

APPENDIX B
PUBLIC COMMENTS

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March 14, 2014

Bruce H. Wolfe
Executive Officer
San Francisco Bay Regional Quality Control Board
1515 Clay Street
Suite 1400
Oakland, California
94612

Re: Tentative Order – Site Cleanup Requirements for Former Chevron Records Facility, Sierra Court, Dublin, Alameda County

Dear Mr. Wolfe:

The following are Alcatel-Lucent's non-technical comments on the above-referenced Tentative Order ("TO"). Comments on the TO from a technical perspective, prepared by Leidos on behalf of both Chevron and Alcatel-Lucent, are being submitted separately.

The term "Site" when referenced below means the Site as defined in the TO.

The TO Must Specify Industrial/Commercial Standards, Not Residential Standards

The TO contains many references to residential cleanup standards; please see Leidos comments dated March 14, 2014. The Site was zoned industrial/commercial at the time of Alcatel-Lucent's occupancy and alleged discharges. The Site is still zoned industrial/commercial.

Under these circumstances, the TO must be modified to clarify that the cleanup standards for this TO are industrial/ commercial only.

Further, there is no basis in law or equity to require Alcatel-Lucent to perform any cleanup to residential standards.

In the event the Board determines to require cleanup to residential standards under this TO, the TO must then specify that the Site owner and/or its authorized representatives and/or parties

having legal control of the Site and their successors, who would benefit financially from this requirement, be responsible for any incremental work required to expand cleanup from commercial/industrial standards to residential standards.

The TO Lacks Necessary Definition Of Final Cleanup Standards And Must Accommodate Engineering and Institutional Controls

The TO as written provides no reasonable certainty as to the final applicable cleanup standards. The TO must allow for utilization of engineering and institutional controls as a means to mitigate Site risks.

In particular, the sentence in paragraph 12 of the TO, “Conversely, if new technical information indicates that cleanup levels can be surpassed, the Regional Water Board may decide that further cleanup actions should be taken”, is not lawful or acceptable or appropriate or necessary for this TO. A regulatory order must identify specific tasks to be performed; this part of the TO simply presents complete unknowns and improperly requires Alcatel-Lucent to perform those unknowns.

The TO must specify that the Site owner and/or its authorized representatives and/or parties having legal control of the Site and their successors be responsible to incorporate any necessary engineering controls and deed restrictions and record same and adhere to same.

In particular, Alcatel-Lucent believes that sufficient documentation has already been provided to the Board to establish that the TO’s cleanup goals will not be attained in the initial foreseeable time frame set forth in Task C5; accordingly the TO should require the deed restriction referenced in Task C6 to be prepared and recorded immediately.

The TO must require installation of vapor barriers for any future development to mitigate potential vapor intrusion risks.

The TO Must Assure Access to the Site For Remediating Parties

The TO must specify that the Site owner and/or its authorized representatives and/or parties having legal control of the Site and their successors be responsible to grant reasonable access to all the remediating parties, their contractors, and appropriate agency representatives.

Alcatel-Lucent appreciates the opportunity to comment on the TO. We are happy to discuss or answer any questions you may have regarding the comments above.

Ralph L. McMurry

Cc:

Lucia Chung
Amy Gaylord, Esq.
Merle Sustersich
Charles B Greene, Esq.
John Galasso
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March 14, 2014

Via E-mail (Bwolfe@waterboards.ca.gov) and Hand Delivery

Bruce H. Wolfe
Executive Officer
San Francisco Regional Water Quality Control Board
1515 Clay St., Suite 1400
Oakland, CA 94612

Re: Comments Regarding February 14, 2014 "Tentative Order - Site
Cleanup Requirements for Former Chevron Records Facility,
6400 Sierra Court, Dublin, Alameda County"

Dear Executive Officer Wolfe:

I write on behalf of Chevron U.S.A. Inc. ("Chevron") to provide comments on the above-referenced San Francisco Regional Water Quality Control Board ("Regional Board") tentative Cleanup and Abatement Order ("Tentative CAO") for the property located at 6400 Sierra Court, Dublin, California ("Property"). As set forth in detail below, there is not substantial evidence that Chevron caused or permitted, or threatened to cause or permit, the discharge of waste at this former records facility. Issuance of a CAO to Chevron is therefore not proper under the standards of Water Code section 13304. Chevron hereby objects to, and reserves all rights to further challenge, the issuance of any final CAO regarding the Property.

Chevron further objects to the scope of the Tentative CAO on the basis that it requires inappropriate cleanup standards given the allowable use of the Property, as set forth herein and in the letter submitted separately on behalf of Chevron and Alcatel-Lucent by their joint consultant at the site, Mike Hurd of Leidos. The comments provided in Mr. Hurd's letter are incorporated herein by reference, and Chevron reserves the right to raise any technical points made by Leidos in future challenges to any final CAO issued with regard to the Property.

I. Brief Background Regarding the Former Dublin Records Warehouse Property.

As the Tentative CAO accurately points out, the Property was utilized from approximately 1970 to 1975 as a manufacturing facility by Western Electric Company. An aboveground storage tank (“AST”) labeled the “Trico tank” on facility drawings, was located on site during Western Electric’s operations. Other records referenced in the Tentative CAO substantiate that Western Electric used and stored trichloroethene (“TCE”) at the site. After Western Electric’s operations ceased, the AST and some associated piping were left on site, but all indications are that the tank was emptied, and the piping was capped. In about 1980, Chevron became the site owner. As acknowledged by the Tentative CAO, Chevron only “used the warehouse as a document- and file-storage facility.” Notably, the Tentative CAO concedes that “[t]here is no information to indicate that Chevron used the warehouse or the AST for chemical storage, use, handling, production, recycling or disposal.” (Tentative CAO, p. 2).

In 1996, Chevron hired a contractor, Ecology & Environment Inc. (“E & E”) to remove the former AST. Although the top of the tank had rusted, a small quantity of liquid was found in the bottom of the tank, indicating the tank was still liquid-tight. This fact, coupled with the fact that TCE was a valuable product used by Western Electric at its other facilities at the time, suggests that the tank was emptied by Western Electric when it vacated the Property. This conclusion is supported by E & E’s observations and the sampling it conducted when the tank was removed. E & E observed and noted that the liquid in the tank appeared to be rain water, and a sample collected from the interior of the tank was non-detect for TCE. A sample collected from the tank spigot, indicated very low residual levels of TCE measured at 20 parts per billion. There is no evidence that TCE remained in the tank after Western Electric vacated the Property. Rather, the available evidence points to the contrary conclusion.

In 2008, in connection with Chevron’s sale of the Property, TCE contamination was identified in soils at the Property. The Regional Board has since required Chevron, and eventually others, to undertake several investigations of the Property. To date Chevron has undertaken or participated in groundwater monitoring, sampling of the nearby canal, piping installation to support soil vapor extraction (“SVE”), and has conducted a SVE pilot test. This work was done in response to investigatory directives issued pursuant to the Regional Board’s authority under Water Code section 13267, not pursuant to a directive under section 13304.

II. It is Improper to Name Chevron in a CAO Because Chevron Did Not Cause or Permit a Discharge at the Warehouse.
A. The Substantial Evidence Does Not Support Issuance of a CAO to Chevron

In contrast to the more lenient standards for directing an investigation pursuant to Water Code section 13267,¹ the Water Code places a higher evidentiary burden on the Regional Board for issuance of a CAO. Specifically, the Regional Board must demonstrate by “substantial evidence” that the named party has caused or permitted waste to be discharged into the waters of the State.

Water Code section 13304 reads, in pertinent part, as follows:

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, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.

State Board precedent requires that there be “substantial evidence” that a named party “caused or permitted” the discharge of waste in order to uphold a cleanup and abatement order under Water Code section 13304. See *In re Stinnes-Western Chemical Corporation*, WQ 86-19 (Cal. St. Wat. Res. Bd.) (“We concluded that while we can independently review the Regional Board record, in order to uphold a Regional Board action, we must be able to find that the action was based on substantial evidence.”) The State Board repeatedly has confirmed this standard. For example, the State Board rejected a regional board’s attempt to issue a cleanup order under Water Code section 13304 because there was insufficient evidence of ownership of the leaking tanks in issue, saying:

There must be substantial evidence to support a finding of

¹ Although Water Code section 13267 places a lower burden on the Regional Board than section 13304, Chevron does not concede that issuance of any directives to it relating to the Dublin records warehouse were, or are, proper under section 13267.

responsibility for each party named. This means credible and reasonable evidence which indicates the named party has responsibility.

In re Exxon Company, et al., WQ 85-7, 1985 WL20026 (Cal.St.Wat.Res.Bd.) at *6; *see also, TWC Storage, LLC v. SWRCB*, 185 Cal. App. 4th 291 (2010) (applying the substantial evidence standard to analogous language in Water Code section 13350). Here, the Tentative CAO acknowledges that there is no evidence indicating that Chevron used the warehouse or the AST for chemical storage, use, handling, production or disposal of TCE. Accordingly, there is no evidence that Chevron caused a discharge of TCE.

Similarly, there is no evidence that Chevron permitted a discharge of TCE. Although the Regional Board's Tentative CAO asserts the AST and associated appurtenances "contained TCE, and apparently were not maintained to prevent a discharge" during Chevron's ownership, this assertion is not supported by any – let alone substantial – evidence. On the contrary, the evidence demonstrates that the AST was emptied before Chevron acquired it. When Chevron had the tank removed in 1996, it was still liquid-tight at the bottom. The fact that the tank was still liquid-tight at the bottom when it was removed in 1996 means that liquid was not leaking out of it prior to its removal during Chevron's ownership. If TCE had been left in the tank when Chevron acquired the site, TCE would still have been present in the tank when it was removed. Instead, the liquid in the tank was observed to be rain water, and sampling indicated it was non-detect for TCE. Although a sample taken from the spigot contained very low residual concentrations of TCE, this fact indicates nothing more than the spigot was not flushed when the tank was emptied. There is no evidence the tank held TCE during Chevron's ownership of the Property, and on the contrary, the substantial evidence demonstrates it did not.

The Regional Board's conclusion that Chevron permitted a discharge of TCE from the tank is not supported by substantial evidence and does not form the basis for a proper CAO to Chevron.

B. The Leased Portion of the Site Does Not Form a Basis for Issuance of a CAO to Chevron.

The Tentative CAO references the fact that Gettler-Ryan, a Chevron subcontractor, stored purged groundwater from Chevron retail stations on a leased portion of the Property. This finding is misguided and legally irrelevant as a basis for issuance of a CAO to Chevron. As indicated by the Tentative CAO, some of the "purged groundwater [may have been] from Chevron retail stations that were undergoing remediation." Chevron understands that Gettler-Ryan was engaged in in remediation

of service stations. Accordingly, if any contaminants were present in the purge water stored on the leased parcel by Gettler-Ryan, they likely would have been petroleum-related compounds. There is no evidence to suggest Gettler-Ryan was storing TCE-impacted purge water. Moreover, Gettler-Ryan, not Chevron, was the generator and transporter of any purge water stored on the leased property. And perhaps most importantly, there is no indication that there was any release or disposal of this purge water at the Property. Even if there were reason to believe the purge water contained TCE, and that it was released at the Property – neither supposition which is supported by any evidence cited in the Tentative CAO – Chevron is not responsible for the purge water stored at the warehouse facility by Gettler-Ryan. The presence of Gettler-Ryan purge water at the site does not form a valid basis for issuance of a CAO to Chevron.

III. Scope of Tentative CAO Is Improper.

Not only is the issuance of a CAO to Chevron improper for the reasons set forth above, the scope of the Tentative CAO is improper because it (a) requires cleanup to standards not applicable to this Property, and (b) requires Chevron to take actions it lacks the authority to undertake.

As detailed by the letter submitted by Leidos, the cleanup standards set forth in the Tentative CAO are improper insofar as they require cleanup to any standard other than industrial use. As illustrated by the enclosed Zoning Map, the Property is currently zoned for Business Park/Industrial Use. Likewise, as illustrated by the enclosed General Plan Land Use Map, the City of Dublin's General Plan does not indicate any proposed or pending change in the Property's allowable use. Requiring cleanup to allow a speculative future use which is currently impermissible is unreasonable given that there is no pending or planned change in zoning for this Property.

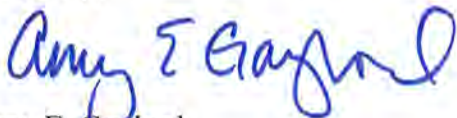
In addition, the Tentative CAO places conditions on Chevron which Chevron lacks the legal authority to undertake. For example, the Tentative CAO requirements for "Risk Management" during remediation direct Chevron to prepare a risk management plan that prohibits use of groundwater for drinking water, and prevents the use of the Property for sensitive uses such as day care centers or residences. Chevron can provide public notice of the condition of the Property, but Chevron is not the current site owner, and it lacks any regulatory or other legal authority to prohibit anyone from using the Property in the manners set forth in the Tentative CAO. Similarly, the Tentative CAO proposes that a deed restriction be imposed on the Property if the prescribed cleanup goals cannot be met. The required deed restriction would prohibit the use of groundwater beneath the site for drinking water, and disallow the use of the site for sensitive uses such as day care centers and residences. The Tentative CAO

improperly places obligations on Chevron which Chevron lacks the legal authority to satisfy.

IV. Conclusion.

The Tentative CAO to Chevron does not comply with the requirements for issuance of a CAO under Water Code section 13304 and Chevron therefore requests that it not be named as a responsible party in any final CAO for this site. Chevron further objects to the scope of the Tentative CAO and incorporates by reference the technical comments to the scope of the Tentative CAO prepared and submitted by Leidos on Chevron's behalf.

Sincerely,



Amy E. Gaylord

cc: [via email only]

Cleet Carlton (ccarlton@waterboards.ca.gov)

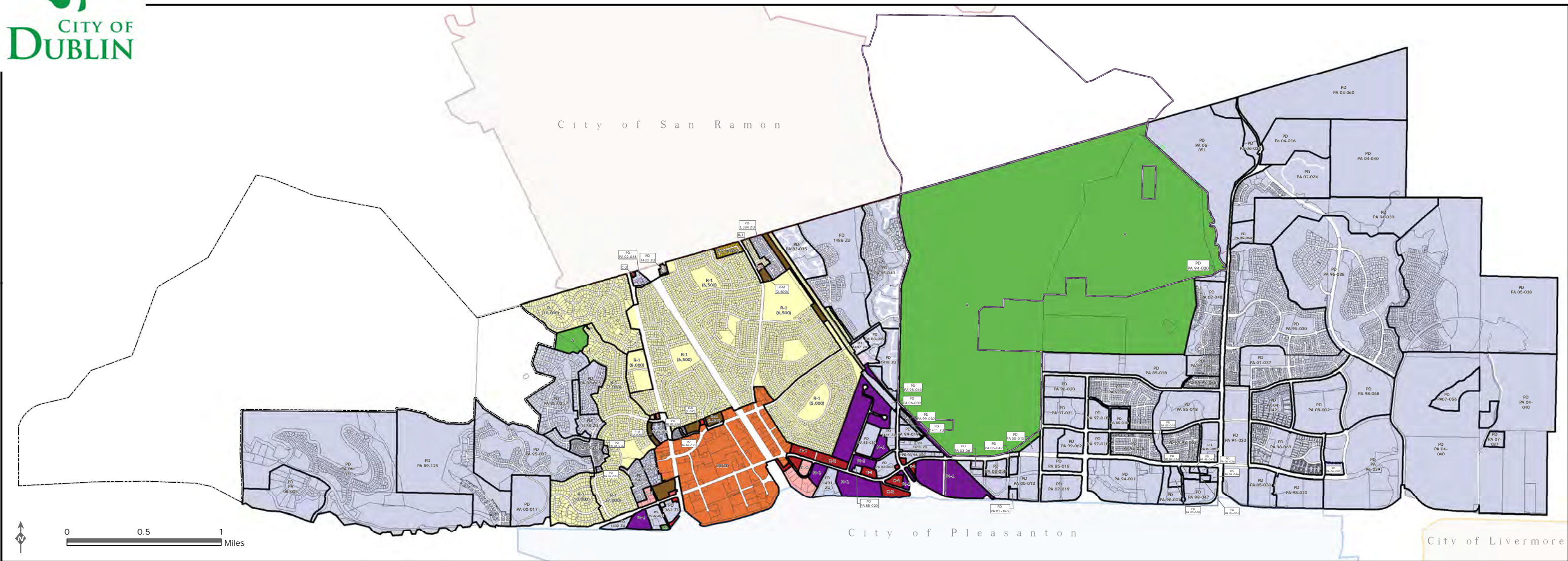
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DUBLIN ZONING MAP

as amended through March 1, 2010



General	
A	Agriculture
PD	Planned Development
U	Unclassified
DDZD	Downtown Dublin Zoning District

Residential	
R-1	Single Family Residential (Minimum Lot Area)
R-2	Two Family Residential (Minimum Lot Area)
R-M	Multi-Family Residential (Minimum Lot Area)

Commercial	
C-O	Commercial Office
C-N	Neighborhood Commercial
C-1	Retail Commercial
C-2	General Commercial

Industrial	
M-P	Industrial Park
M-1	Light Industrial
M-2	Heavy Industrial

Tri-Valley Jurisdictions	
	City of Livermore
	City of Pleasanton
	City of San Ramon
	City of Dublin

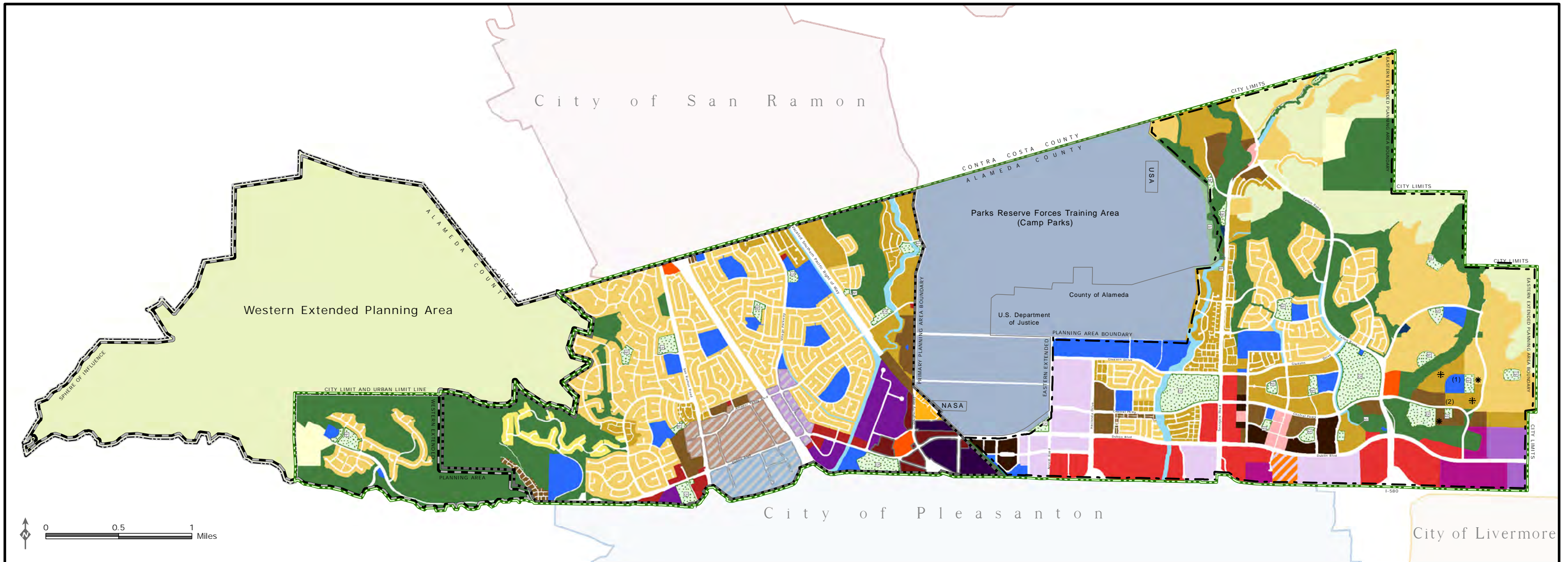
	Parks RFTA
	Sphere of Influence
	Scarlett Court Overlay
	Specific Plan Areas
	Zoning District Boundary

Note Recent Amendments:



DUBLIN GENERAL PLAN LAND USE

(Figure 1-1)
February 2013



Public/Semi-Public/Open Space

- Regional Park
- Parks/ Public Recreation
- Open Space
- Stream Corridor
- Public Lands
- Public / Semi-Public
- Semi-Public
- Community Park
- Neighborhood Square
- Neighborhood Park
- Regional Park

Commercial/Industrial

- General Commercial
- Retail/Office
- Retail/Office and Automotive
- Neighborhood Commercial
- General Commercial/Campus Office
- Campus Office
- Industrial Park
- Business Park/Industrial and Outdoor Storage
- Mixed Use
- Mixed Use 2/Campus Office
- Medium/High-Density Residential and Retail Office

Downtown Dublin

- Downtown Dublin - Village Parkway District
- Downtown Dublin - Transit-Oriented District
- Downtown Dublin - Retail District

Residential

- Rural Residential/Agriculture (1 Unit per 100 Gross Residential Acres)
- Estate Residential (0.01 - 0.8 du/ac)
- Low-Density Single Family (0.5 - 3.8 du/ac)
- Single Family Residential (0.9 - 6.0 du/ac)
- Medium-Density Residential (6.1 - 14.0 du/ac)
- Medium/High-Density Residential (14.1 - 25.0 du/ac)
- High-Density Residential (25.1+ du/ac)

- City of Dublin
- Eastern Extended Planning Area Boundary
- Primary Planning Area Boundary
- Western Extended Planning Area Boundary
- Sphere of Influence
- City of Livermore
- City of Pleasanton
- City of San Ramon

* The location of Semi-Public sites on the Chen, and Croak properties of Fallon Village will be determined at the time of the Stage 2 Development Plan approval. The respective sizes of the sites will be 2.5 net acres, and 2.0 net acres on the Chen and Croak Properties.

50% of the units within the Medium Density land use designation on the Croak and Jordan properties shall have private, flat yards.

General Plan Land Use Map should be used in combination with the General Plan and applicable Specific Plans that contain policies and development standards for specific planning areas.

While the General Plan Land Use Map shows existing development and layout, only the land use designations for the land on which such development exists are part of the General Plan.

(1) Underlying Land Use - Medium Density Residential

(2) Underlying Land Use - Public/Semi-Public



March 14, 2014

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

Subject: **Comments on Tentative Order – Site Cleanup Requirements
6400 Sierra Court
Dublin, California**

Dear Mr. Carlton:

On behalf of Chevron Environmental Management Company (CEMC) and Alcatel-Lucent USA Inc., (Alcatel-Lucent) Leidos Engineering, LLC (Leidos) has prepared these comments on the Tentative Order (TO) for the site. As requested in the transmittal of the Tentative Order, these comments are being provided in advance of the March 14, 2014 date.

CLEANUP LEVELS - SOIL

Leidos requests that certain of the cleanup levels be amended to be applicable to the site. The requested cleanup levels are presented in the tables attached to this letter. Leidos request that the soil cleanup level for vinyl chloride (on Page 12 of the TO) be amended to be consistent with the derivation of the other specified soil cleanup levels. The proposed cleanup levels are based on the residential direct exposure Environmental Screening Levels (ESLs, Regional Water Quality Control Board, 2013), and are not consistent with the industrial/commercial uses of the site. Given that the other soil cleanup levels are based on a groundwater protection rationale, Leidos requests that this cleanup level be amended to utilize the same rationale. The cleanup level would thus be 0.085 milligrams per kilogram (mg/kg) rather than 0.032 mg/kg, as noted in the attached tables.

CLEANUP LEVELS – SOIL GAS

The Cleanup levels in the TO (Page 12) for soil gas are ESLs listed for protection of indoor air for a residential setting. As noted above, the proposed cleanup levels are based on residential ESLs and are not consistent with the industrial/commercial uses of the site. Leidos therefore request that the cleanup levels be amended to the Commercial/Industrial Land Use ESLs for soil gas. Additionally, as the cleanup levels listed are for protection

of human health from vapor intrusion, these cleanup levels should only apply beneath an on-site building. The requested cleanup levels are presented in the tables attached to this letter.

CLEANUP LEVELS – INDOOR AIR

The indoor air cleanup levels noted in the TO (Page 12) are again the residential indoor air ESLs. As the property is zoned for commercial use, residential cleanup levels do not apply, and Leidos requests that these cleanup levels be amended to the Commercial/Industrial Land Use ESLs. These requested cleanup levels are presented in the tables attached to this letter.

Also, as noted in the TO, the indoor air cleanup levels apply only to occupied on-site buildings.

CEMC and Alcatel-Lucent appreciate the opportunity to provide these comments on the TO. If you have any questions, please feel free to call the undersigned at 510.466.7161.

Sincerely,

Leidos Engineering, LLC



Michael Hurd, CHG 0068

Enclosure:

Tables

Soil Cleanup Levels:

Constituent	Level (mg/kg)	Basis
TCE	0.46	Leaching to Groundwater
cis-1,2-DCE	0.19	Leaching to Groundwater
trans-1,2-DCE	0.67	Leaching to Groundwater
Vinyl Chloride	0.085	Leaching to Groundwater

mg/kg = milligram per kilogram

Soil Gas Cleanup Levels:

Constituent	Level ($\mu\text{g}/\text{m}^3$)	Basis
TCE	3,000	Human Health – Vapor Intrusion
cis-1,2-DCE	31,000	Human Health – Vapor Intrusion
trans-1,2-DCE	260,000	Human Health – Vapor Intrusion
Vinyl Chloride	160	Human Health – Vapor Intrusion

$\mu\text{g}/\text{m}^3$ = microgram per cubic meter

Indoor Air Cleanup Levels: T

Constituent	Level ($\mu\text{g}/\text{m}^3$)	Basis
TCE	3	Human Health - Inhalation
cis-1,2-DCE	31	Human Health - Inhalation
trans-1,2-DCE	260	Human Health - Inhalation
Vinyl Chloride	0.16	Human Health - Inhalation

$\mu\text{g}/\text{m}^3$ = microgram per cubic meter

Note: Cleanup levels taken from Regional Water Quality Control Board “Environmental Screening Levels”, December 2013.

From: [Scheidt, Kurt](#)
To: Carlton.Cleet@Waterboards
Subject: Public Comment-Tentative Order, 6400 Sierra Court, Dublin, CA
Date: Wednesday, March 12, 2014 5:27:39 PM
Attachments: [image001.png](#)

Cleet, thank you for sending us the Tentative Order on Site Cleanup Requirements for 6400 Sierra Court in Dublin.

On behalf of the Receiver, we have two comments to the order:

1. The Order does not specifically state that Chevron is responsible for the Gettler Ryan spill. We have seen no data over the years to indicate that this secondary contamination came from anywhere than on site. We understand that Chevron is prepared to clean up this area, also, but in their

Feasibility Study/Remedial Action Plan dated July 1, 2013, they continue to believe this may be an offsite contamination issue. Nowhere in the Tentative Order is it clear that this is their issue;

2. Wells Fargo Bank and the owner, 6400 Sierra Court Investors, have suffered significant losses due to this issue. Based on multiple conversations with potential buyers of the site, we believe that the highest and best use for the property is as a residential site. We have had discussions with the City of Dublin concerning residential usage and have been led to believe that the City, subject to a General Plan Amendment that requires City Council approval, would approve such a conversion. It is imperative that we are able to sell the site at some point and mitigate the damages to the Bank and the owner. Cleaning up to a residential standard will help us minimize these substantial financial losses.

Thank You.

Kurt Scheidt

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