



THE CITY OF SAN DIEGO

DATE ISSUED: September 5, 2007

REPORT NO.: RA-07-28

ATTENTION: Honorable Chair and Members of the Redevelopment Agency  
Docket of September 11, 2007

SUBJECT: Proposed Settlement Agreement in Redevelopment Agency of the City of San Diego v. Chevron U.S.A., Inc., Case No. GIC 863025.

REQUESTED ACTION: 1) Approve the Settlement Agreement; and 2) Authorize execution of said Settlement Agreement.

STAFF RECOMMENDATION: Approve the requested actions.

SUMMARY: The Centre City Development Corporation ("CCDC") is in the process of planning a redevelopment project for 55,000 square feet on the block bounded by 7<sup>th</sup> and 8<sup>th</sup> Avenues, and Market Street and Island Avenue. One of the parcels within the project footprint is the historic location of a gas station that was operated by Standard Oil of California (now Chevron). The subject parcel (to be referred to in this report as the "Chevron site") is owned by the Redevelopment Agency of the City of San Diego ("Agency").

Environmental investigations conducted at the Chevron site show that the site is impacted with petroleum hydrocarbons from the operation of the gas station. Chevron was sent a 60 day notice under the Polanco Redevelopment Act (*California Health & Safety Code* §§ 33459 et seq.) requesting that Chevron assist in the remediation of the site. Chevron did not respond affirmatively to this request. A complaint was filed against Chevron to recover environmental clean up costs on March 20, 2006. After a year of litigation, the parties have reached the following proposed settlement:

1. The Agency has incurred \$93,000 in outside attorneys' fees as of July 16, 2007. Chevron will pay those fees within thirty days after execution of the Settlement Agreement by the Agency.
2. The Agency has incurred \$55,000 in investigation costs. Chevron will pay 90% of those costs within thirty days after execution of the Settlement Agreement by the Agency.

3. Chevron agrees to pay 20% of the Incremental Costs associated with the treatment of groundwater. "Incremental Costs" are only those costs that would not have been incurred but for the presence of petroleum hydrocarbons in the groundwater.
4. An environmental consultant will: a) prepare a Remedial Action Plan, a health and safety plan, and a closure report; b) monitor the soil during excavation and take soil samples; and c) interact with the County of San Diego Department of Environmental Health ("DEH"). Chevron will pay 30% of these consulting costs up to an amount of \$65,000 (The Chevron site comprises 18% of the total square footage of the redevelopment project site, and an estimated 37% of the total contamination at the project site).
5. The Agency anticipates that the DEH will provide regulatory oversight for all remedial activity for the entire project. Chevron agrees to pay 30% of all DEH oversight costs.
6. Soil handling and disposal costs for soil removed from the site.
  - a. Chevron will reimburse the Agency for costs incurred to dispose of petroleum contaminated soil on a per ton basis as charged by either Otay Mesa or TPS Technologies (the two agreed upon disposal facilities).
  - b. Chevron will reimburse the Agency an additional \$5/ton for contaminated soils for handling costs.
  - c. If the Agency incurs costs to transport contaminated soil, and those costs are above the cost to transport clean soil, Chevron will pay the difference between the two transportation costs.
  - d. Total costs paid under this section 6 are subject to the payment schedule listed in section 8 below.
7. Chevron will pay all laboratory costs incurred for the Chevron site associated with petroleum hydrocarbon contamination subject to the payment schedule listed in section 8 below.
8. Payment schedule for costs listed in sections 6 and 7.

All soil/laboratory costs between \$1 - \$345,000: Chevron to pay 90%.  
All soil/laboratory costs between \$345,001 - \$745,000: Chevron to pay 80%.  
All soil/laboratory costs between \$745,001 - \$1,145,000: Chevron to pay 70%.  
All soil/laboratory costs between \$1,145,001 - \$1,545,000: Chevron to pay 50%.  
Chevron is not responsible for any soil/laboratory costs above \$1,545,000.
9. For contamination that extends beyond the southern boundary of the Chevron site property line, Chevron is responsible for all soil contamination above the groundwater table that is a continuation of releases from the site pursuant to the payment schedule provided in paragraph 8 above. For contaminated soil in the groundwater "smear zone"

Chevron is responsible for 50% of soil handling and disposal costs for contamination that extends from the Chevron site.

When the Agency acquired the former Chevron property, \$270,000 was deducted from the purchase price to assist in paying environmental clean up costs. If the total clean up costs for the Chevron site are \$1,500,000 (projected to be a “worse case scenario”), then the Chevron settlement would result in at least \$1,245,500 in clean up costs being paid to the Agency, plus contributions towards groundwater treatment and reimbursement of regulatory agency oversight fees from Chevron to the Agency. This would leave less than approximately \$250,000 to be paid for remediation of the Chevron site. This amount would be negotiated with a future developer whereby the developer assumes the risk, or the vast majority thereof, in paying for costs not paid by Chevron under the Settlement Agreement.

The Settlement Agreement, if approved, results in a total recovery of more than 83% of clean up costs, which includes the payment of almost all attorneys’ fees and 90% of investigation costs by Chevron, plus contributions towards groundwater treatment and reimbursement of regulatory agency oversight fees from Chevron to the Agency. It appears that both the soil and groundwater at the Chevron site, and extending beyond the southern boundary of the site, are impacted to some degree with releases from the historical gasoline station that existed on one of the other properties in the project footprint. Further, there were other entities that operated the gas station on the Chevron site in addition to Chevron.

FISCAL CONSIDERATIONS: When the Agency acquired the former Chevron property, \$270,000 was deducted from the purchase price to assist in paying environmental clean up costs. If the total clean up costs for the Chevron site are \$1,500,000 (projected to be a “worse case scenario”), then the Chevron settlement would result in at least \$1,245,500 in clean up costs being paid to the Agency, plus contributions towards groundwater treatment and reimbursement of regulatory agency oversight fees from Chevron to the Agency.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: On July 17, 2007, this matter went before the Redevelopment Agency in closed session. Upon a motion made by Agency member Madaffer and seconded by Agency member Young, the Redevelopment Agency voted 5-0 (Agency member Peters recused himself, and Agency members Faulconer and Hueso were not present) to approve the Settlement Agreement and to authorize its execution.

COMMUNITY PARTICIPATION & PUBLIC OUTREACH EFFORTS: None with this action.

Respectfully submitted,

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Huston Carlyle  
Deputy General Counsel