

APPENDIX A
TENTATIVE ORDER

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

TENTATIVE ORDER

AMENDMENT OF SITE CLEANUP REQUIREMENTS (ORDER NO. R2-2004-0046) FOR:

SHELL OIL COMPANY
SIGNATURE AT THE ESTUARY, LLC

for the properties located at

2901 to 2999 GLASCOCK STREET, and including
BOWSMAN COURT, CHANNEL WAY and REGATTA DRIVE
OAKLAND, ALAMEDA COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter the Regional Water Board), finds that:

1. **Regional Water Board Orders:** The Regional Water Board adopted Order No. R2-2004-0046, final site cleanup requirements (Final SCR) for this site on June 16, 2004. An amendment (Order No. R2-2004-0096) was adopted on December 7, 2004, which removed the Friends of California Men's Crew, a California non-profit corporation, as a named responsible party following completion of their obligations under the Final SCR.
2. **Reasons for Amendment:**
 - a. Addition of Shell Oil Company (Shell) as a named responsible party. Shell was the Owner and operator of the bulk fuel distribution terminal at the portion of the site referred to, prior to redevelopment, as 303 and 315 Derby Avenue from approximately 1925 to 1980. In addition, Shell owned the two associated product pipelines that underlie Glascock Street and were used historically to deliver petroleum products to the former bulk fuel distribution terminal. Releases from the former bulk fuel distribution terminal were first reported in 1942. An oil recovery system consisting of extraction wells, stormwater drainage controls, oil-water separator, and oil absorbent booms were reportedly operated at the property from the early 1970s to the late 1980s. In addition to the onsite fuel tanks and appurtenances, a suspected source of residual petroleum contamination at the site is impacted soil and/or groundwater as a result of leakage from Shell's pipelines.

Shell was not previously named as a discharger because Signature at the Estuary, LLC, the current owner at the time of the Final SCR, was actively involved with site cleanup. However, Signature at the Estuary, LLC, has informed the Regional Water Board that it does not have the financial capacity to fulfill its obligations under the Final SCR.

- b. Amendment of Groundwater Site Cleanup Standards. The 2004 order found that groundwater underlying and adjacent to the site does not qualify as a potential source of drinking water due to high total dissolved solids (TDS) and due to contamination. However, more recent groundwater monitoring data (biodegradation indicator parameters) clearly show that TDS is well below the 3,000 mg/l threshold (typically between 400 and 800 mg/l). Furthermore, site contamination is not naturally-occurring and cannot be used to as a basis for eliminating drinking water as a beneficial use. Therefore it is appropriate to set groundwater cleanup standards that protect the drinking water beneficial use.

Groundwater cleanup standards that protect the drinking water beneficial use are uniformly more stringent than those necessary to protect aquatic receptors in the adjacent Oakland Estuary. Therefore, there is no need for a separate set of groundwater cleanup standards in the 50-foot shoreline buffer zone (to protect aquatic receptors). The 50-foot shoreline buffer zone and its associated groundwater cleanup standards should be removed from the 2004 order.

- c. Addition of Soil Gas Cleanup Standards. Soil gas monitoring was performed subsequent to the adoption of the Final SCR and subsequent to the remedial actions (excavation and in-situ groundwater treatment) at the site. Monitoring results have indicated residual concentrations of petroleum-related compounds in soil gas that present a concern for vapor intrusion into indoor air.
3. **CEQA:** This action is an amendment of an order to enforce the laws and regulations administered by the Regional Water Board. This action is exempt from the provisions of the California Environmental Quality Act (CEQA) under the general rule that “CEQA applies only to projects that have the potential for causing a significant effect on the environment” (14 CCR section 15061(b)(3), also known as the “common sense” exemption). This action makes administrative changes to the existing site cleanup order and will not result in new or substantially different cleanup activities at the site.
 4. **Notification:** The Regional Water Board has notified the discharger and all interested agencies and persons of its intent under California Water Code Section 13304 to amend site cleanup requirements for the discharge, and has provided them with an opportunity to submit their written comments.
 5. **Public Hearing:** The Regional Water Board, at a public meeting, heard and considered all comments pertaining to this discharge.

IT IS HEREBY ORDERED, pursuant to Section 13304 of the California Water Code, that Order No. R2-2004-0046 shall be amended as follows:

A. Shell Oil Company is hereby added to the Order as a named discharger. Finding 3 is revised to read:

3. **Named Dischargers:**

Shell Oil Company is named as a discharger because it owned a portion of the property during the time of the activity that resulted in the discharge, had knowledge of the discharge or the activities that caused the discharge, and had the legal ability to prevent the discharge.

Signature at the Estuary, LLC, is named as a discharger because it owned the property during or after the time of the activity that resulted in the discharge, has knowledge of the discharge or the activities that caused the discharge, and has the legal ability to prevent the discharge.

If additional information is submitted indicating that other parties caused or permitted any waste to be discharged on the site where it entered or could have entered waters of the State, the Regional Water Board will consider adding those parties' names to this order.

B. Cleanup Standards shall be amended to eliminate the 50-foot shoreline buffer zone and update groundwater cleanup standards. Finding 12.b. is revised to read:

Beneficial Uses: The Regional Water Board adopted a revised Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) on January 18, 2007. This updated and consolidated plan represents the Regional Water Board's master water quality control planning document. The revised Basin Plan incorporates all amendments approved by the Office of Administrative Law. A summary of regulatory provisions is contained in Title 23, California Code of Regulations, Section 3912. The Basin Plan defines beneficial uses and water quality objectives for waters of the State, including surface waters and groundwaters.

Regional Water Board Resolution No. 89-39, "Sources of Drinking Water," defines potential sources of drinking water to include all groundwater in the region, with limited exceptions for areas of high TDS, low yield, or naturally-high contaminant levels. Groundwater underlying and adjacent to the site qualifies as a potential source of drinking water due to TDS measurements in monitoring wells considerably below the exemption threshold of 3,000 mg/L, and contamination in groundwater being a result of historic site uses.

The Basin Plan designates the following potential beneficial uses of groundwater underlying and adjacent to the site:

- Freshwater replenishment to surface waters
- Municipal or domestic water supply

The existing and potential beneficial uses of the Oakland Estuary include:

- Ocean, Commercial, and Sport Fishing
- Industrial process supply or service supply
- Water contact and non-contact recreation
- Wildlife habitat
- Fish migration and spawning
- Navigation
- Estuarine habitat
- Shellfish harvesting
- Preservation of rare and endangered species

Section B.2. is revised to read:

Groundwater Cleanup Standards: The following groundwater cleanup standards shall be met in all wells identified in the Self-Monitoring Program.

Constituent	Groundwater Cleanup Standard (ug/l)	Basis
TPH-Gasoline	100	GCCV
TPH-Diesel	100	GCCV
Benzene	1	MCL
Toluene	40	GCCV
Ethylbenzene	30	GCCV
Xylene	20	GCCV
MtBE	5	GCCV

Notes: MCL = Maximum Contaminant Level (drinking water)

GCCV = Gross Contamination Ceiling Value

(The concentrations are the same as the applicable Environmental Screening Levels; *Screening For Environmental Concerns At Sites With Contaminated Soil and Groundwater*, Regional Water Board, Interim Final November 2007, Revised May 2008)

- C. Cleanup Standards shall be amended to include soil gas cleanup standards. Section B.4. is added to read:

Soil Gas Cleanup Standards: The following soil cleanup standards shall be met in all on-site soil gas.

Constituent	Soil Gas Cleanup Standard (ug/m ³)	Basis
TPH-Gasoline	10,000	VI
TPH-Diesel	10,000	VI
Benzene	84	VI
Toluene	63,000	VI
Ethylbenzene	980	VI
Xylene	21,000	VI
MtBE	9,400	VI

Notes: VI = Vapor Intrusion into Buildings, residential land use scenario (The concentrations are the same as the applicable Environmental Screening Levels; *Screening For Environmental Concerns At Sites With Contaminated Soil and Groundwater*, Regional Water Board, Interim Final November 2007, Revised May 2008).

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on _____.

 Bruce H. Wolfe
 Executive Officer

=====

FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS ORDER MAY SUBJECT YOU TO ENFORCEMENT ACTION, INCLUDING BUT NOT LIMITED TO: IMPOSITION OF ADMINISTRATIVE CIVIL LIABILITY UNDER WATER CODE SECTIONS 13268 OR 13350, OR REFERRAL TO THE ATTORNEY GENERAL FOR INJUNCTIVE RELIEF OR CIVIL OR CRIMINAL LIABILITY

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APPENDIX B
CORRESPONDENCE

<u>Letter – Source / Date</u>	<u>Page</u>
Shell Oil Company / March 17, 2001	1
Chapman & Intrieri, LLP on behalf of the Estuary Homeowners Association / March 18, 2011	7
B. and M. Devens / March 26, 2011	10
Shell Oil Company / May 4, 2011	11
Signature Homes / May 9, 2011	20
Signature Homes / May 25, 2011 (exhibits not included)	22



*Lance Tolson - Senior Legal Counsel
Shell Oil Company
Legal Services US
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VIA EXPRESS AND E-MAIL

March 17, 2011

Bruce H. Wolfe
Executive Director
California Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA. 94612

RE: Shell Oil Company Comments
Tentative Order – Amendment of Site Cleanup Requirements (Order)
(Order No. R2-20004-0046)

Dear Mr. Wolfe:

Please find enclosed Shell Oil Company's Comments to the Order referenced above. We appreciate your staff's cooperation in allowing an extension of time for us to comment.

Shell Oil Company makes no admissions by these comments, and reserves all rights and defenses available to it in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Lance S. Tolson", written over a large, stylized scribble.

Lance S. Tolson

Lst

Enclosure

cc: B. Flowers (via e-mail)
C. Campagna (via e-mail)

C. Carlton (via e-mail)
M.R. Cassa (via e-mail)
California Regional Water Quality Control Board

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

TENTATIVE ORDER

AMENDMENT OF SITE CLEANUP REQUIREMENTS (ORDER NO. R2-2004-0046) FOR:

SHELL OIL COMPANY
SIGNATURE AT THE ESTUARY, LLC

For the properties located at

2901 to 2999 GLASCOCK STREET, and including
BOWSMAN COURT, CHANNEL WAY AND REGATTA DREIVE
OAKLAND
ALAMEDA COUNTY

COMMENTS OF SHELL OIL COMPANY TO TENTATIVE ORDER

General:

Reservation of Rights: Shell Oil Company (SOC) provides the following comments with full reservation of rights for itself, as well as its' subsidiary, affiliated and associated entities. Nothing herein should be construed as an admission of any fact or law, and SOC specifically reserves its rights to Petition for Review any Order ultimately issued by the California Regional Water Quality Control Board (Board).

Order Style:

SOC has records which would indicate prior operations for a location at 303 and 315 Derby Avenue in Oakland. SOC specifically denies prior operations or involvement at either of the locations on Glascock Street referenced above in Oakland.

1. Regional Water Board Orders:

SOC is not a named party under the prior version of Order No. R2-2004-0046 (2004) or the amendment Order No. R2-2004-0096 (2004). As such, to the extent any provision(s) of those Orders is not included within this Tentative Order, but the Board attempts to enforce said provision(s) against SOC by "incorporation" herein, SOC reserves the right to comment on said provision(s), as well as reserves all rights and defenses to the imposition of such provision(s) available to it.

2. Reasons for Amendment:

a. Addition of Shell Oil Company as a named responsible party.

SOC denies any specific knowledge of historical releases from the "Shell Oil Company pipelines" which may underlie Glascock Street and note that no specific incident of release is provided for these pipelines in paragraph 2.a. of the Tentative Order.

Further, it appears SOC has been made a Respondent to the Tentative Order due to the fact that current Respondent **Signature at the Estuary LLC (SAE)** has informed the CRWQCB that it does not have "the financial capability to fulfill the obligations under the Final SCR" (Page 2, second and third lines). First, SOC requests the opportunity to review the financial data that the Board has undoubtedly requested and received from SAE to support their lack of financial viability. In the unlikely event that such information was not requested, the Board should do so immediately and it be reviewed by all Potentially Responsible Parties.

SOC would further maintain that SAE is an Associated Business of another entity entitled **Signature Homes Inc. (Signature)**. The running of a *Comprehensive Business Report* for Signature would list 42 associated businesses and 100 property record assets. Further, SOC asserts that information would show that Signature and SAE share the same record address of 4670 Willow Road in Pleasanton, CA.

Also, a search of the California Secretary of State's records would indicate that the service agent for SAE is a Kathy Kimura-Barnes. A simple Google search shows that Ms. Kimura-Barnes is listed as a paralegal working in-house for Signature. Finally, one of the other Associated Businesses of both Signature and SAE is a **Signature Properties Inc. (SP)**. In local publications (*Oakland Examiner 4/28/10*), it was stated that the particular development at issue here was "built" by SP (and to the point of financial viability "quickly sold out the 100 units"). SOC asserts that SP shares the same address with Signature and SAE, and the same service agent as SAE. As such, SOC would strongly encourage that the Board investigate the broad based businesses of the "Signature" (and related) line of entities, and make any and all applicable related entities a Respondent to the subject Tentative Order, in order to fulfill SAE's "financial obligations" herein, rather than attempt to accomplish this through the addition of other parties.

Further, it appears that SAE did not carry out its site activities in compliance with approved Plans of the State of California, leading to the current vapor concerns at the site. In *FACT SHEET Pilot Study Design and Implementation Work Plan – Signature at the Estuary, Oakland, Alameda County May 2009* the first paragraph on page 2 states:

"In addition, the Corrective Action Plan stated that town homes would be built with vapor/gas barriers beneath building slabs and would have passive sub-floor ventilation to reduce the potential for migration of soil vapors into living spaces." (Lines 2-8)

However, in the next paragraph, it was stated:

“During a meeting on November 4, 2008, Signature informed the Water Board staff that a moisture barrier was installed beneath the buildings instead of the intended vapor barrier. At that meeting, Signature proposed to install an alternative engineering system to depressurize the sub-slab and prevent migration of vapors into potentially affected buildings.” (Lines 1-9)

Further, within the Covenant and Environmental Restriction (Covenant) for the site, it was provided:

“...cleanup goals were established at a concentration considered sufficient to be protective of human health, including goals based on an indoor air exposure scenario, and to prevent significant vapor migration. As an added precaution, residential structures were designed with passive ventilation beneath floors.” (page 2)

Further, within Section 3.2 *Enforcement* of the Covenant, it provides:

“Failure of an Owner or Occupant to comply with any of the restrictions, as set forth in paragraph 3.1, shall be grounds for the Board, by reason of this Covenant, to have authority to require that the Owner modify or remove any improvements constructed in violation of that paragraph.”

Thus, it is clear from this exchange that it appears that SAE did not provide the vapor protection mandated by their Work Plan, and by all indications has not provided the subsequent “alternative engineering system” proposed by them. SOC would maintain that this appears to be a violation of approved Board plans. It is less clear, but SAE may also be in violation of its Covenant responsibilities as well. Therefore, SOC feels the “Signature” line of entities should be held accountable for these issues, and the Board should not encourage such obvious disregard for approved plans and commitments by SAE, or their related entities, by attempting to make other entities accountable for their deficiencies.

b. Amendment of Groundwater Site Cleanup Standards.

SOC would maintain that use of the Tentative Order herein to amend the Groundwater Site Cleanup Standards unilaterally without detailed evidence of site conditions meriting such a change is improper, as provided below.

The October 2002 Corrective Action Plan (Lowney Associates 2002) established site specific clean up levels. These clean up levels were subsequently adopted by the Water Board under Order No. R2-2004-0046. The basis for the groundwater cleanup levels as stated in the Order were the protection of ecological receptors, prevention of nuisance conditions and protection of human health under indoor air exposure scenarios. The Order further stated that cleanup to those levels will protect beneficial uses of groundwater and will result in acceptable risk to humans. Other than changes to the area Basin Plan, SOC would maintain nothing has changed to merit such drastic changes to groundwater cleanup levels at this time.

Groundwater at the site is not currently used for drinking water. Based on the site’s mixed use setting, current zoning, future area development plans, the current Covenant and Environmental

Restriction ("Covenant") and being adjacent to the Oakland Estuary, the groundwater is unlikely to be used as a potential source of drinking water in the foreseeable future. We do acknowledge that according to the Basin Plan, the beneficial use of groundwater should consider the potential of its designated use for municipal or domestic water supply including drinking water. However, we maintain a site-specific risk based cleanup approach would be a more appropriate method to achieve site goals here.

If the RWQCB desires to change the clean up levels, SOC proposes that the ultimate Responsible Party submit an updated Corrective Action Plan (including a risk assessment) in a reasonable time frame. The plan would be to develop site specific clean up levels, based on site use - including the Covenant. The current Covenant restricts, among other things, drilling, boring or otherwise constructing a well for any use, including but not limited to domestic, potable or industrial uses.

The current risk drivers are the potential for vapor intrusion (VI) and seeps in to the estuary (aquatic receptors), therefore SOC agrees that actions should be maintained to reduce risk in those 2 areas. However, the Responsible Party should be allowed sufficient time to complete the site investigation (seep, VI) and complete a risk assessment prior to determining final clean up goals. As provided above, the potential for drinking water beneficial use would be considered in any risk assessment.

c. Addition of Soil Gas Cleanup Standards.

The soil gas cleanup goals for VI based on residential land use ESLs are appropriate for an initial screening assessment but are not appropriate for a final remediation goal. Risk based soil gas cleanup goals should be developed.

A.

3. Named Dischargers:

SOC would comment that the named dischargers under this paragraph are not an exhaustive list of former Potentially Responsible Parties (PRP's) that were dischargers at the site. Site records would indicate subsequent landowners to SOC had releases at the subject site and are not listed herein.

Further, as it regards SAE, SOC incorporates its' previous comments in this area, and would state that SAE is an associated entity of Signature Homes Inc. and Signature Properties Inc. and as such Signature Homes Inc. and Signature Properties Inc. (and/or other "Signature" entities) should be named dischargers under this Tentative Order.

B.

Beneficial Uses:

SOC incorporates its' previous comments in this area, and states that "Municipal or domestic water supply" is noted herein by the Basin Plan as a potential beneficial use of groundwater underlying and adjacent to the site. SOC is not aware of any current use of groundwater in the area for municipal or domestic water, and is not aware of any future contemplated uses of such area water.

Groundwater Cleanup Standards:

SOC incorporates its' previous comments in this area, and would offer the following in regard to the using drinking water as a basis for groundwater standards and gross contamination cleanup goals provided herein:

- The current Covenant restriction prevents the usage of groundwater for any purpose.
- There are other impacted sites in the area that have received NFA above drinking water standards.
- Proximity to the Oakland Estuary, and the fact that groundwater extraction (for production) would likely cause impacted groundwater and sea water to migrate to the site, which in turn, would degrade the water to below drinking water standards (i.e. increase TDS levels > 3,000 ppm).
- The basis of using ESLs as default cleanup standards goes against the intention of the ESLs (screening levels vs. site-specific).
- Gross contamination will likely drop out as a driver for cleanup goals as part of a risk assessment

Further, SOC comments that it sold the subject facility to Simmons Oil Company in 1980, some 9 to 10 years prior to its known introduction of MTBE into its California operations. Thus, SOC objects to groundwater cleanup standards associated with MTBE being potentially imposed on it under the Tentative Order.

Soil Gas Cleanup Standards:

SOC incorporates its' previous comments in this area, and states that the soil gas cleanup goals for VI based on residential land use ESLs are appropriate for an initial screening assessment but are not appropriate for a final remediation goal. Risk based soil gas cleanup goals should be developed.

CHAPMAN & INTRIERI, L.L.P.

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Karen St. Onge
Christopher R. Carling*

File No.: 337.87

March 18, 2011

Email & Facsimile

Cleet Carlton, P.G.
Engineering Geologist
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, California 94612

Re: Tentative Order – Amendment of Site Cleanup Requirements (Order No. R2-2004-0046)

Dear Mr. Carlton:

I am writing on behalf of the Estuary Homeowners Association for the purpose of providing written comments to the proposed Tentative Order referenced above. Our comments are based on a review of the Tentative Order, prior orders in this matter, the original Corrective Action Plan and a review of public records relating to Signature at the Estuary, LLC. Our comments are as follows:

- The order should be further amended to name Signature Properties, Inc. as a responsible party.

The original cleanup order dated June 16, 2004, named as dischargers Signature at the Estuary, LLC and Friends of the California Men's Crew. The order was subsequently amended to remove Friends of California Men's crew as a named discharger. In your recent Tentative Order, you have added Shell Oil Company as a named responsible party based on Shell's ownership of the subject property from 1925 to 1980. Signature Properties is the general contractor for the development of the site and is the Managing member of Signature at the Estuary, LLC.

According to public records housed with the California Secretary of State, Signature at the Estuary, LLC did not exist until December 18, 2002, yet according to Peter VanNess, his company began working with the Water Quality Control Board in 2001 – work that could only have been done by Signature Properties (*see* letter to Cleet Carlton from Peter VanNess dated

February 27, 2009). Moreover, the original Corrective Action Plan, prepared by Lowney Associates, was prepared on “behalf of Signature Properties” and completed on October 31, 2002. The Plan specifies that “Signature Properties intends to act as the responsible party for the remediation of the Site.” This original Corrective Action Plan has not been amended.

Even after the creation of Signature at the Estuary, LLC in December 2002, correspondence from Lowney was directed to Patrick VanNess at Signature Properties and Lowney’s reports continued to state that its work was being performed for Signature Properties pursuant to a July 23, 2002 agreement between Lowney and Signature Properties (*see* “Fourth Quarter 2002 – Ground Water Monitoring Report” and accompanying cover letter dated January 22, 2003). The first time any Lowney document references Signature at the Estuary, LLC (as opposed to Signature Properties) is in the introduction to the Risk Management Plan dated October 21, 2004 – after the original cleanup order had been issued. Thus Signature Properties, Inc. was and is the entity responsible for the implementation of the Corrective Action Plan and it should be subject to your order.

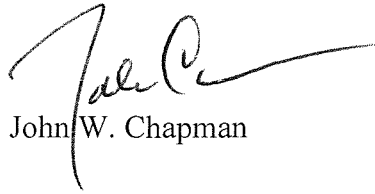
The Board’s order was issued pursuant to its authority under The Porter-Cologne Act (“Act,” California Water Code Sec. 13000 et seq.). Sec. 13304(a) of the Act provides that any person who threatens to create a condition of pollution or nuisance, shall, upon order of the regional board, clean up the waste or abate the effects of the waste and take any other necessary remedial action, including overseeing cleanup and abatement efforts. The Act defines a nuisance as, “anything which meets all of the following requirements: (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and (3) occurs during, or as a result of, the treatment or disposal of wastes.” Cal. Water Code Sec. 133050. With respect to liability for nuisance, it “does not hinge on whether the defendant owns, possesses or controls the property, nor on whether he is in a position to abate the nuisance; the critical question is whether the defendant created or assisted in the creation of the nuisance.” *City of Modesto Redevelopment Agency v. Superior Court* (2004) 119 Cal. App. 4th 28, 38. Liability for nuisance also extends to those who maintain a nuisance. *Philips v. Pasadena* (1945) 22 Cal. 2d 104,106. The Estuary Homeowners Association submits that Signature Properties, Inc. is responsible for maintaining the site conditions which are a nuisance and thus it should be subject to the Water Board’s Orders.

In summary, Signature Properties is a responsible party under Sec. 13304 because it took on the responsibility to clean up the estuary site, but failed to do so. In that regard, Signature Properties maintained the nuisance. Signature Properties was responsible for the development of the site and the sale of the residences. Whether Signature Properties ever technically held title to the property or was involved in the original contamination of the Site is not relevant.

Cleet Carlton, P.G
Re: *The Estuary*
March 18, 2011
Page 3

Signature Properties' actions prior to the issuance of the original order, its role in the development in the site, and its relationship to Signature at the Estuary, LLC, make it a responsible party under Sec. 13304 and therefore the order should be amended to specifically identify Signature Properties as such. Again, these comments are provided to you on behalf of the Estuary Homeowners Association. We appreciate your attention to the above and request that you include Signature Properties, Inc. in this process.

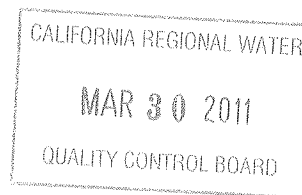
Best Regards,

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

John W. Chapman

JWC:smw

March 26, 2011



Cleet Carlton
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, California 94612

Re: **The Estuary Homeowners Association**
Comment to Tentative Order – Amendment of Site Cleanup Requirements (Order No. R2-2004-0046) – for the Properties located at 2901 to 2999 Glascock Street and including Bowsman Court, Channel Way and Regatta Drive, Oakland, Alameda County.

Dear Mr. Carlton:

We are homeowners and members of The Estuary HOA located on the Estuary in Oakland which is the subject of your site remediation efforts. Please consider the below comments at the upcoming Regional Water Board regular meeting on April 13, 2011.

As concerned homeowners, we are supportive of the Water Board's efforts to remediate and clean up the site at The Estuary. We agree with and support the Tentative Order in all respects. However, we would also like the Water Board to add Signature Properties, Inc. as a named discharger on the basis that this entity is the parent company of Signature at the Estuary LLC which recently alleged an inability to meet its financial obligations to participate in further site remediation.

We thank you for your kind consideration of our request.

Very truly yours,

Bruce and Monica Devens
2883 Regatta Drive
Oakland, CA 94601
510-904-2079
mdevens@yahoo.com



*Lance Tolson - Senior Legal Counsel
Shell Oil Company
Legal Services US
910 Louisiana, OSP 4874
Houston, Texas 77002*

VIA EXPRESS AND E-MAIL

May 4, 2011

Bruce H. Wolfe
Executive Director
California Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA. 94612

RE: Shell Oil Company Comments
Adoption of Final site Cleanup Requirements
(Order No. R2-20004-0046)

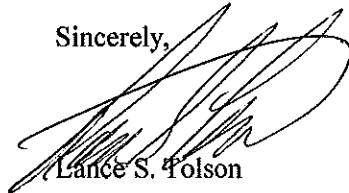
Amendment of Site Cleanup Requirements
(Order No. R2-2004-0096)

Dear Mr. Wolfe:

As directed in your correspondence to Ms. Beth Flowers dated April 8, 2011, please find enclosed Shell Oil Company's Comments to the Orders referenced above. We appreciate your staff's cooperation in allowing an extension of time for us to comment.

While we attempted to provide all relevant comments, in an understandable fashion, we need to note the inherent difficulty in some respects of commenting "real time" in 2011 on provisions of orders issued in 2004. Therefore, should you or your staff have any questions regarding these comments, please advise. Shell Oil Company makes no admissions by these comments, and reserves all rights and defenses available to it in this matter.

Sincerely,



Lance S. Tolson

Lst

Enclosure

cc: B. Flowers (via e-mail)
C. Campagna (via e-mail)

C. Carlton (via e-mail)
M.R. Cassa (via e-mail)
California Regional Water Quality Control Board

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

ORDER R2-2004-0046

ADOPTION OF FINAL SITE CLEANUP REQUIREMENTS FOR:

SIGNATURE AT THE ESTUARY, LLC
FRIENDS OF CALIFORNIA MEN'S CREW, A CALIFORNIA NON-PROFIT
CORPORATION

for the properties located at

2901 & 2999 GLASCOCK STREET
303 & 315 DERBY AVENUE
OAKLAND
ALAMEDA COUNTY

COMMENTS OF SHELL OIL COMPANY TO ORDER R2-2004-0046

General:

Reservation of Rights: Shell Oil Company (SOC) provides the following comments with full reservation of rights for itself, as well as its' subsidiary, affiliated and associated entities. Nothing herein should be construed as an admission of any fact or law, and SOC specifically reserves its rights to Petition for Review any Order ultimately issued by the California Regional Water Quality Control Board (Board).

Order Style:

SOC has records which would indicate prior operations for a location at 303 and 315 Derby Avenue in Oakland. SOC has no knowledge of prior operations or involvement at either of the locations on Glascock Street referenced above in Oakland. SOC is in the process of confirming previous title ownership of area properties, and if SOC is included in any future orders here, its' responsibilities should be limited to the properties encompassed by that legal ownership .

1. Site Location:

SOC incorporates and references its' comments in the *Order Style* paragraph above regarding any site location herein

2. Site History:

SOC incorporates and references its' comments in the *Order Style* paragraph above regarding any site location herein

3. Named Dischargers:

SOC incorporates and references its' comments made in sections 2 and 3 of its' *COMMENTS OF SHELL OIL COMPANY TO TENTATIVE ORDER* submitted March 17, 2011 (1st Comments) regarding discharger Signature at the Estuary LLC, and entities Signature Homes Inc. and Signature Properties Inc.

Further, in support of its prior positions in this area, SOC would refer the Board to that **Corrective Action Plan** for the Derby properties and the parcel at 2909 Glascock Street supplied on October 31, 2002 to the Board “on behalf of” Signature Properties. (page 1) Further, in Section 1.1 Purpose (page 1) of that document, the last sentence states:

“Signature Properties intends to act as the responsible party for the remediation of the Site.”
(Emphasis added)

In addition, SOC incorporates and references its’ comments in sections 2 and A. of its’ *COMMENTS OF SHELL OIL COMPANY TO ORDER R2-2004-0096* (2nd Comments) provided May 4 as they regard named discharger California Men’s Crew, a California non-profit corporation.

Finally, SOC incorporates and references its’ comments in section 3 of its’ 1st Comments regarding other subsequent site owners and dischargers not being named Potentially Responsible Parties at the site.

6. Remedial Investigations:

SOC would comment that the third paragraph relating to releases from the fuel distribution terminal is not entirely accurate. Releases from an oil separator were reported to be the source of any 1942 reported release. As it regards the cited recovery system, SOC would maintain that in 1982, an oily sheen was identified in the storm drain outfall and Simmons Oil Company, the owner of the site at that time, was determined to be the source of the sheen.

Further, SOC would comment that the following data gaps are to be noted in the investigations/operations previously conducted at the Site.

- The 2002 Corrective Action Plan specifies a fuel pipeline rupture that triggered investigation at the Site when Simmons operated the facility. In general, the Corrective Action Plan does not provide sufficient details about the Simmons Terminal Corporation operations and maintenance of systems at the Project Site.
- The section specifies “investigations did not include investigation of soils surrounding the two product pipelines underneath Glascock Street”. This statement could not be verified because the Corrective Action Plan mentions a fuel pipeline rupture that occurred at the Terminal. However, it is unclear if the “fuel pipeline” referenced is any of those product pipelines that underlie Glascock Street.

Finally, SOC comments that due to lack of data, the remedial investigations summarized in the Order for 2901 Glascock Street property could not be verified.

7. Adjacent Sites:

As stated in section 2. a of its 1st Comments, SOC denies any specific knowledge of historical releases surrounding the “two product pipelines” that underlie Glascock Street, and therefore would comment that any reference to the site being “affected” by residual contamination from those pipelines, or that “subsurface contamination” may be present due to releases from the pipelines is unfounded.

The 2002 Corrective Action Plan specifies a fuel pipeline rupture that occurred at the Terminal and that the sheen observed in 1982 at the storm drain outlet appeared to coincide with the pipeline rupture. The pipeline referenced may or may not be the same product pipelines that underlie Glascock Street. Additionally, based on the Environmental Impact Report (EIR) prepared by Shell in 1978, it appears that these pipelines may have been part of the Shell Bay Area Products Pipeline which remained inactive from 1970 and until at least 1978 (and possibly longer). Per the EIR, alternative routes including Southern Pacific Transportation’s Common Carrier Pipeline were used to distribute product to the Terminal.

8. Interim Remedial Measures:

SOC incorporates and references its' comments regarding the historical 1942 release at the former terminal, and operation of the oil recovery system, as stated in section 6 previously.

9. Environmental Risk Assessment:

a. Screening Level Risk Assessment:

The screening level risk assessment, as presented in the 2002 Corrective Action Plan, was sufficient in identifying primary chemicals of concern for soil and groundwater and primary and secondary source media. The use of the 2003 Environmental Screening Levels (ESLs) to identify potential threats to human health and the environment is outdated and since the site has undergone active remediation since the Corrective Action Plan, the site data for soil, groundwater, and soil gas should also be considered outdated.

The Board's November 2007 (updated May 2008) *Screening for Environmental Concerns at Sites with Contaminated Soil and Groundwater, Environmental Screening Levels (ESLs)* is the most current. However, it should be noted that the ESLs have not been recently updated and therefore the screening levels may not always represent the most current science. Additional sources to consider are USEPA Regional Screening Levels (RSLs).

As a result of the above, and consistent with its comments in Section 2.b. of its 1st Comments, SOC proposes a new conceptual site model (CSM) be prepared to present the current conditions at the site.

Further, consistent with the Board's staff initial assessment and based on the reasons provided for herein, and as stated later in these comments, the appropriate soil and groundwater screening levels should be for residential land use where groundwater is not a potential source of drinking water. It should be noted that the ESLs were not intended to be clean-up levels, which should be developed based on site specific characteristics.

b. & c. Post Remediation Soil and Groundwater Assessment:

SOC incorporates and references its comments in section 9a herein, thereby commenting here that the screening tables need to be updated in consideration of updated data, screening levels and the potential for a proposed Conceptual Site Model.

d. Site Specific Assessment

The following statement appears within the second full paragraph of the section, on page 8:

"Because the contaminants of concern at this site are considered less toxic to human receptors than to ecological receptors and on the condition that building design elements preclude soil vapor emissions to indoor air, residential occupancy is permitted prior to the attainment of cleanup levels for the protection of ecological receptors." (Emphasis Added)

SOC would incorporate and reference its' comments in Section 2.a. of its' 1st Comments having to do with Signature at the Estuary LLC's acknowledged failure to provide these safeguards.

Further, although the 2003 Corrective Action Plan identified a 50 ft. buffer zone from the Oakland Estuary, for the assessment of surface water impacts, a 100 ft. buffer "BCDC Jurisdiction Line" under the McAteer-Petris Act should be considered:

"2. A shoreline band consisting of all territory located between the shoreline of San Francisco Bay as defined in 1. of this section and a line 100 feet landward of and parallel with that line, but excluding any portions of such territory which are included in 1., 3., and 4. of this section; provided that the Commission may, by resolution, exclude from its area of jurisdiction any area within the shoreline band that it finds and declares is of no regional importance to the Bay." (*Part 1 Summary – Area of Jurisdiction*).

Ecological receptors would be assessed based on available screening levels in the 2007 ESLs, or other applicable scientific source, and may be modified as necessary for site specific conditions.

10. Feasibility Study:

SOC would incorporate and reference its' comments in section 3 above as they regard Signature Properties and their role in the *Corrective Action Plan* of October 31, 2002.

Further, the 2002 Corrective Action Plan was completed almost ten (10) years ago. As commented in section 9a herein, SOC recommends that a new CSM be completed for the subject properties that will address primary and secondary sources, pathways and receptors and will identify any data gaps that could be addressed by additional investigations and analyses.

11. Remedial Action Plan:

Paragraph 5 within this section states, as an element of the Corrective Action Plan:

"5. Building design criteria to include engineering controls such as organic/water vapor barriers or sub-floor ventilation systems to minimize potential adverse effects on indoor air."

SOC would incorporate and reference its' comments in Section 2.a. of its' 1st Comments having to do with Signature at the Estuary LLC's acknowledged failure to provide these safeguards.

Further, SOC would incorporate and reference its comments contained in section 9.a., as it regards the potential use of a CSM herein.

12. Basis for Clean-up Standards

a. General:

SOC would acknowledge that since issuance of this Order, the Board has noted under Regional Water Board Resolution No. 89-39, "Sources of Drinking Water" which is also restated in the Basin Plan (2010) that potential sources of drinking water are to include all groundwater in the region, with limited exceptions for areas of high total dissolved solids, low yield, or naturally-high contaminant levels. However, for the following reasons, the groundwater should not be considered a drinking water source:

- Shallow groundwater is tidally influenced by the Estuary; therefore, it is unlikely to be considered potable. If the groundwater is pumped at a rate of 200 gallons per day or more, it would likely cause salt water intrusion from the Estuary. Such intrusion would elevate total dissolved solids above the Basin Plan potable water threshold of 3,000 milligrams per liter (mg/L) or 5,000 μ S/cm, conductivity.
- There over 20 cleanup sites listed on GeoTracker within 2,500 feet of the site. Many of these have received regulatory closure with contamination levels above potable water standards and are under deed restrictions preventing the use of groundwater for potable uses. Based on the hydrogeology of the area, sustained groundwater extraction from the site would likely

encourage intrusion of surrounding contamination rendering the groundwater unfit for potable use.

- Municipal potable water source provided by the City of Oakland is currently connected to the subject property and all of the surrounding properties. This municipal water source, which consists of imported water, will be used for the foreseeable future.
- The East Bay Plain Groundwater Basin Beneficial Use Evaluation Report (RWQCB, 1999) cites that extraction of groundwater from the former municipal wells from less than 100 feet in depth resulted in saltwater and sewerage intrusion and the abandonment of wells, hence it became necessary to import water from the Sierras. A regional municipal well field that was in use from the late 1800s until approximately 1930 was taken out of operation due to salt water intrusion.

SOC would therefore comment that any subsequent Order should be updated to reference the current 2010 San Francisco Bay Basin (Region 2) Water Quality Control Plan (Basin Plan), but should also take into consideration the above information vis a vis beneficial uses of groundwater for the site.

b. Beneficial Uses:

SOC would incorporate and reference its' comments in section 12a. above as they regard Beneficial Uses of the site.

c and d: Basis for Groundwater and Soil Clean Up Standard:

SOC would reiterate its' comments in section 9 herein having to do with the generation of a CSM, and its' comments in section 2 of its' 1st Comments regarding a new Corrective Action Plan or "CAP" (to include risk assessment) for the proposition that it is premature to institute groundwater or soil cleanup standards at this time, with that issue to be revisited after generation of any CSM and CAP.

13. Future Changes to Cleanup Standards

SOC would comment that due to its' comments in section 9 having to do with the generation of a CSM, and its' comments in section 2 of its' 1st Comments regarding a new CAP (to include risk assessment) that it is premature to discuss cleanup levels at this time, much less the standards for changes to such standards.

C. Tasks

Obviously, at this juncture in time, SOC would comment that compliance dates listed in sections 1, 3 and 4 have all passed for purposes of being implemented at this time. SOC would also comment that Tasks could be better defined after the production and issuance of a CSM and CAP as proposed.

B. Remedial Action Plan and Cleanup Standards

SOC would incorporate and reference its comments in section 9 as it regards the use of a CSM here, as well as its' comments regarding a new CAP (with risk assessment) as provided in section 2 of its' 1st comments, for the proposition that implementation of these standards (or any others) in this, or any subsequent Amended Order, is premature at this time.

D. Provisions

11. Secondarily-Responsible Discharger

SOC would incorporate and reference its comments in comments in sections 2 and A. of its' 2nd Comments provided May 4 as they regard named discharger California Men's Crew, a California non-profit corporation.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER R2-2004-0096

AMENDMENT OF SITE CLEANUP REQUIREMENTS (ORDER NO. R2-2004-0046) FOR:

SIGNATURE AT THE ESTUARY, LLC

for the properties located at

2901 & 2999 GLASCOCK STREET
303 & 315 DERBY AVENUE
OAKLAND
ALAMEDA COUNTY

COMMENTS OF SHELL OIL COMPANY TO ORDER R2-2004-0096

General:

Reservation of Rights: Shell Oil Company (SOC) provides the following comments with full reservation of rights for itself, as well as its' subsidiary, affiliated and associated entities. Nothing herein should be construed as an admission of any fact or law, and SOC specifically reserves its rights to Petition for Review any Order ultimately issued by the California Regional Water Quality Control Board (Board).

Order Style:

SOC has records which would indicate prior operations for a location at 303 and 315 Derby Avenue in Oakland. SOC has no knowledge of prior operations or involvement at either of the locations on Glascock Street referenced above in Oakland. SOC is in the process of confirming previous title ownership of area properties, and if SOC is included in any future orders here, its' responsibilities should be limited to the properties encompassed by that legal ownership .

1. Water Board Orders:

SOC incorporates and references here its comments regarding prior Order No. R2-2004-0046 from its submission COMMENTS OF SHELL OIL COMPANY TO ORDER R2-2004-0046 submitted on May 4, 2011.

2. Reason for Amendment:

SOC was not a party to the original Order No. R2-2004-0096, or the discussions leading up to this **Amendment of Site Cleanup requirements**. SOC has no personal knowledge of prior Respondent Friends of California Men's Crew, a California non-profit corporation's activities at the site and/or its' alleged satisfaction of any Tasks (1 or 2) meriting its removal as a named discharger. Therefore, SOC can neither admit to, or refute this aspect of the Amendment.

A.

SOC incorporates by reference here its' comment as outlined in #2 above as it regards the removal of Friends of California Men's Crew, a California non-profit corporation, from Order R2-2004-0096.

3. Named Discharger

SOC incorporates and references here its comments regarding discharger Signature at the Estuary LLC as provided in sections 2 and 3 of its' COMMENTS OF SHELL OIL COMPANY TO TENTATIVE ORDER submitted March 17, 2011.



May 9, 2011

Mr. Cleet Carlton
California Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

RE: Tentative Order – Amendment of Site Cleanup Requirements (Order No. R2-2004-0046) for the properties located at 2901 to 2999 Glascock Street including Bowsman Court, Channel Way and Regatta Drive, Oakland, Alameda County

Dear Mr Carlton:

We are providing the following information to correct the erroneous assertions of the commenters that Signature Properties, Inc. and Signature Homes, Inc. are legally responsible for the obligations of Signature at the Estuary, LLC.

Signature Properties, Inc. is a duly formed and validly existing California corporation incorporated on December 20, 1985. It was primarily a management company that managed assets held by other entities. It was a very active corporation for some 25 years. Unfortunately, with the downturn in residential real estate Signature Properties became insolvent and ceased doing business effective August 1, 2010. Among the projects it managed was the Estuary project. The owner of the Estuary project was Signature at the Estuary, LLC, a validly formed separate legal entity. This is a public record you can check and verify.

Signature Homes, Inc. is a duly formed and validly existing California corporation incorporated on May 8, 1987. Once again this is a public record you can check and verify. It has separate ownership distinct from Signature Properties, Inc. or Signature at the Estuary, LLC. It has a different Board of Directors and set of officers than does Signature Properties, Inc. or Signature at the Estuary, LLC. Signature Homes, Inc. has never had anything whatsoever to do with the ownership or management of the Estuary project. It is separately capitalized and has its own set of books and records.

It is true that Signature Properties, Inc. and Signature Homes, Inc. have the same primary place of business. However, this is not uncommon and in fact, there are numerous other businesses with the same principal place of business. The fact that two companies have the same principal place of business does not make one company liable for the actions of the other. The same is true for the agent for service of process. In this case, Kathy Kimura Barnes is the agent for

service of process for numerous entities. Again, having the same agent for service of process does not make one company liable for the actions of another.

The facts of this case as you should know from your years of involvement are that the property was owned by Signature at the Estuary, LLC and managed by Signature Properties, Inc. Neither entity was responsible for the contamination at the site. In fact, both entities worked with the Regional Board in good faith to clean up the contamination caused by others. Unfortunately, Signature at the Estuary, LLC was forced to spend several Hundreds of Thousands of Dollars on studies and other issues instead of installing the corrective measure that would have mitigated the issues. As a result of these demands and market issues, both Signature at the Estuary, LLC and Signature Properties, Inc. became insolvent.

If you need further information regarding the entities, we will do our best to provide it so long as the requests are reasonable and do not involve an invasion of the privacy rights of the entities.

In conclusion, California law is very clear in respecting the separation of legal entities. Signature at the Estuary, LLC, Signature Properties, Inc. and Signature Homes, Inc. are and always were separate and independent entities and neither Signature Properties, Inc. nor Signature Homes, Inc. ever succeeded to or otherwise assumed the obligations of Signature at the Estuary, LLC. As such, there is no legal basis to name either entity as a responsible party on the proposed order.

If you have any questions, please put them in writing to the undersigned.

Sincerely,

James C. Ghielmetti
President



VIA OVERNIGHT COURIER

May 25, 2011

Cleet Carlton, P.G.
Engineering Geologist
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, California 94612

Re: Tentative Order – Amendment of Site Cleanup Requirements (Order No. R2-2004-0046) for the properties located at 2901 to 2999 Glascock Street including Bowsman Court, Channel Way and Regatta Drive, Oakland, Alameda County

Dear Mr. Carlton:

Per your request I am writing this letter to provide you with a brief history of Signature Properties, Inc. and its operating practices as well as an explanation of the impacts of recent events that have led to its insolvency and the termination of its business effective as of July 31, 2010.

History and Structure of Signature Properties, Inc.

1. **Formation.** Signature Properties, Inc. (“Signature”) was formed as a California corporation on December 20, 1985.
2. **Ownership.** Since January 1, 2002, the outstanding shares of Signature’s stock have been owned 55% by the James C. and Laurie L. Ghielmetti Revocable Trust, dated August 5, 1997 (the “JLG Trust”) and 45% by Michael and Rebecca Ghielmetti.
3. **Management.** Signature has been managed by a Board of Directors and corporate officers since its formation. The three member Board has typically been comprised of some combination of James Ghielmetti, Laurie Ghielmetti, Michael Ghielmetti and/or various corporate officers. The office of President was held by James Ghielmetti from Signature’s formation through April 18, 2003. From that time until July 31, 2010, James Ghielmetti served as the Chief Executive Officer and Michael Ghielmetti served as the President. James Ghielmetti currently serves as the President and John Ford currently serves as the Secretary.
4. **Business Purpose.** Signature’s primary business purpose was to act as a management company for various real estate development joint ventures. The numerous joint venture entities

that retained Signature as their development manager varied in form (corporations, limited partnerships and limited liability companies) and were owned by members of the Ghielmetti family and various third parties. These joint venture entities were typically formed for the purpose of developing residential projects, but over its history, Signature also managed the development of various commercial, industrial and mixed-use projects.

5. Management Services; Compensation. In its capacity as a management company, Signature would assist with the acquisition of project real property, obtain the necessary land use entitlements and permits, act as the general contractor for the construction of project improvements, act as the broker for the sale of project property, provide warranty services for property sold, provide accounting/bookkeeping services and provide credit enhancements for project related loans and bonds obtained from the joint venture entities' various creditors and sureties.

In order to provide the required services, Signature held a California general contractor's license and a California broker's license (with James Ghielmetti serving as the contractor-officer and the broker-officer) and hired a staff of employees to carry out the day-to-day business of each project.

In return for providing these services, Signature was paid a project management fee and reimbursed for field personnel and third party costs charged to or incurred on behalf of the applicable joint venture entity.

6. Project Structure. For the time period from Signature's formation through the later 1990's, the typical project structure involved the formation of a limited partnership, with Signature serving as the general partner holding a de minimus (2% -5%) interest. In this capacity, Signature would hold legal title to any project property to facilitate management and transactions and Signature would provide the management services to the partnership in return for the management fee. Beginning in the late 1990's, the typical structure changed to involve the formation of a limited liability company that retained Signature as its (non-member) manager to perform the management services in return for the management fee.

7. Project Financing. The joint venture entities managed by Signature typically worked with either Wells Fargo Bank, N.A. or The Housing Capital Company to obtain financing for their various projects. For each project, this financing typically involved (a) an acquisition and development loan to finance the acquisition of the project property and the construction of the necessary infrastructure improvements (grading, utilities, streets, etc.) and (b) one or more construction loans to finance the construction of vertical improvements. The equity necessary to obtain these loans was provided by the applicable joint venture entity. These loans were secured by the individual project properties. Initially due to its role as the general partner, Signature (along with other entity principals and affiliates) was required to provide Repayment Guaranties, Hazardous Material Indemnities and Completion Guaranties in conjunction with the project financing. This practice was carried forward to the limited liability companies. As set forth above, Signature was compensated for providing the credit enhancements (among the other services) by being paid the management fee.

8. Construction Management Account. As part of the project accounting/bookkeeping services provided by Signature, and primarily to address short term cash flow issues for its various clients, Signature maintained a central checking account (the "CMA" or construction management account) into which it deposited various project proceeds and paid various project costs. A ledger was maintained on a daily basis to track the participating entities' balances. On an as needed basis, Signature borrowed money from entities with positive balances and loaned money to entities that needed funds on a short term basis. Interest was charged to and by Signature under this CMA arrangement.

With the revenue provided by Signature's management agreements, Signature remained a profitable and successful company for over two decades. Unfortunately, this all changed due to the recent depression's impact on the real estate market.

Effect of Market Change

It is common knowledge that the recent depression has had a particularly adverse effect on the real estate market. Exacerbating this overall impact were (1) the fact that the Bay Area real estate market was deemed a very strong market prior to the depression and (2) the fact that the change occurred very rapidly. In common terms, the Bay Area real estate bubble burst. This meant that Signature was working with over 20 joint venture entity clients that were active in the real estate market when the economy changed. As a result, at the time the market changed, Signature was at or near its historic peak with respect to individuals employed (and corresponding overhead costs) and had co-guaranteed over \$400,000,000 in project debt.

Beginning in 2008, Signature participated with its joint venture clients in various modifications to or restructuring of the loans held by Wells Fargo Bank, N.A. and The Housing Capital Company in an effort to obtain the additional time and operating capital necessary to survive the depression. Three major modifications were entered into with Wells Fargo, the first closing in November of 2008, the second closing in July of 2010 and the latest closing in November of 2010. Two modifications were entered into with The Housing Capital Company, the first closing in June of 2009 and a recent extension in February of 2011. In return for agreeing to the modifications, the lenders required the borrowers and guarantors to pledge substantially all of the previously unsecured assets as additional security for the various loans. This security included real property, personal property, cash accounts and interests in various other entities.

Unfortunately, these modifications were insufficient to keep many of the projects moving forward and many of them have been shut down until such time as the applicable joint venture entities deem it prudent to move forward. As such, Signature went from receiving management fee revenue from the sale of as many as 711 homes in 2004 to only 103 homes in 2010. During this time, Signature took the appropriate measures to cut costs, including work force reductions taking it from approximately 178 employees in 2007 to 67 employees when it closed its doors in 2010. Also during this time, Signature's shareholders contributed approximately \$11,500,000.00 in capital to fund overhead costs and Signature borrowed millions of dollars in operating funds from Wells Fargo Bank, N.A.

Closure of Signature Properties, Inc.

After working together for over three years in an effort to weather the effects of the depression, James Ghielmetti and Michael Ghielmetti, as Signature's shareholders and the principal managers, elected to pursue separate paths. James and Laurie Ghielmetti currently own and operate Signature Homes, Inc., a California corporation ("SHI"), which was initially formed in 1987 to develop custom homes, but now focuses on managing suburban developments. Michael Ghielmetti owns and operates the Signature Development Group, Inc., a California corporation ("SDG"), which focuses on urban development. Neither owns an interest in the other company or is involved in the management of the other company's day-to-day operations.

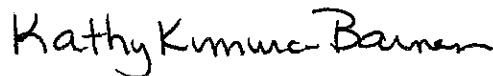
Effective as of July 31, 2010, Signature ceased its business operations and terminated all employees. Concurrently, the various joint venture entities terminated their management agreements with Signature.

At that time, Signature's liabilities (approximately \$63,800,000) far exceeded the value of its assets (excluding receivables from insolvent entities) (approximately \$12,100,000). With the consent of its lenders, Signature entered into two transactions to sell many of its remaining assets. In one transaction, Signature sold certain of its business personal property and vehicles and certain receivables and project interests to SHI. In the second transaction, Signature sold certain other business property, vehicles and project interests to SDG. Both of these transactions were arms' length transactions with full value received for the property transferred. I have enclosed the applicable purchase agreements (along with applicable amendments and closing binders) for the two transactions for your review (See Exhibits 1 and 2). At the time of sale, many of the assets transferred were (and remain) subject to the security interest previously acquired by Wells Fargo Bank, N.A. as partial consideration for having entered into the various loan modifications.

As a result of the foregoing, Signature is currently a dormant California corporation with de minimus assets, essentially all of which are subject to a current, perfected security interest held by Wells Fargo Bank, N.A.

To assist in your review I am providing to you all of the documents outlined on the List of Exhibits attached to this letter. If you need additional information please let us know what it is and we will address your requests.

Sincerely,



Kathy Kimura Barnes
Paralegal

cc: Mr. James C. Ghielmetti

LIST OF EXHIBITS

- Exhibit 1 Purchase and Sale Agreement regarding Certain Business Assets by and between Signature Properties, Inc., and Signature Homes, Inc.
- Exhibit 2 Purchase and Sale Agreement regarding Certain Business Assets by and between Signature Properties, Inc. and Signature Development Group, Inc.

MISCELLANEOUS DOCUMENTS

- Deed of Trust dated November 3, 2008 in favor of Wells Fargo Bank
- Deed of Trust dated November 6, 2008 in favor of Housing Capital Company
- Security Interests provided to Wells Fargo Bank
- Deed of Trust dated November 3, 2008
- Third Party Pledge Agreement dated November 3, 2008
- Pledge Agreement dated December 7, 2010
- Assignment and Assumption Agreement by and between Signature Properties, Inc., and Ruby Hill Development Joint Venture
- Signature Properties Financial Statement for the period ending 2010
- Wells Fargo Loan Modification documents
- Secured Revolving Loan Agreement dated November 3, 2008
 - Loan Agreement dated November 3, 2008
 - Promissory Note Secured by Deed of Trust dated November 3, 2008
 - Omnibus Modification Agreement dated July 7, 2010
 - Memorandum of Modification Agreement Amending Deed of Trust dated July 7, 2010 (Ghielmetti Vineyards)
 - Memorandum of Modification Agreement Amending Deed of Trust dated July 7, 2010 (Olympia Investments)
 - Memorandum of Modification Agreement Amending Deed of Trust dated July 7, 2010 (Signature Homes)
 - Memorandum of Modification Agreement Amending Deed of Trust dated July 7, 2010 (Signature Properties)
 - Supplement to Omnibus Modification Agreement dated December 7, 2010

APPENDIX C
RESPONSE TO COMMENTS

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

PROSECUTION STAFF'S RESPONSE TO WRITTEN COMMENTS FOR ITEM 5D

June 8, 2011, Board Meeting

Amendment of Site Cleanup Requirements (Order No. R2-2004-0046) – for the Properties located at 2901 to 2999 Glascock Street and including Bowsman Court, Channel Way and Regatta Drive (Signature at the Estuary development), Oakland, Alameda County

On February 2, 2011, Regional Water Board staff distributed the Tentative Amendment of Site Cleanup Requirements for the Signature at the Estuary development site for a public comment period. On April 8, 2011, we sent followup letters to Shell Oil Company and Signature Homes, Inc., that invited additional comments in light of the initial round of comments. We received the following comments:

- Shell Oil Company (Shell) on March 17, 2011
- Chapman & Intrieri, L.L.P., on behalf of the Estuary Homeowners Association (HOA), on March 18, 2011
- Shell, on May 4, 2011 (comments on previous Site Orders)
- Signature Homes, Inc., on May 9, 2011 (responding to above comments)

Below we have provided a comment summary and response to each comment.

Shell Comments and Responses

(Comments 1-6 are on the current Tentative Order; comments 7-10 are on previous Site Orders)

1) Comment: The named dischargers are not an exhaustive list of former potentially responsible parties that were dischargers at the site. Site records would indicate subsequent landowners had releases at the subject site.

Response: We disagree. We are not aware of any information that provides a compelling argument to name specific additional parties. As stated in Finding 3 of Order No. R2-2004-0046 (Named Dischargers), if additional information is submitted indicating that other parties caused or permitted any waste to be discharged on the site where it entered or could have entered waters of the state, the Regional Water Board will consider adding those parties' names to the order. No change has been made to the Tentative Order in response to this comment.

2) Comment: Signature at the Estuary LLC ("LLC") is affiliated with Signature Homes, Inc. ("SH"), and Signature Properties, Inc. ("SP"), and the Board should investigate the Signature related entities and make any and all applicable related entities subject to the Tentative Order. A newspaper account shows that SP built the development at issue here, and SP shares the same address with SH and Signature at the Estuary LLC and the same service of process agent as Signature at the Estuary LLC.

Response: We have sought further information as requested. Our findings and conclusions are summarized in response to Comment 11 below.

To the extent Shell is suggesting that the LLC's corporate form should be disregarded to reach SP (a member of the LLC) or SH, there are insufficient facts to support doing so. It is not unusual for corporations to share the same address and service of process agent. These facts alone are inadequate to overcome the general rule that shareholders are not liable for the debts of the corporation.

3) Comment: The LLC did not install the vapor barrier under the town homes as called for in the approved cleanup plan and has not subsequently provided an alternative system to prevent vapor intrusion. Therefore, the LLC and related entities should be held responsible for addressing this deficiency.

Response: We disagree. Site cleanup orders issued pursuant to Water Code section 13304 hold dischargers jointly responsible. The vapor intrusion concern exists because of prior releases of petroleum products at the site, and those responsible for the releases bear responsibility too. As a practical matter, it seems unlikely that the LLC would be able to fund further work to address the vapor intrusion issue, and our responses to other comments explain why the related entities (SP and SH) should not be named as dischargers. Therefore, it is appropriate that all named parties are jointly responsible for addressing the vapor intrusion concern.

4) Comment: Groundwater cleanup standards should not be changed. Drinking water standards should not apply to the site based on current covenant restrictions, and proximity to the Estuary would result in sea water intrusion. Gross contamination cleanup goals will likely drop out as a driver as part of a risk assessment. And use of environmental screening levels as default cleanup standards goes against the intention of the ESLs (screening levels vs. site-specific).

Response: We disagree. The San Francisco Bay Basin Plan clearly states the exemptions for groundwater beneficial use as a drinking water resource. Total dissolved solids in excess of 3,000 mg/L, the relevant threshold for exemption, had been assumed at this and other active site cleanup program sites immediately adjacent to the Estuary. However, Regional Water Board staff evaluation of actual site data has shown that groundwater wells that have been monitored for years have TDS concentrations well below this threshold. Furthermore, groundwater extraction at the site as part of the remedial action, and in extraction wells at a nearby site, similarly adjacent to the Estuary to the southeast, did not result in the sea water intrusion assumed in the comment, even though the extraction rate (averaged over a period exceeding two years) far exceeded the relatively low threshold of 200 gallons per day stated in the Basin Plan.

With respect to gross contamination, the comment that this cleanup goal will likely drop out as a driver as part of a risk assessment, is confirmation that a risk assessment alone is insufficient to address all viable concerns at the site. Furthermore, site residents, as well as Regional Water Board staff, have experienced offensive petroleum odors at the site. These odors correspond to the presence of a petroleum seep also observed along the shoreline at the site, which appears to be related to site contamination.

Regarding the use of ESLs as default cleanup goals, the existing Order used ESLs from July 2003. In this Tentative Order, the groundwater cleanup goals are based on the lowest of applicable standards, based on vapor intrusion, drinking water, nuisance conditions, and ecological protection. In this case, the lowest of applicable standards for benzene is the MCL and for other contaminants of concern is the gross contamination ceiling level, both of which are justified by the drinking water beneficial use and known gross contamination issues at the site. The corresponding concentrations are the same as the applicable ESLs. No change has been made to the Tentative Order in response to this comment.

5) Comment: Groundwater cleanup standards for MtBE should not be imposed on Shell, since it sold the facility to Simmons Oil Company in 1980, 9 to 10 years prior to its known introduction of MtBE into its California operations.

Response: We agree in part. The presence of MtBE in some monitoring wells could imply a discharge in addition to the massive discharge related to site use that pre-dated the use of MtBE in California. However, Regional Water Board records associated with Waste Discharge Requirements (WDR) Order 74-9 (adopted on January 22, 1974) note that other non-petroleum products were stored at this facility, including various solvents (but they were to be phased out prior to adoption of the WDR Order). MtBE was a byproduct of refining and had uses other than as a gasoline additive prior to the 1970s and 1980s. Although available records do not specify what materials were stored at the site, the storage and distribution of MtBE cannot be ruled out. In addition, we are not aware of any information that provides a compelling argument to name specific additional parties in relationship to the presence of MtBE at the site (also see response to Comment 1). Nevertheless, cleanup of residual contamination that is in large part related to Shell's activities at the site will also address MtBE. No change has been made to the Tentative Order in response to this comment.

6) Comment: ESLs should not be used for soil gas cleanup goals. Risk-based soil gas cleanup goals should be developed.

Response: We agree. Regional Water Board staff developed cleanup goals that are protective and applicable to site-specific circumstances. For soil gas, they are protective of vapor intrusion to indoor air, and based on a target cancer risk = $1E^{-06}$, Target Hazard Quotient = 0.2, and soil gas to indoor air attenuation factor = 0.001. Because the conceptual model for the site resembles that for the ESLs, the cleanup goals are the same as ESLs. In addition, since a vapor barrier was not installed as intended, and Regional Water Board staff have observed cracks in the foundation (in spite of the foundation being a post-tension, continuous pour slab), other assumptions that may be incorporated into site-specific modeling for establishing cleanup goals may not be sufficiently protective. Shell may elect to re-assess site-specific data and present the findings, along with proposed soil gas cleanup goals based on the site-specific data, to Regional Water Board staff. However, any proposed future change to site cleanup goals must be demonstrated to be protective and applicable to site-specific circumstances to be acceptable to the Executive Officer. In this instance, the discharger has not offered a site-specific proposal; therefore we support the cleanup goals in the Tentative Order. No change has been made to the Tentative Order in response to this comment.

7) Comment: The 2004 Order is not entirely accurate in that the source of an oily sheen identified at the storm drain outfall in 1982 was the current owner at that time, Simmons Oil Company.

Response: We disagree in part. A Regional Water Board Compliance Monitoring Report, dated July 30, 1981, notes that oily groundwater was being pumped at that time, and a small seep of petroleum-smelling liquid was observed under the dock at low tide. The Compliance Monitoring Report, which was pursuant to WDR Order 78-82, predates the 1982 Woodward-Clyde report, which investigated the subsurface product spill at the site. This suggests that, to a significant degree, site contamination was a pre-existing condition. No change has been made to the Tentative Order in response to this comment.

8) Comment: The use of the 2003 ESLs in the 2004 Order is outdated and since the Site has undergone active remediation since the Corrective Action Plan, site data should also be considered outdated. Furthermore, the November 2007 (updated in May 2008) ESLs may not represent the most current science.

Response: We disagree in part. There are ample site data for groundwater and soil gas that post-date the Corrective Action Plan, as well as active remediation at the site. Cleanup goals are compared to these data and the groundwater monitoring program. Also see responses to comments 4 and 6. As stated above, Shell may elect to re-assess site-specific data and present the findings, along with proposed cleanup goals based on the site-specific data, to Regional Water Board staff. Any proposed future change to site cleanup goals must be demonstrated to be protective and applicable to site-specific circumstances. No change has been made to the Tentative Order in response to this comment.

9) Comment: Shell proposes a new conceptual site model be prepared to present the current conditions at the Site.

Response: We do not disagree with this comment but conclude that a new conceptual site model is not necessary to proceed with the SCR amendment (and can be initiated by the dischargers afterward if they wish). To adequately present the current conditions, the groundwater monitoring required under the existing Order would need to be reinstated and additional soil vapor samples, including sub-slab soil vapor samples may be needed. No change has been made to the Tentative Order in response to this comment.

10) Comment: A 100-foot buffer under the McAteer-Petris Act should be considered.

Response: We disagree. The “100-foot shoreline band” under the McAteer-Petris Act is a boundary used to protect the Bay shoreline for water-oriented priority uses and prevent indiscriminant filling of the Bay. It is not pertinent to groundwater cleanup goals or protection. No change has been made to the Tentative Order in response to this comment.

HOA March 18, 2011, Comment and Response

II) Comment: The Order should be further amended to name SP as a responsible party. SP was the general contractor for the development of the site and is the managing member of Signature at the Estuary, LLC. The LLC did not exist until December 18, 2002, and it appears it was SP that was working with the Board on the cleanup as early as 2001. The original corrective action plan for the site was prepared on behalf of SP and states that SP intends to act as the responsible party for remediation of the property. SP should be named as a responsible party under Water Code section 13304 because it took on the responsibility to clean up the property, but failed to do so, and maintained the nuisance. Liability for nuisance extends to those who maintain a nuisance, which “does not hinge on whether a defendant owns, possesses or controls the property, nor on whether he is in a position to abate the nuisance: the critical question is whether the defendant created or assisted in the creation of nuisance.” *City of Modesto Redevelopment Agency v. Superior Court*, (2004) 119 Cal.App.4th 23, 38.

Response: Section 13304 of the California Water Code authorizes the Regional Water Board to issue cleanup and abatement orders to any person who has:

“caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance . . . “

The State Water Board has issued many precedential decisions interpreting this section. In general, the Regional Water Board should name all persons who have “caused or permitted” the discharge. Such persons may include those who are in current possession, ownership, or control of the property including current landowners, lessees, and sublessees. Prior landowners, lessees, and sublessees may be named if they owned or were in possession of the property at the time of the discharge, had knowledge of activities that resulted in the discharge, and the legal ability to prevent the discharge. See, e.g., State Water Board WQ Orders 85-7, 91-7, and 92-13. “Discharge” has been broadly interpreted to include both active and continuing discharges. State Water Board Order WQ. 86-2. Importantly, there must be substantial evidence to support a finding of responsibility.

Here, it is alleged that SP worked with the Regional Water Board as early as 2001 on potential cleanup of the site in question. At such time, SP had no possessory interest in the property. In essence, SP voluntarily came to the Regional Water Board for cleanup of the property in anticipation of development. This fact alone cannot be the basis of liability under the test identified above. A party cannot be held as a responsible party for approaching the Regional Water Board regarding cleanup in the absence of any possessory interest in the property. With respect to the statement that SP will act as the responsible party, Regional Water Board staff notes that statement was made by a consultant, not SP. The Regional Water Board prosecution staff believe that statement to be in error because the Regional Water Board ultimately worked with the LLC on the cleanup.

The Regional Water Board named the LLC as a responsible party in its prior order because it is the entity that ultimately purchased the property in 2003, undertook cleanup activities and developed the property. Also, it was the LLC—not SP—that entered into a settlement agreement with Shell to recoup \$1.25 million in costs the LLC incurred relating to cleanup of the site in 2005. Nevertheless, the HOA would like SP to be named as a discharger as well because SP was the general contractor for the development and took on cleanup responsibility, but failed to do so properly. Regional Water Board prosecution staff is not aware of any State Water Board decision finding that a discharger-hired general contractor is liable for undertaking building activities on contaminated property. More to the point, Regional Water Board prosecution staff do not think that SP as the general contractor had each of the requisite possessory interest, knowledge and legal ability to prevent the continuing discharge in order to be named as a discharger. As far as the claim that SP undertook cleanup, as stated above (and borne by the record), the LLC undertook the cleanup, not SP, once the LLC acquired title.

In response to the HOA's and Shell's comments, Regional Water Board prosecution staff did seek further information on SP, and we have learned SP is a management company that manages assets held by other entities, and that it managed the site in question. It is unknown to what extent SP in that role had a possessory interest in the site and the legal ability to prevent the continuing discharge. SH has indicated in its correspondence to us dated May 24, 2010, that in its capacity as a management company, SP would assist with the:

“acquisition of real property, obtain the necessary land use entitlements and permits, act as the general contractor for the construction of the project improvements, act as the broker for the sale of project property, provide warranty services for property sold, provide accounting/bookkeeping services and provide credit enhancements for project related loans and bonds obtained from the joint ventures' various creditors and sureties.”

In return for providing these services, SP was paid a project management fee. Taken all together, Regional Water Board prosecution staff do not believe there is substantial evidence that SP, as a management company that facilitated real estate transactions, caused or permitted a discharge. Importantly, even if SP can be held liable as a discharger, SP has ceased doing business as of July 31, 2010, terminated all its employees, terminated its management agreements, and its liabilities exceeded its assets (which have since been sold off). Thus, naming SP would not yield any monies for the cleanup.

Finally, with respect to the HOA's argument that nuisance does not hinge on ownership or control based on the *City of Modesto* case, Regional Water Board prosecution staff do not disagree. The *City of Modesto* court, however, went on to say that nuisance liability is not unlimited and through that prism held that the Legislature did not intend the Porter-Cologne Water Quality Control Act to impose liability on those with no ownership or control over the property or the discharge, and whose involvement in a discharge was remote and passive. (The court's ultimate holding was that those who took affirmative steps directed toward the improper discharge of solvent waste may be liable under Section 13304, but not those who merely placed solvents in the stream of commerce without adequate warnings.)

Signature Homes, Inc., Comments and Responses

12) Comment: Signature Properties, Inc., was primarily a management company that managed the assets held by other entities. It became insolvent and ceased doing business effective August 1, 2010. The property owned by Signature at the Estuary, LLC, was managed by Signature Properties, Inc., and was not responsible for the contamination at the site.

Response: Comment noted. Regional Water Board prosecution staff confirmed with the Alameda County Assessor's Office that Signature Properties, Inc., was never an owner at the site.

13) Comment: Signature Homes, Inc., never had ownership or management of the Estuary project and is a separate and independent entity. Therefore, there is no legal basis for it to be named as a responsible party on the Order.

Response: Comment noted, and we agree that Signature Homes, Inc., cannot be named as responsible party.

APPENDIX D

LOCATION MAP

2901 to 2999 Glascock Street, and including Bowsman Court, Channel Way, and Regatta Drive, Oakland, Alameda County

