

Bay Trail Backers Sue State, Chevron Over Richmond Wharf

By Richard Brenneman

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[Fund for Local Reporting!](#) Bay Trail advocates have sued the State Lands Commission (SLC) and Chevron U.S.A., challenging the agency's decision to renew the lease for Richmond's Long Wharf Terminal.

The action, filed in Alameda County Superior Court March 5, seeks to reverse the commission's Jan. 29 vote to give the oil company a 30-year renewal on its lease for the pier that serves as the entry point for all the oil processed at Chevron's vast Richmond refinery complex.

The terminal is central to the operation of the refinery, Richmond's largest and most controversial industry.

Oakland attorney Stephan Volker filed the action on behalf of the Trails for Richmond Action Committee (TRAC), Citizens for East Shore Parks (CESP) and Daniel P. Dollestedt.

Both CESP and TRAC have been struggling with the oil giant to extend the Bay Trail through the refinery's property, and Dollestedt is a paraplegic who sustained his injuries on Sept. 24, 2006, while bicycling on a section of the shoulder of Interstate 580 which serves as a section of the trail.

The action, filed under the California Environmental Quality Act (CEQA), seeks to invalidate the environmental impact report (EIR) used to justify the lease renewal and asks for a ruling declaring that the commission's certification of the EIR and approval of the lease were invalid.

The suit also seeks reimbursement for attorney fees and litigation costs.

"TRAC has existed for 10 years, all of it trying to complete the Bay Trail through Richmond," said Bruce Beyaert, the organization's chair.

"We've never considered litigation before, because we prefer to accomplish our goals through friendly persuasion, working with local governments and private enterprise. It was with very great reluctance that we finally decided to sue."

Built in 1902

The Long Wharf Terminal was built in 1902 by Pacific Coast Oil, extending 3,440 feet parallel to the shoreline and connected to the land by a 4,200-foot-long causeway. The massive project was built above and into publicly owned submerged, tidal and shoreline land.

Standard Oil Company of California bought the wharf and causeway along with the refinery in 1905, with the company becoming Chevron with the breakup of the parent company in 1984.

The Long Wharf complex operated without a lease from the state until 1947, when the oil company signed a 50-year agreement a year after the original wooden structure was replaced with

a concrete construction.

According to plaintiffs, the SLC, which negotiates contracts for all private uses of public lands, evaded the requirements of CEQA for 12 years after the original lease expired by delaying the start of work on the EIR until 1998 and delaying certification until Jan. 29 of a so-called “finalizing addendum” in a meeting held at the Hotel Mar Monte in Santa Barbara.

The lease approved by the commission requires the oil company to pay \$870,000 a year, plus \$5.8 million to cover the 12 years when Chevron operated the pier without an agreement. In addition, the lease was backdated to a start date of July 1, 2006.

In a subsequent action Feb. 4, the agency approved certification of the entire EIR, according to the complaint.

The three-member commission is chaired by Lt. Gov. John Garamendi, with the other two positions held by State Controller John Chiang and Director of Finance Michael C. Genest. Garamendi and Chiang both attended the Jan. 29 meeting, while Genest was represented by Tom Sheehy.

The lawsuit contends the commission’s actions violated the Public Trust Doctrine by either failing to renew the lease or to seek “relevant and adequate mitigation of the resulting harm,” including impacts to resources, navigation and recreational uses.

Incomplete?

The second cause of action cites a series of the EIR’s alleged violations of CEQA, including a failure to adequately describe the wharf project by omission of the refinery itself from the description.

The suit also contends that rather than describing the lease as the continuation of an existing project—the legal term for the subject of an EIR—the document should have treated the agreement as an entirely new project, given that there was no lease in place after the existing agreement had expired in 1997.

The suit also charges that the EIR failed to consider the “numerous inconsistencies between the Project and local and regional plans,” citing five plans that called for extension of “a safe new segment of the Bay Trail around the Long Wharf and its associated facilities.”

Other allegations include failure to provide adequate alternatives and mitigation measures, failure to consult with the California Coastal Conservancy, “a responsible agency, as required by CEQA,” failure to adequately respond to public comments and failure to adequately address cumulative impacts of the renewal.

“We think they got some bad legal advice,” said Beyaert.

Volker said completion of the Bay Trail was critical for the safety of the recreational users.

Dollestedt and a friend, Dan Weinstein, were biking the Bay Trail to Point Richmond along the dangerous segment which uses the freeway shoulder. Since Chevron owns the land on either side of the freeway and has refused to allow an extension of the trail through the area, claiming refinery security overrides public safety.

Weinstein was fatally injured and Dollestedt critically injured when a car swerved out of control and struck the two cyclists as they were cycling along the freeway shoulder.

“The very least Chevron could do is provide for a trail that would prevent similar accidents in the future,” Volker said.

The attorney said the commissioners had indicated they favored an agreement to allow a trail extension during an earlier session last year, but had reversed course by the time of the January meeting.

Asked for a comment on the litigation, Chevron spokesperson Brent Tippen said, “Chevron believes the State Lands Commission fully and properly considered Chevron’s request for renewal of the lease and that its decision to approve the issuance of the lease was correct. Period.”