For Garaventa Defendants Including, But Not Limited To, Pittsburg Disposal Defendants:

1. Mary C. Garaventa
c/o Fred Blum, Esq.
Bassi Martini Edlin & Blum
351 California Street, Suite 200
San Francisco, CA 94104
Subjects: Operation GBF/Pittsburg Landfill(s); operations of Pittsburg Disposal
Company and related companies.

- 1 2. Silvio Garaventa, Jr.
2 c/o Fred Blum, Esq.
3 Bassi Martini Edlin & Blum
351 California Street, Suite 200
3 San Francisco, CA 94104
4 Subjects: Operation GBF/Pittsburg Landfill(s); operations of Pittsburg Disposal
4 Company and related companies.
- 5 3. Gary Lazdowsky
6 c/o Fred Blum, Esq.
7 Bassi Martini Edlin & Blum
351 California Street, Suite 200
7 San Francisco, CA 94104
8 Subjects: Operation GBF/Pittsburg Landfill(s); operations of Pittsburg Disposal
8 Company and related companies; landfill and regulatory problems and enforcement
9 actions.

10 For City of Antioch:

- 11 1. Joe Brandt
12 Director, Public Works Department
13 City of Antioch
P.O. Box 5007
Antioch, CA 94531
- 14 2. Ron Bernal, P.E.
15 Assistant City Engineer
16 City of Antioch
P.O. Box 5007
Antioch, CA 94531
- 17 3. Phil Hoffmeister
18 Public Works Department
19 City of Antioch
P.O. Box 5007
Antioch, CA 94531
- 20 4. Glenn Lynch or operators of Lynch Landfill
- 21 5. Stan Davis
- 22 6. Jim Jakel
23 City Manager
24 City of Antioch
P.O. Box 5007
Antioch, CA 94531
- 25 7. Lynn Tracy Nerland
26 City Attorney
27 City of Antioch
P.O. Box 5007
Antioch, CA 94531

28

1 8. Phil Harrington
2 Director, Capital Improvements/Water Rights
3 City of Antioch
4 P.O. Box 5007
5 Antioch, CA 94531

6 9. Steve Scudero
7 Former Antioch employee
8 (Address unknown)

9 For PB:

10 1. Michael J. Scott, P.E.
11 Senior Project Manager
12 Assistant Vice President
13 PB, Construction Service Line
14 3260 Lone Tree Way, Suite 104
15 Antioch, CA 94509

16 For California Department of Public Health:

17 1. Lawrence A. Burch
18 *Formerly:*
19 California Department of Public Health (in 1967)
20 *Presently:*
21 Potrero Hills Landfill
22 3675 Potrero Hills Lane
23 Suisun, CA 94585
24 Subject: Conditions of Pittsburg and Antioch Landfills in 1967.

25 For Chevron:

26 1. Don Means
27 c/o Pillsbury Winthrop Shaw Pittman LLP
28 50 Fremont Street
San Francisco, CA 94105-2228
Subjects: Transfer of properties; Antioch tenancy; Chevron PMK topics.

29 2. Chevron Custodian of Records
30 c/o Pillsbury Winthrop Shaw Pittman LLP
31 50 Fremont Street
32 San Francisco, CA 94105-2228
33 Subjects: Locations of documents; search for Gentry sale and Antioch lease documents;
34 loss and/or destruction of documents.

35 3. Douglas Ely
36 Chevron Business and Real Estate Services
37 c/o Pillsbury Winthrop Shaw Pittman LLP
38 50 Fremont Street
39 San Francisco, CA 94105-2228
40 Subjects: Transfer of properties; Antioch tenancy; Chevron PMK topics.

1 **B. Rule 26(a)(1)(A)(ii) Disclosures**

2 "a copy — or a description by category and location — of all documents, electronically stored
3 information, and tangible things that the disclosing party has in its possession, custody, or
4 control and may use to support its claims or defenses, unless the use would be solely for
5 impeachment"

6 The documents that Plaintiffs identified in their initial set of Rule 26 disclosures are as
7 follows:

8 **a. Documents relating to GBF/Pittsburg Landfill, including:**

- 9 a. Remedial Action Plan (dated June 1997)
- 10 b. Consent Order (dated November 29, 2001).
- 11 c. Groundwater monitoring reports, and other technical reports, prepared by TRC.
- 12 d. Draft Phase I Remedial Design And Implementation Plan prepared by TRC (dated
13 January 9, 2002).
- 14 e. Correspondence files obtained from DTSC ranging from April 1986 through July
15 2001.
- 16 f. Technical reports obtained from DTSC regarding the GBF/Pittsburg Landfill
- 17 g. Reports and documents obtained from DTSC regarding allocation of liability and
18 generator information.
- 19 h. Site photographs obtained from DTSC.
- 20 i. EPA Toxicity Assessments.
- 21 j. Partial Application For Containment Zone Designation, GBF/Pittsburg Landfill(s),
22 prepared by Treadwell & Rollo, Inc. and McCulley, Frick & Gilman, Inc.
23 (February 1998).
- 24 k. Documents produced by the Garaventa defendants in *West Coast Home Builders,*
25 *Inc. v. Ashland, Inc.*
- 26 l. Leases, franchise agreements, and other documents relating to operation of
27 Pittsburg Landfill from 1940s to closure.

28 **b. Documents relating to Antioch Landfill, including:**

- a. Brown & Caldwell characterization

1 which will be used by Plaintiffs to support their claims and defenses. In addition, Plaintiffs have
2 served, and will soon be serving, further written discovery responses in which they identify
3 documents which support Plaintiffs' contentions in this litigation. Plaintiffs incorporate herein by
4 specific reference all of the documents produced by any party (including Plaintiffs), any third
5 parties or any consultant in this litigation and all documents identified in Plaintiffs' written
6 discovery responses.

7 Among other things, Plaintiffs intend to rely on historic aerial photographs, historic
8 ground level photographs, maps, diagrams, correspondence, notes, reports, memoranda and other
9 documents obtained from a variety of public agencies, including the City of Antioch, City of
10 Pittsburg, Department of Toxic Substances Control, Central Valley Regional Water Quality
11 Control Board, Integrated Waste Management Board, Contra Costa County Environmental Health
12 Department and California Department of Public Health.

13 **C. Rule 26(a)(1)(A)(iii) Disclosures**

14 *"a computation of each category of damages claimed by the disclosing party — who must also*
15 *make available for inspection and copying as under Rule 34 the documents or other evidentiary*
16 *material, unless privileged or protected from disclosure, on which each computation is based,*
including materials bearing on the nature and extent of injuries suffered"

17 **1. Incurred Environmental Investigation And Remediation Costs**

18 SPPI has incurred substantial costs investigating the extent and nature of the
19 contamination on and under the properties, in remediating/removing such contamination, and in
20 restoring the soil surface:

21 **a. Costs Incurred And Accounted For Under Interim Antioch Cost-Sharing Agreement:**

22	Payment to Antioch for design, permitting and peer review of Markley Creek remediation. This includes Payments to Brown & Caldwell and Shaw.	\$671,481
23		
24	Payment to Antioch for Markley Creek remediation	\$1,734,649
25	Total	\$2,406,130
26		
27		
28		

1	b.	Other Environmental Investigation and Remediation Costs Incurred (As of March 2009):	
2		Waste Characterization Study (Shaw)	\$100,354.20
3		Site Reconnaissance (Shaw)	\$2,329.50
4		Hydrologic & Hydraulic Analysis (Shaw)	\$36,761.53
5		Payment to Isakson Civil Engineer (Topo Map)	\$3,450.00
6		Misc. (Erosion Control, Fencing, Hydroseeding, etc.)	\$10,000
7		Total	\$152,895.23

8 **2. Penalties & Fines**

9 SPPI has paid \$50,000 in penalties and fines to the Regional Water Quality Control
10 Board, for which it is entitled to reimbursement.

11 **3. Legal Fees and Costs**

12 Legal fees associated with Markley Creek and Parcel 034 investigation, remediation and
13 litigation, as well as with the groundwater contamination and remediation, are approximately
14 \$860,000 for invoices received as of April 2009. This amount will necessarily be adjusted
15 upward to reflect ongoing costs as invoices are received.

16 **4. Future Remediation Costs**

17 The remediation/removal action that occurred on three parcels (although primarily on
18 Parcel 034) in 2008 left behind some burn dump and related contamination that still must be
19 addressed. SPPI does not yet have a cost figure for this further remediation/removal action.

20 SPPI anticipates that substantial vapor barriers or other mitigation technologies will be
21 required by the regulatory community due to the presence of the groundwater contamination
22 plumes under the properties caused by the GBF/Pittsburg/CCWS/ TRC Landfill. SPPI would
23 then have costs associated with vapor barrier or other mitigation technologies to prevent soil
24 vapor from impacting interior spaces. Passive vapor barrier technology runs about \$3.75 per
25 square feet in excess of costs normally incurred in construction. At present, SPPI anticipates
26 developing the properties at issue as follows:

27
28

Planned Uses	Total Footprint Area
Warehouse/Service (SPPI-Somersville and Somersville-Gentry)	103,000 sq. ft.
Office (SPPI-Somersville and Somersville-Gentry)	192,000 sq. ft.

Were passive vapor barriers required under this development, the additional cost would be approximately \$1.1 million. Further, the most recent regulatory guidelines for vapor intrusion prevention require both passive and some measure of active mitigation, including SSV or SSD systems. This technology, if required, would constitute additional response costs recoverable in this action. This entire subject area will be the subject of expert witness evaluations.

SPPI also anticipates the procurement of an environmental insurance policy to protect it from the contingency of costs associated with future regulatory requirements and liability associated with the proximity to the GBF/Pittsburg/CCWS/TRC Landfill. The cost of such policy is at present unknown.

5. Increased Property Development Expenses

The surface waste, soil contamination and groundwater contamination on, at and under the properties at issue in these consolidated cases has increased Plaintiffs' necessary development costs, which also constitute a part of Plaintiffs' loss of use damages. These increased costs include the following categories of expenses, which will be the subject of expert and other testimony:

(A) The development envelope of Parcel 034 has been substantially reduced as the result of the Markley Creek work and the Antioch 2008 garbage removal work, both of which were caused by defendants' illegal conduct. Plaintiffs will be required to undertake work to remove or restore these areas and/or will suffer a concomitant loss of use or diminution in value.

(B) When Antioch performed its 2008 removal work at Parcel 034, it excavated some of solid and hazardous waste present, but it did not replace the removed dirt with clean fill, thereby leaving a large void below grade. Accordingly, Plaintiffs will incur costs to purchase, transport and place clean fill to restore the original profile of this property.

(C) Plaintiff Somersville-Gentry, Inc. has planned from the time of its purchase

1 of Parcel 034 to provide access to this parcel through a bridge from the north that spans Markley
2 Creek. However, as a result of the work required by the Regional Board in response to
3 defendants' illegal conduct, the greater length and other characteristics of the required span have
4 increased substantially the bridge's construction costs. The costs of the increased bridge size are
5 currently being evaluated.

6 (D) Plaintiffs will incur the cost of removing the remaining solid and hazardous
7 waste remaining in the soil on the properties, including the waste in the "wedge" south of
8 Markley Creek.

9 (E) Plaintiffs will incur the costs of all future environmental studies, risk
10 assessments, agency communications, and other investigation and monitoring relating to soil and
11 groundwater contamination at, on or under the properties as required by regulatory agencies or
12 agencies issuing permits/entitlements for the planned development. Among other things,
13 Plaintiffs will need to conduct studies relating to potential indoor air contamination issues.

14 6. Diminution in Value Damages.

15 The Tom Gentry California Company ("Gentry") purchased the properties in 1966. Since
16 this time, the properties have been contaminated by subsurface contamination from the operations
17 of the GBF/Pittsburg Landfill(s). This contamination has reduced the value of the property from
18 what it would be if it were unpolluted. Gentry assigned to Plaintiffs its claims for recovery. This
19 diminution in value will be the subject of an expert witness appraisal that will compare the value
20 of the properties contaminated versus the value of the properties uncontaminated.

21 7. Loss Of Use Damages.

22 Plaintiffs purchased the four parcels of land at issue in this lawsuit from Gentry in
23 November 2003. If the contamination had not existed on, at and under these properties and if
24 defendants had resolved these contamination issues in a timely manner, Plaintiffs would have
25 been able to begin entitling and developing them soon after purchase. Moreover, simultaneously
26 with entitling the properties, Plaintiffs would have been able to start marketing them to
27 prospective purchasers, building owners and tenants. If they had been able to do so, these
28 properties would have been able to take advantage of the vigorous real estate sales opportunity

1 window in the 2004-07 period. However, the presence of, and unresolved issues relating to, the
2 contamination made it extremely unlikely that entitlements, financing and insurance could be
3 obtained, thereby forcing the companies to defer these processes until a resolution. In the
4 meantime, the market has changed substantially and adversely. In addition, because of
5 defendants' actions and resulting contamination, Plaintiffs have lost an income stream they would
6 have received earlier. Thus, Plaintiffs' commercial usage plans for the properties have been and
7 continue to be delayed by the serious contamination issues at, on and under the properties. All of
8 the damages described as increased property development expenses in paragraph No. 5 also
9 constitute loss of use damages. The damages from loss of use will be the subject of expert and
10 other witness evaluations.

11 **8. Abatement/Injunctive Remedies and Expenses**

12 Plaintiffs will be seeking injunctive relief from the Court to compel defendants to comply
13 with the Remedial Action Plan, to address vapor intrusion issues and to construct and implement
14 further remedies to abate the surface and groundwater contamination, along with appropriate
15 investigation and long-term monitoring and other RCRA/CERCLA/state law remedies. These
16 remedies could include a variety of techniques, such as groundwater recovery/extraction. The
17 appropriate nature, type and extent of abatement and injunctive relief will be the subject of expert
18 testimony.

19 **9. Damages Flowing From Non-Disclosure By Standard Oil**

20 Plaintiffs, as assignees of the rights of Gentry, are entitled to damages from Defendant
21 Chevron USA for Standard Oil's failure to disclose the existence of contamination on Parcel 034.
22 Damages flowing from this non-disclosure include, but are not limited to, all of Plaintiffs' costs in
23 the previous paragraphs. The damages also include the costs incurred by Gentry and Plaintiffs to
24 investigate and remediate or remove the contamination on site. These damages will be the
25 subject of expert opinion.

26 **10. Damages Flowing From Inverse Condemnation By Antioch**

27 All of the illegal and other activities of Antioch have resulted in a variety of damages,
28 including but not limited to the increased development expenses in paragraph 5 herein, and are

1 recoverable as inverse condemnation of the properties. These damages will be the subject of
2 expert and other testimony.

3 **11. Interest**

4 Plaintiffs are entitled to interest on all of the damages set forth above as allowed by law.

5 **D. Rule 26(a)(1)(A)(iv) Disclosures**

6 *"for inspection and copying as under Rule 34, any insurance agreement under which*
7 *an insurance business may be liable to satisfy all or part of a possible judgment in the action or*
8 *to indemnify or reimburse for payments made to satisfy the judgment"*

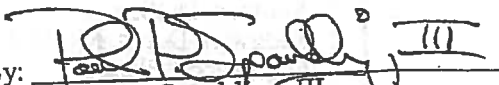
9 Insurance information is not relevant as SPPI-SOMERSVILLE, INC. AND
10 SOMERSVILLE-GENTRY, INC. are the plaintiffs in this action.

11 **E. Conclusion**

12 Investigation into the foregoing matters is ongoing and Plaintiff reserves the right to amend
13 or supplement any information disclosed above should circumstances warrant. Parties may view
14 the documents identified at the offices of Farella Braun + Martel, LLP.

15 Dated: May 22, 2009

FARELLA BRAUN + MARTEL LLP

16 By: 
17 Paul P. Spaulding, III

18 Attorneys for Plaintiffs SPPI-SOMERSVILLE,
19 INC. and SOMERSVILLE-GENTRY, INC.

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PROOF OF SERVICE

I, Betty Dunets, declare I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 235 Montgomery Street, San Francisco, California 94104. On May 22, 2009, I served a true and correct copy of the following document(s):

**PLAINTIFFS' SECOND SUPPLEMENTAL RULE 26 DISCLOSURES
(CONSOLIDATED ACTIONS)**

- by electronic transmission to each of the email addresses for counsel shown below on this date before 6:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.

Counsel for Generator Defendants

Clifton J. McFarland
Janlynn R. Fleener
Gregory T. Broderick
Downey Brand LLP
621 Capitol Mall, 18th floor
Sacramento, CA 95814
Tel: (916) 444-1000
Fax: (916) 444-2100
Email: cmcfarland@downeybrand.com
jfleener@downeybrand.com
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Counsel for Defendant City of Antioch

Earl L. Hagström
Matthew Dudley
Sedgwick Detert, Moran & Arnold LLP
One Market Plaza
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Earl.hagstrom@sdma.com

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Environmental Defense Section
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Leslie.hill@usdoj.gov

Counsel for Contra Costa/Garaventa Defendants

Fred M. Blum
Jonathan Meislin
Farheena A. Habib
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San Francisco, CA 94104
Tel: (415) 397-9006
Fax: (415) 397-1339
fblum@bmeblaw.com

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 22, 2009, at San Francisco, California.

Betty Dunets



**SEMIANNUAL
GROUNDWATER AND SURFACE WATER
MONITORING REPORT**

JULY 1, 2008 – DECEMBER 31, 2008

**GBF/Pittsburg Landfill
Antioch, California**

Prepared for:

**Cal-EPA, Department of Toxic Substances Control, Region 2
Berkeley, California**

and

**California Water Quality Control Board, Central Valley Region
Sacramento, California**

Prepared by:

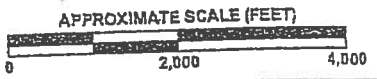
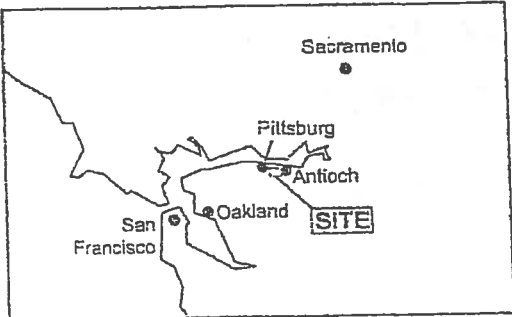
TRC

Concord, California

January 2009



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SITE LOCATION MAP
 GBF / Pittsburg Landfill
 Antioch, California
TRC **FIGURE 1**

LEGEND

- Groundwater monitoring well screened in upper saturated zone
- Well in upper saturated zone used for water level measurements only
- MW-43
1.6
PCE concentration in groundwater (µg/l), October-November 2008
- 5
PCE isocapcentration contour line (µg/l), October-November 2008
- ND Not detected at or above laboratory reporting limit of 0.5 µg/l. Higher reporting limits for some wells are indicated on the figure.
- Site boundary
- Creek

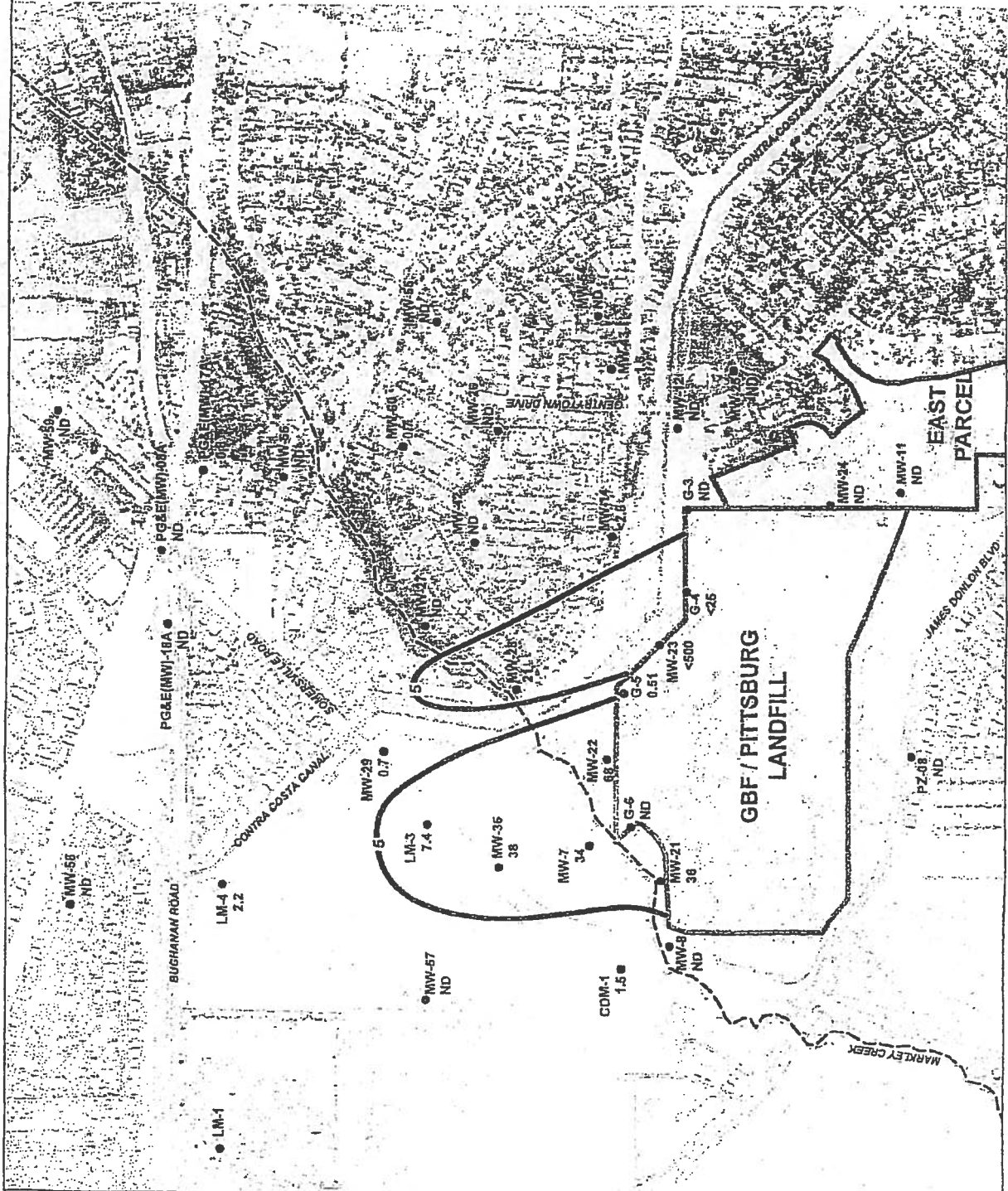
AERIAL PHOTO SOURCE: Maptech, 2005.



PCE CONCENTRATIONS IN GROUNDWATER
UPPERMOST SATURATED ZONE
October-November 2008
GBF / Pittsburg Landfill
Antioch, California



FIGURE 10



Not to be used for purposes other than those intended by the author.

From: Terry Gilmore <TGilmore@jtm-esc.org>
Sent: Thursday, December 13, 2012 4:34 PM
To: Leigha Schmidt
Subject: Fwd: Tuscany project

Terry Gilmore
IT Systems Administrator
Episcopal Senior Communities
TGilmore@jtm-esc.org

Begin forwarded message:

From: Terry Gilmore <TGilmore@jtm-esc.org>
Date: December 12, 2012 5:05:24 PM PST
To: "PlanningCommissioner@ci.pittsburg.ca.us"
<PlanningCommissioner@ci.pittsburg.ca.us>
Subject: Re: Tuscany project
To whom it may concern,

I am a resident of Pittsburg living near the proposed site for the Tuscany project. My neighborhood is across Buchanan road from the future site. A few years back I asked the city of Pittsburg planning commission for improvements to the entry to my neighborhood and also the canal fencing that borders Buchanan road. These areas are in sharp contrast to the (relatively) new construction directly across the street, in fact by comparison my side of the street looks like an industrial area from the outside. While the planning commission member I spoke with at that time agreed that the area was in need of improvement I was told that the budget for the city would not likely allow it. I was also told that the project would be put on a list for future consideration. Recently businesses including the city of Pittsburg have been putting signs on the chain link fence that borders my neighborhood entrance adding to the blight.

I would like to propose that the city of Pittsburg stipulate that the builder make improvements to these areas as a condition of approval for building. Considering that the builder Seno homes is also the original builder responsible for the construction of my neighborhood, and that they neglected to provide an esthetically pleasing entrance as seen in EVERY other neighborhood entrance on Buchanan road, I don't believe this is an unreasonable request.

The area boarding the canal is the entry to Pittsburg from Antioch and plays a vital role in the perception of visitors to our area. Currently that border is an eroding barren roadside without a sidewalk or proper landscape that is held in by a rusty bent and industrial fence with supporting concrete exposed from the erosion of the land around it. Beautification of this first glance of Pittsburg is key in formation of outlook on the community. Currently it states slum to the right side, and new housing to the left. Please help us change that perception. I would also like to suggest that improvements be made to the area that was formerly the business Rock City nursery.

In addition to the visual improvement, the construction of a proper neighborhood boundary would also provide sound barrier to the added traffic caused by the addition of new residents.

Thank you for your consideration and I await your reply.

Terry Gilmore
Home owner and resident
Greenridge Drive
Pittsburg CA



Los Medanos
Chevron Pipe Line Company
2360 Buchanan Rd.
Pittsburg,, CA 94565
Tel 925 753 2000
Fax 925 753 2030

December 26, 2012

Leigha Schmidt, AICP
City of Pittsburg
65 Civic Ave
Pittsburg, CA 94565

PROPOSED TUSCANY MEADOWS PROJECT NOTICE OF PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT AND LOS MEDANOS PUMP STATION

Dear Mrs. Schmidt,

Thank you for giving us the opportunity to comment of the NOP EIR dated November 29, 2012 for the proposed Tuscany Meadows Project.

Chevron operates two (2) active pipelines in the vicinity of Buchanan Road along the north end of Parcel "A" and the proposed Tuscany Meadows Drive. These 12-inch and 10-inch buried pipelines cross Buchanan Road and continue down "Standard Oil Avenue". This high pressure pipeline transports crude oil and natural gas. Extreme caution should be used when excavating, drilling, or grading around this pipeline.

You are being sent an aerial image delineating the approximate location of Chevron Pipe Line Company's KLM and NCNG pipelines. Chevron assumes no responsibility for the accuracy of these drawings and they should be used only for the general location of our facilities. Actual depths and alignment can only be determined by field checking and potholing the pipeline. Chevron will provide a Facility Inspector to mark and help locate our pipeline. Your company would be responsible to provide a backhoe and operator and a surveyor if needed.

We consider your request as very preliminary fact finding. Chevron will require several weeks of lead time to provide any detailed information regarding facilities and right-of-way information. A request for more specific information should be requested through Jeremy Gross (Contract Conflict Inquiry Specialist) at (925) 753-2003, mailing address 2360 Buchanan Rd., Pittsburg, Ca. 94565.

Our pipelines are operated and maintained under Federal Regulations (D.O.T. 195) and State Regulations (California Pipeline Safety Act).

Chevron, Federal, and State regulations require 12-inches (minimum) clearance between petroleum pipeline and other cross-lines that intersect at a 90° angle (perpendicular to each other).

If the intersection angle is less than 90°, the minimum clearance between the two pipelines must be 24-inches or greater.

Chevron recommends that the potholing of the Chevron pipeline be done before construction plans are completed so conflicts between your proposed road reconstruction project and our pipeline can be avoided. Chevron requires that arrangements for potholing of its pipelines be made at least forty-eight (48) hours in advance with Jeremy Gross at (925) 753-2003. Chevron will provide a Facility Inspector to locate the pipelines and assist with the potholing.

Regarding restrictions on development over our pipelines, most of our easements do not restrict paving or landscaping as long as encroachment clearances are maintained. That is, no less than 24-inches of undisturbed clearance between the top of pipe and bottom of the subgrade for paving and grass or shallow rooted plants on the easements. Deep-rooted trees and all structures are prohibited. All excavations within 24-inches of Chevron's facilities must be done by hand tools only. I would also like to add that the use of heavy vibratory equipment is prohibited over our pipelines.

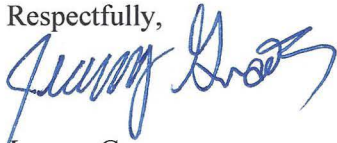
Furthermore, Chevron would like to remind the developer to adhere to the "Amendment of Agreement" dated November 5, 1987, by and between Chevron U.S.A. Inc., a Pennsylvania Corporation and North State Development Company, as well as the "Basic Agreement dated March 15, 1985, for the sale and purchase of certain real property in Contra Costa County, California and its amendments.

Chevron would also like to address access to Los Medanos Pump station along Tuscany Meadows Drive. Chevron would also like to address concerns regarding drainage, exterior sound walls, and noise complaints. Due to the short notice of receiving the NOP EIR more time will be needed to review files and input from stakeholders.

Chevron must review and approve all construction plans that involve right of way encroachments. All work that would affect our pipeline needs to be coordinated with our office at 2360 Buchanan Rd., Pittsburg, Ca. 94565.

Notify Underground Service Alert (USA) at 800-227-2600 at least 48 hours prior to any excavation work. If you have any questions or need additional information, please contact me at (925) 753-2003. Thank you for the advance notice on this project, we look forward to working with you.

Respectfully,



Jeremy Gross
Contract Conflict Inquiry Specialist
For Chevron Pipe Line Company





PUBLIC AND ENVIRONMENTAL HEALTH ADVISORY BOARD

December 27, 2012

Co-Chair
Marjorie Leeds

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Rosa Maria Sternberg
Clyde J. Trombetta

Dana Hoggatt Ayers
Planning Manager
City of Pittsburg
65 Civic Avenue,
Pittsburg, CA 94565

Dear Ms. Ayers,

The Contra Costa Public and Environmental Health Advisory Board (PEHAB) would like to contribute public comment for the draft environmental impact report for the Tuscany Meadows multi-unit housing project. The Public and Environmental Health Advisory Board is an appointed Board of the County Public Health Department and the Board of Supervisors. It is charged with identifying emerging health issues that impact the most vulnerable populations and recommending solutions to those health issues. The Board is concerned about resident exposure to secondhand smoke in this new, multi-unit housing project. We are writing to encourage the Pittsburg Planning Department to include secondhand smoke exposure and the need for smokefree policies as an issue of concern in the environmental impact report on this project.

Secondhand smoke has been classified as a toxic air contaminant by the CA Air Resources Board in the same category of diesel emissions and other harmful substances. The US Surgeon General has determined that there is no safe level of exposure to secondhand smoke. It is responsible for as many as 73,000 deaths among nonsmokers each year in the United States; and can cause lower respiratory tract infections, cancer, trigger heart attacks and exacerbate asthma. As an example, multi-unit housing, secondhand smoke has been shown to seep under doorways, through electrical outlets and even through wall cracks. Persons living in apartments near smokers can be exposed to elevated pollution levels for 24 hours a day where the particulate matter exposure can exceed the U.S. Environmental Protection Agency's 24-Hour Health Based Standard.

Smokefree housing policies do not prohibit people who smoke from living in a nonsmoking unit. The policies simply require that there be no smoking in that unit. Twenty five communities in California, including unincorporated Contra Costa, Richmond Pleasant Hill and Pinole, have policies that prohibit smoking in new multi-unit housing units.

Please consider the inclusion of secondhand smoke as an issue of concern in the environmental impact report on this project and consider options to protect residents and visitors from secondhand smoke in this complex, including making the entire complex smokefree.

Thank you,

Marj Leeds, Chair
Public and Environmental Health Advisory Board

PEHAB
Joanne Genet,
Executive Assistant
Contra Costa Health Services
597 Center Avenue, Suite 200
Martinez, CA 94553-4669
Phone: (925) 313-6763
Fax: (925) 313-6721



December 20, 2012

Leigha Schmidt, Associate Planner
City of Pittsburg-Planning Department
65 Civic Avenue
Pittsburg, CA 94565

RE: Notice of Preparation for Environmental Impact Report for Tuscany Meadows
Our File: 1002-8654

Dear Ms. Schmidt:

We have reviewed the Notice of Preparation (NOP) for the Environmental Impact Report (EIR) for the Tuscany Meadows Project, which we received on November 29, 2012, and submit the following comments:

1. We request that the DEIR provide a map of the watersheds where the Project is located. The map should include the watershed boundaries, and identify and show all existing watercourses, tributaries, and man-made drainage facilities within the project site that could be impacted by the Project. The discussion should include an analysis of the capacity of the existing watercourses.
2. This project is located within Drainage Area 70 (DA 70). This drainage area defines the watershed for Kirker Creek, which ultimately drains to New York Slough. This project is located on the border with Drainage Area 55 (DA 55). No diversions of the watershed to DA 55 should be allowed.
3. Kirker Creek has inadequate reaches in the downstream areas. The Contra Costa County Flood Control and Water Conservation District (District) recommends that this project contribute to the drainage mitigation fund for Kirker Creek in an amount equal to \$0.80 per square foot of new impervious surfaces. The developer should be required to calculate the amount of impervious surfaces and the corresponding mitigation fees and provide those calculations to us for review. The mitigation fees should be paid before the issuance of the building permits and should be transferred to the District.
4. We recommend that the DEIR quantify the amount of runoff that would be generated by the project and discuss how the runoff entering and originating from these areas will be distributed between the natural watercourses, the detention basins and the man-made drainage facilities.

5. According to our records, the Somersville Road widening project would result in a minor diversion of the DA55 watershed to the Tuscany Meadows project area. The diversion would add an additional Q10 of 2.6cfs to the run-on. Per a letter from West Coast Home Builders to the Flood Control District in May of 2005, the detention basin to be located within Highlands Ranch II Subdivision, now Tuscany Meadows, was to accommodate the additional flow into DA 70. The DEIR should discuss this. The Tuscany Meadows detention basins need to be sized to accommodate the additional flows coming from the Somersville Road widening. Peak flows to Kirker Creek should not be allowed to increase. The District is available to provide technical assistance in sizing and design of the detention basins under our Fee-for-Service program.
6. The DEIR should include a discussion of the basin design information, (i.e., capacity, sizes of inlet and outlet structures, routing, etc.). A discussion of how maintenance of these facilities would be performed and funded should also be included.
7. Based on the watershed size, we recommend that this development be required at minimum to mitigate a 10-year storm event, but that the proposed detention basins be designed to contain without freeboard the 100-year storm event unless it can be shown that a 100-year storm event can be safely passed through the detention basin without damage to the detention basin or any other property upstream or downstream of the project.
8. The DEIR should discuss the adverse impacts of the runoff from the project to the existing drainage facilities and drainage problems in the downstream areas, including those areas outside of the city of Pittsburg.
9. A copy of the Vesting Tentative Map should be included in the DEIR. The map should be large enough and clear enough such that details regarding the planned storm drain system can be read. It was not possible to read those details from the map included in the Initial Study.
10. We recommend that the DEIR address the design and construction of storm drain facilities to adequately collect and convey stormwater entering or originating within the development to the nearest adequate man-made drainage facility or natural watercourse, without diversion of the watershed, per Title 9 of the County Ordinance Code.
11. The DEIR should discuss how the project will comply with the current NPDES (National Pollutant Discharge Elimination System) requirements under the City's Stormwater Management and Discharge Control Ordinances and the C.3 Guidebook.

12. The DEIR should address a perpetual funding source for maintenance of the new drainage facilities required to serve the annexation area.
13. If improvements or work within the natural watercourses are proposed, the DEIR should discuss the scope of improvements.
14. We recommend that the DEIR request the appropriate environmental regulatory agencies, such as the U.S. Army Corps of Engineers, the State Department of Fish and Game, and the State Regional Water Quality Control Board, to explore the permits, special conditions, and mitigation that may be necessary for this project. Of particular interest to them may be the replacement of the two drainage ditches with underground pipes.
15. The District should be included in the review of all drainage facilities that have a region-wide benefit, that impact region-wide facilities, or that impact District-owned facilities. The District is available to provide technical assistance during the development of the DEIR, including hydrology and hydraulic information and our HYDRO6 method, under our Fee-for-Service program.

We appreciate the opportunity to review projects involving drainage matters and welcome continued coordination. If you should have any questions, please call me at (925) 313-2179 or e-mail me at kschu@pw.cccounty.us; alternately, you may contact Teri Rie at (925) 313-2363 or trie@pw.cccounty.us.

Sincerely,



Kara Schuh-Garibay
Civil Engineer
Contra Costa County Flood Control
& Water Conservation District

KSG:d
G:\fldct\CurDev\CITIES\Pittsburg\Sub 8654 Tuscan Meadows\NOP of EIR comments.doc

c: M. Carlson, Flood Control
T. Jensen, Flood Control
T. Rie, Flood Control
Louis Parsons, West Coast Home Builders
4021 Port Chicago Hwy, P.O. Box 4113
Concord, CA 94524



**CONTRA COSTA
WATER DISTRICT**

1331 Concord Avenue
P.O. Box H2O
Concord, CA 94524
(925) 688-8000 FAX (925) 688-8122
www.ccwater.com

December 21, 2012

Directors

Joseph L. Campbell
President

Karl L. Wandry
Vice President

Bette Boatman
Lisa M. Borba
John A. Burgh

Jerry Brown
General Manager

***VIA FACSIMILE (925) 252-4814
Hard Copy to Follow***

Ms. Leigha Schmidt
Development Services Dept.
City of Pittsburg Planning Division
65 Civic Ave.
Pittsburg, CA 94565

**Subject: Comments on the NOP for the Proposed Tuscany Meadows Project
(Project No. 12-843)**

Dear Ms. Schmidt:

The Contra Costa Water District (CCWD) has received your request for comments on the Notice of Preparation (NOP) for the proposed Tuscany Meadows project (Subdivision 8654), formerly Tuscany Meadows Project No. AP-12-843 and its predecessor the Chevron East project (Project No. AP-10-695). CCWD comments on the NOP for the current Tuscany Meadows project are similar to the comments made in our June 12, 2012 comment letter on the earlier Tuscany Meadows project (attached) and the July 29, 2010 comment letter on the Chevron East Project (attached). CCWD notes the changes in the current site plan from the earlier projects, namely the proposed 5.4-acre park at Parcel "M," the proposed 6.6-acre park and detention area at Parcel "B," and the expanded 6.6 acre park and detention center at Parcel "C."

The Contra Costa Canal (Canal) right-of-way is adjacent to the Project site. Within the Canal right-of-way is the Canal and the Multi-Purpose Pipeline (MPP). The Canal system and right-of-way are owned by the United States Bureau of Reclamation. CCWD owns the MPP adjacent to the Canal. CCWD operates and maintains these facilities.

CCWD provides untreated water service from the United States Bureau of Reclamation to the City of Pittsburg who in turn provides retail water service. At this time, no water service is provided to the area where the project is proposed.

CCWD requests that the EIR on the project consider the following:

-The proposed project is outside of the City of Pittsburg and is outside of the Contra Costa Water District. This area has no entitlements to allow for the provision of water service on either a temporary or long term basis.

-Under CCWD regulations any proposed use of water will require that the area where such water will be used be annexed to the CCWD service area. In addition, any use of water will require review by the United States Bureau of Reclamation for inclusion to its Central Valley Project area. Before water service entitlements are established, United States Bureau of Reclamation review will require National Environmental Policy Act (NEPA) review. Of particular importance for the NEPA review is the Endangered Species Act and Cultural Resources (Section 106 of the National Historic Preservation Act). The CEQA document should clearly identify whether the project intends to use the East Contra Costa County Habitat Conservation Plan to support Endangered Species Act compliance.

-The City of Pittsburg would need to submit to CCWD an application on behalf of the project developers for an annexation to CCWD and inclusion into the Central Valley Project (CVP).

-The environmental review should clearly define the amount of construction water that will be needed as well as the degree of permanent landscaping that will be included. The environmental document should also clearly limit the start of any construction activities until CCWD advises the City of Pittsburg in writing that all water related entitlements as well as all CCWD regulations have been obtained.

CCWD recommends that the following comments on the NOP be fully addressed in the EIR for the project and made conditions for approving the project:

-All issues potentially affecting Reclamation property will need to be thoroughly reviewed by CCWD before approval of the project. Please contact Dino Angelosante at (925) 688-8152 if there is any need to encroach upon Reclamation property.

-Pittsburg shall provide to CCWD details on how the project developer will prevent the project from potentially impacting the Canal and the MPP.

-CCWD should review the proposed project drainage plan. Any and all drainage from the project and proposed detention basins and bio-swales should avoid the adjacent Canal and Canal right-of-way.

- No trail access or landscaping to occur within Reclamation property.

-Project bio swales and detention basins shall not impact Reclamation right-of-way.

Leigha Schmidt
Tuscany Meadows Project NOP
December 21, 2012

-A six foot high property line fence is required to protect the Canal as well as a liner fence, if not already installed. Any damage to existing Canal fences from construction must be repaired to the satisfaction of CCWD. A permit will be required from CCWD to enter and construct the fence.

-Reclamation and CCWD pipelines must be protected from damage by heavy construction equipment possibly crossing or working adjacent to the Canal and the MPP. Prior to any grading or crossing the Canal or the MPP with heavy equipment, the project developer must provide CCWD with information on the type and weight of equipment that will be crossing the facilities, identify how their work may impact the existing facilities, and identify their proposed mitigation and protection measures.

- The project developer shall be responsible for any costs incurred by CCWD to repair any damage to Reclamation or CCWD facilities.

-CCWD has the following additional comments on the NOP for the proposed project as shown on the attached site plan map:

- No runoff or drainage allowed from Project onto ROW or into Canal itself.
- Developer will need to install 6 foot property line fencing along Canal ROW. See CCWD regulations.

-The NOP does not address Senate Bill 610 and Senate Bill 221 regarding water supply availability and land use decisions. CCWD understands that information regarding water availability will be provided to City decision makers prior to the approval of large development projects. Senate Bill 610 of 2001 (SB 610) requires a Water Supply Assessment (WSA) for any proposed projects which are subject to the California Environmental Quality Act (CEQA) and would demand an amount of water equivalent to or greater than the amount of water required by a 500 dwelling unit project. A WSA addresses the current and planned future water demand of the water supplier, the projected demand of the proposed project, the projected water supply of the water supplier, and makes a determination of the sufficiency of its water supplies for the project, in addition to the existing and planned future uses. Senate Bill 221 applies to a tentative tract map or a development agreement associated with residential developments of 500 dwelling units or more and requires the preparation of a Water Verification. This legislation basically prohibits the approval of a project without written confirmation that the water supply will be available prior to completion of project construction.

- Treated and Untreated water service is governed by CCWD Code of Regulations Section 5 (**Reg 5**).

-Contra Costa Water District provides untreated water to the municipality serving treated water to this Project/Property. Each new service requiring a meter will be


Leigha Schmidt
Tuscany Meadows Project NOP
December 21, 2012

assessed a Facility Reserve Charge (FRC) fee (**Reg. 5.20.010 and/or 5.14.020**).
Further review by CCWD is recommended.

-Further information and answers to a number of frequently asked questions regarding water service and District regulations can be found on the District's web site at www.ccwater.com.

I may be contacted at (925) 688-8119 should you have further questions.

Sincerely,



Mark A. Seedall
Principal Planner

MAS/jmt

Attachment 1 (July 29, 2010 Letter)
Attachment 2 (June 12, 2012 Letter)
Attachment 3 (Site Plan Map)

cc: Darlene Ortega, Bureau of Reclamation, Fresno
Cathy James, Bureau of Reclamation, Byron



CONTRA COSTA
WATER DISTRICT

1331 Concord Avenue
P.O. Box H2O
Concord, CA 94524
(925) 688-8000 FAX (925) 688-8122
www.ccwater.com

June 12, 2012

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Vice President

Bette Boatman
Lisa M. Borba
John A. Burgh

Jerry Brown
General Manager

VIA FACSIMILE (925) 252-4814
Hard Copy to Follow

Ms. Leigha Schmidt
Development Services Dept.
Planning Division
65 Civic Ave.
Pittsburg, CA 94565

Subject: Comments on the Proposed Tuscany Meadows Project (Project No. AP-12-843 SUB)

Dear Ms. Schmidt:

The Contra Costa Water District (CCWD) has received your request for comments on the proposed Tuscany Meadows project (Project No. AP-12-843), formerly the Chevron East project (Project No. AP-10-695). CCWD comments on the Tuscany Meadows project are similar to the comments made in our July 29, 2010 comment letter on the Chevron East Project (attached). CCWD manages and maintains water facilities that are owned and operated by the United States Bureau of Reclamation (Reclamation). This includes the Contra Costa Canal (Canal) as well as the Multi-Purpose Pipeline (MPP) in the project vicinity. The proposed Chevron East project has the potential to adversely affect the Canal and the MPP.

CCWD provides untreated water service from the United States Bureau of Reclamation to the City of Pittsburg who in turn provides retail water service. At this time, no water service is provided to the area where the project is proposed.

CCWD requests conformation that the CEQA document on the project considered the following:

-The proposed project is outside of the City of Pittsburg and is outside of the Contra Costa Water District. This area has no entitlements to allow for the provision of water service on either a temporary or long term basis.

-Under CCWD regulations any proposed use of water will require that the area where such water will be used be annexed to the CCWD service area. In addition, any use of water will require review by the United States Bureau of Reclamation for inclusion to its Central Valley Project area. Before water service entitlements are established,

Leigha Schmidt
City of Pittsburg
Tuscany Meadows Project
June 12, 2012

United States Bureau of Reclamation review will require National Environmental Policy Act (NEPA) review. Of particular importance for the NEPA review is the Endangered Species Act and Cultural Resources (Section 106 of the National Historic Preservation Act). The CEQA document should clearly identify whether the project intends to use the East Contra Costa County Habitat Conservation Plan to support Endangered Species Act compliance.

-The City of Pittsburg would need to submit to CCWD an application on behalf of the project developers for an annexation to CCWD and inclusion into the Central Valley Project (CVP).

-The environmental review should clearly define the amount of construction water that will be needed as well as the degree of permanent landscaping that will be included. The environmental document should also clearly limit the start of any construction activities until CCWD advises the City of Pittsburg in writing that all water related entitlements as well as all CCWD regulations have been obtained.

CCWD recommends that conditions for approving the project include the following:

-All issues potentially affecting Reclamation property should be thoroughly reviewed before approval of the project. Please contact Dino Angelosante at (925) 688-8152 if there is any need to encroach upon Reclamation property. 6

-Pittsburg shall provide to CCWD details on how the project developer will prevent the project from potentially impacting the Canal and the MPP.

-CCWD should review the proposed project drainage plan. Drainage from the project should avoid the adjacent Canal.

- No trail access or landscaping to occur within Reclamation property.

-Project bio swales shall not impact Reclamation right-of-way.

-A six foot high property line fence is required to protect the Canal as well as a liner fence, if not already installed. Any damage to existing Canal fences from construction must be repaired to the satisfaction of CCWD. A permit will be required from CCWD to enter and construct the fence.

-Reclamation and CCWD pipelines must be protected from damage by heavy construction equipment possibly crossing or working adjacent to the Canal and the MPP. Prior to any grading or crossing the Canal or the MPP with heavy equipment, the project developer must provide CCWD with information on the type and weight of equipment that will be crossing the facilities, identify how their work may impact the existing facilities, and identify their proposed mitigation and protection measures.

Leigha Schmidt
City of Pittsburg
Tuscany Meadows Project
June 12, 2012

- The project developer shall be responsible for any costs incurred by CCWD to repair any damage to Reclamation or CCWD facilities.

CCWD has the following additional comments on the proposed project:

-Please refer to comments on the attached site plan map of the project regarding fencing location, no drainage into the Canal, need for more information on the 24-inch-reinforced concrete pipe, and information needed on APN 089-150-015.

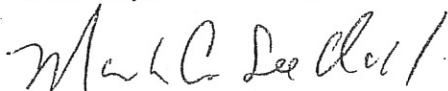
- Treated and Untreated water service is governed by CCWD Code of Regulations Section 5 (**Reg 5**).

- Contra Costa Water District provides untreated water to the municipality serving treated water to this Project/Property. Each new service requiring a meter will be assessed a Facility Reserve Charge (FRC) fee (**Reg. 5.20.010 and/or 5.14.020**). Further review by CCWD is recommended.

-Further information and answers to a number of frequently asked questions regarding water service and District regulations can be found on the District's web site at www.ccwater.com.

Please contact Chris Hentz at CCWD regarding engineering issues at (925) 688-8311. Alternatively, I may be contacted at (925) 688-8119 should you have further questions.

Sincerely,



Mark A. Seedall
Principal Planner

MAS/jmt

Attachment 1 (July 29, 2010 Letter)
Attachment 2 (Site Plan Map)



**CONTRA COSTA
WATER DISTRICT**

1331 Concord Avenue
P.O. Box H2O
Concord, CA 94524
(925) 688-8000 FAX (925) 688-8122
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July 29, 2010

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Vice President

Bette Boatman
Lisa M. Borba
John A. Burgh

Jerry Brown
*Interim General
Manager*

Ms. Kristin Vahl
City of Pittsburg
Development Services Dept.
Planning Division
65 Civic Ave.
Pittsburg, CA 94565

VIA FACSIMILE (925) 252-4814
Hard Copy to Follow

**Subject: Comments on the Proposed Chevron East Project
(Project No. AP-10-695)**

Dear Ms. Vahl:

The Contra Costa Water District (CCWD) has received your request for comments on the proposed Chevron East project (Project No. AP-10-695). CCWD operates and maintains water facilities that are owned by the United States Department of the Interior, Bureau of Reclamation (Reclamation) or CCWD. This includes Reclamation's Contra Costa Canal (Canal) as well as CCWD's Multi-Purpose Pipeline (MPP) in the project vicinity. The proposed Chevron East project has the potential to adversely affect the Canal and the MPP.

CCWD provides wholesale water service from Reclamation to the City of Pittsburg, who in turn provides retail water service. At this time, no water service is provided to the area where the project is proposed.

CCWD would request that the California Environmental Quality Act (CEQA) document on the project consider the following:

- The proposed project is outside of the City of Pittsburg and is outside of CCWD's service area. This area has no entitlements to allow for the provision of water service on either a temporary or long-term basis.
- Under CCWD regulations, any proposed use of water will require that the area where such water will be used be annexed to the CCWD service area. In addition, any use of water will require review by the Reclamation for inclusion to its Central Valley Project (CVP) area. Before water service entitlements are established, Reclamation review will require National Environmental Policy Act

(NEPA) review. Of particular importance for the NEPA review is the Endangered Species Act and Cultural Resources (Section 106 of the National Historic Preservation Act). The CEQA document should clearly identify whether the project intends to use the East Contra Costa County Habitat Conservation Plan to support Endangered Species Act compliance.

- The City of Pittsburg would need to submit to CCWD an application on behalf of the project developers for an annexation to CCWD and inclusion into the CVP.
- The environmental review should clearly define the amount of construction water that will be needed, as well as the degree of permanent landscaping that will be included. The environmental document should also clearly limit the start of any construction activities until CCWD advises the City of Pittsburg in writing, that all water-related entitlements, as well as all CCWD regulations have been obtained.

CCWD recommends that conditions for approving the project include the following:

- All issues potentially affecting Reclamation property should be thoroughly reviewed before approval of the project. Please contact Dino Angelosante at (925) 688-8152 if there is a need to encroach upon Reclamation property.
- Pittsburg shall provide to CCWD details on how the project developer will prevent the project from potentially impacting the Canal and the MPP.
- Pittsburg shall provide to CCWD the proposed project drainage plan. Drainage from the project should avoid the adjacent Canal.
- A six-foot high property line fence is required to protect the Canal as well as a liner fence, if not already installed. Any damage to existing Canal fences from construction must be repaired to the satisfaction of CCWD.
- Reclamation and CCWD facilities must be protected from damage by heavy construction equipment possibly crossing or working adjacent to the Canal and the MPP. Prior to any grading or crossing the Canal or the MPP with heavy equipment, the project developer must provide CCWD with information on the type and weight of equipment that will be crossing the facilities, identify how their work may impact the existing facilities, and identify their proposed mitigation and protection measures.
- The project developer shall be responsible for any costs incurred by CCWD to repair any damage to Reclamation or CCWD facilities.

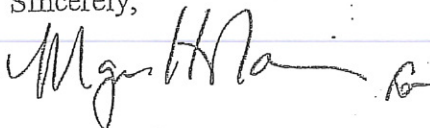
Ms. Kristin Vahl
Chevron East Project
July 29, 2010
Page 3

CCWD has the following additional comments on the proposed project:

- Treated and Untreated water service is governed by CCWD Code of Regulations Section 5 (Reg. 5).
- Further information and answers to a number of frequently asked questions regarding water service and CCWD regulations can be found on the CCWD web site at www.ccwater.com.

Please contact Chris Hentz at CCWD regarding engineering issues at (925) 688-8311. Alternatively, I may be contacted at (925) 688-8119 should you have further questions.

Sincerely,



Mark A. Seedall
Principal Planner

MAS/jmt/mc

TRANSPLAN COMMITTEE

EAST COUNTY TRANSPORTATION PLANNING

Antioch • Brentwood • Oakley • Pittsburg • Contra Costa County
30 Muir Road, Martinez, CA 94553

December 28, 2012

Leigha Schmidt, Associate Planner
City of Pittsburg – Planning Department
65 Civic Avenue, Pittsburg, CA 94565

RE: Notice of Preparation of an Environmental Impact Report (EIR) for the Proposed Tuscany Meadows Project

Ms. Schmidt:

TRANSPLAN staff has reviewed the above captioned document. The following comments are being submitted based on the available information:

1. The East County Action Plan for Routes of Regional Significance (Action Plan) and Contra Costa Transportation Authority (CCTA) require EIRs be circulated to neighboring jurisdictions for development projects that generate 100 net peak hour vehicle trips. Please be sure to include Contra Costa County, the City of Antioch and TRANSPLAN in the EIR distribution, if this has not already been done. Also, environmental notices (Notice of Preparation, Notice of Completion, etc.) should be transmitted to each member jurisdiction of TRANSPLAN. The Action Plan can be found here: <http://transplan.us/about.html>.
2. Based on the project description, the project is expected to generate 100 or more net new vehicle trips. Pursuant to the Measure J Growth Management Program, a traffic impact analysis will need to be prepared for the project in accordance with the traffic impact analysis guidelines provided in the CCTA Technical Procedures. The current version of the Technical Procedures can be found here: <http://www.ccta.net/EN/main/planning/planningtools.html>. However you should be aware that CCTA will soon be adopting an updated version of the Technical Procedures. The draft update can be found here: <http://www.ccta.net/EN/home/quicklinks/currentactivities.html>.

If you have any questions regarding the above comments, please do not hesitate to contact me at (925) 674-7832, or email me at jamar.stamps@dcd.cccounty.us. Thank you for the opportunity to comment. TRANSPLAN looks forward to being involved in the review of subsequent plans and documents.

Sincerely,



Jamar Stamps, TRANSPLAN staff

cc: TRANSPLAN TAC



December 27, 2012

Leigha Schmidt
Development Services Department- Planning Division
City of Pittsburg
65 Civic Avenue
Pittsburg CA 94565

SUBJECT: Tuscany Meadows Project EIR

Dear Ms. Schmidt:

Thank you for providing the Contra Costa Local Agency Formation Commission (LAFCO) with a Notice of Preparation (NOP) and Initial Study (IS) regarding the above referenced project EIR. As proposed, the 170-acre project site would involve development of up to 917 low density residential single-family lots, 365 multi-family units and related parks and/or detention basins. The IS indicates that, following certification of the EIR and approval of the project by the City of Pittsburg, several approvals by LAFCO will be required before the project can be implemented:

- Sphere of Influence (SOI) amendments to remove the Project site from the Antioch SOI and include it in the City of Pittsburg SOI;
- Annexation to the City of Pittsburg;
- Annexation to Contra Costa Water District (and inclusion in the federal Central Valley Project service area); and
- Annexation to the Delta Diablo Sanitation District.

The SOI amendments and annexations will include both the 170-acre parcel where the residential development is proposed (APN 089-150-013) and the adjacent 23-acre Chevron oil tank farm property (APN 089-150-015).

In response to the NOP/IS, we offer general and specific comments below.

General Comments

As a Responsible Agency pursuant to the California Environmental Quality Act (CEQA), LAFCO will need to rely on the City's environmental document for this project in consideration of the associated boundary changes mentioned above. LAFCO is an independent, regulatory agency with discretion to disapprove or approve, with or without conditions, boundary changes. LAFCO is required to consider a variety of factors when evaluating a proposed boundary change including, but not limited to, the project's potential impacts on agricultural land and open space, the provision of municipal services and infrastructure to the project site, the extent to which

the proposal will affect a city or cities and the County in achieving their respective fair shares of the regional housing needs, the timely and available supply of water, etc.

The factors relating to boundary changes are contained in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 ("CKH" - Government Code §56000 et seq.) and include §56668. (Note: all references in this letter are to the California Government Code). We encourage City staff and its consultants to consider and reference the factors set forth in §56668 and other relevant sections of the CKH when preparing environmental documents for projects that require subsequent approvals by LAFCO, as doing so will facilitate the LAFCO application and review process. Failure to do so may result in the need for additional CEQA compliance work on the part of the applicant.

In reviewing this project, LAFCO will be asked to rely on the City's environmental document for the required SOI amendments and annexations. Therefore, the City's document should:

- 1) specifically reference the LAFCO action(s) in the Project Description;
- 2) list Contra Costa LAFCO as one of Other Public Agencies Whose Approval is Required, and
- 3) most importantly, include within the EIR an evaluation of the LAFCO action(s) and relevant CKH factors on which the LAFCO decision would be based, as discussed below.

Specific Comments/Questions

1. Agricultural Resources. The IS finds that impacts involving the loss or conversion of agricultural lands would be less than significant because it is not designated as prime agricultural land, is currently vacant, and is surrounded by urban (residential) development. The IS states that no further discussion or analysis regarding impacts to agricultural lands will be included in the EIR.

LAFCO acknowledges that for CEQA purposes, the conclusion reached in the IS could be considered adequate. However, be advised that LAFCO will require more analysis of this issue in order for the Commission to make determinations required under CKH §56668 in which the loss of agricultural lands is an important concern. We would encourage you to expand the scope of the EIR to include further analysis and discussion regarding the loss of agricultural lands in the context of CKH sections 56016, 56064 and 56668(e).

- 2. Regional Housing Needs.** Another factor of concern to LAFCO in considering the proposed boundary adjustments is the extent to which the project would affect the City's ability to achieve its share of regional housing needs. The EIR should consider this issue in relation to the provisions of CHK Section 56668(l).
- 3. Sustainable Communities Strategy.** The CKH contains two factors relating to regional growth goals and policies [§§56668(g) and 56668.5]. The EIR should evaluate the relationship of the proposed project to the regional growth goals and policies and related sustainable communities strategies identified in the *One Bay Area* plan.
- 4. Hazards/Hazardous Materials.** The IS states that the Tuscany Meadows project site is currently undergoing remediation of conditions involving soil or other contamination, that the site is on the Cortese list of contaminated sites per Government Code §65962.5, and that the EIR will provide further documentation and discussion of potential environmental effects related to this aspect of the site's soil conditions. It will be important for the EIR to also include similarly detailed discussion regarding the current status of soil and/or groundwater contamination on the Chevron parcel since that site is part of the

“Project” and will be included in the SOI amendments and annexation actions which LAFCO will be asked to approve. The information should include whether the Chevron parcel is also on the Cortese list, should describe the history of prior remediation activities, and documentation of the status of any current or projected remediation work required by the California Department of Toxic Substance Control. Of concern is the potential for health and safety effects of exposing future residents of the Tuscany Meadows project to residual contamination of soil and groundwater at the Project site and particularly near the Chevron parcel, as the proposed tentative subdivision map shows individual single family lots and proposed neighborhood parks abutting the Chevron parcel.

5. **Land Use; Population and Housing.** As stated in our letter of May 29, 2012, the EIR should include an evaluation of the need to expand the City’s SOI in terms of expected absorption and development rates for undeveloped land already in the City of Pittsburg as well as land proposed to be added to the City’s SOI.
6. **Public Services and Utilities.** As stated in our letter of May 29, 2012, the EIR should demonstrate with substantial evidence that there will be a need for municipal services (e.g., water, wastewater, police, fire and other municipal services) within a 5-10 year period. In this regard, and in the relevant chapters of the document, the EIR should also address each of the following:
 - a) The present and planned land uses in the area, including agricultural and open-space lands;
 - b) The present and probable need for public facilities and services in the area;
 - c) The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide; and
 - d) The existence of any social or economic communities of interest in the area.
 - e) Regarding the Chevron parcel, the EIR should include information about the effects of transferring jurisdiction from the County to the City in terms of taking on the responsibility for overseeing on-going clean-up work – i.e., are there costs or service responsibilities that the City would assume once the property is within its jurisdiction? How would annexation of the Chevron parcel affect public services, particularly police and fire protection?
7. **Transportation/Traffic.** The EIR traffic analysis should include a discussion of the relationship between the proposed James Donlon Boulevard/Buchanan By-Pass (JDB) project and the Tuscany Meadows project, including how traffic conditions would be different if the JDB extension is built, or if it is delayed or not built.
8. **Effects of the Project on Other Government Agencies.** Another factor LAFCO must consider in its review of a boundary change proposal is the effect of a project on adjacent areas, on mutual social and economic interests, and on the local government structure in the County [§56668(c)].

As noted in our May 29, 2012 letter, LAFCO will need information regarding how the change to the SOI and the subsequent annexation and development of the property, would affect local school districts. For example, we understand that the subject property is within the boundary of the Antioch Unified School District (AUSD) and that AUSD is responsible for repayment of principal and interest under Mello Roos district (2004-1) bonds that may have assumed future revenues from development on this property. Describe how the boundaries of the AUSD and the Pittsburg USD would need to be altered as part of the project, how the SOI modifications and the annexation would affect the two school districts, and whether the districts are in support of the boundary modification.

9. **Consultation with the City of Antioch.** As mentioned in our previous communications, LAFCO expects the SOI amendment and annexation applications to include information regarding the City of Pittsburg's efforts to consult with the City of Antioch regarding the proposed SOI amendments. The information should include Antioch's position regarding the proposed land uses, development standards and other relevant aspects of the proposed project; and the effects of removing the subject property from Antioch's SOI, including consistency with Antioch's General Plan, and Antioch's jobs/housing balance which was predicated, in part, on the use of this project site as an employment-rich business park (Gov. Code §56425).

Further, we understand that the development impact fees that are charged by the City of Antioch are substantially greater than would be charged in the City of Pittsburg; one reason for the difference may be that Pittsburg no longer assesses new development for regional roadway improvements as in 2010 Pittsburg withdrew from the East Contra Costa Regional Fee and Financing Authority. This agency has been the regional funding mechanism for the upgrading of major roadway improvements in East Contra Costa County including the State Route (SR) 4 By Pass, the widening of SR4 in Pittsburg and Antioch and others. It will be important to know how the lack of fees from this project would affect the delivery of transportation services throughout the surrounding areas.

10. **Alternatives.** In the evaluation of Alternatives, the EIR should consider potential land use alternatives for the Chevron parcel and evaluate how different land uses on that site - such as another residential development or industrial use - could affect or be affected by the proposed Tuscany Meadows residential development that would surround it.

Thank you for your consideration of our comments and questions. Please contact the LAFCO office if you have any questions.

Sincerely,



Lou Ann Texeira
Executive Officer

c: LAFCO Planner