

December 5, 2016

Via E-mail and Federal Express

Hon. Candace Andersen, Chair  
Hon. Mary N. Piepho, Vice-Chair  
Hon. John M. Gioia  
Hon. Karen Mitchoff  
Hon. Federal D. Glover  
Board Chambers, Room 107  
Administration Building  
651 Pine Street  
Martinez, California 94553-1229

**Re: December 6, 2016 Meeting**  
**Closed Session, Agenda Item B. 3, Concerning Litigation Entitled**  
***Keller Canyon Landfill Company v. County of Contra Costa, et al.,***  
**Contra Costa County Superior Court Case No. C16-02062**  
**City of Pittsburg's Intention to Intervene in Action to Unite With County In**  
**Defense of Same**

Dear Chair Anderson, Vice-Chair Piepho and Honorable Members of the Board:

I am the City Attorney for the City of Pittsburg ("City"), which has an interest in the above referenced and recently filed litigation (the "lawsuit" or "action"). against the County and its Board of Supervisors Board") Your Board is scheduled to discuss the lawsuit (Agenda Item B. 3) with your County Counsel in closed session at the December 6 Board meeting. Specifically, the City's interest lies in joining with the County to resist and defeat this lawsuit, which seeks unlawful and unavailable relief that has direct, immediate and adverse environmental and economic impacts on the City, as well as the County as a whole.

The action is meritless because it is clearly time-barred by the applicable statute of limitations, barred by the plain terms of the September 1994 Franchise Agreement (the "Agreement") between the County and plaintiff Keller Canyon Landfill Company ("KCLC") (attached as Exhibit D to plaintiff's Complaint), and without merit by seeking patently unlawful relief. Accordingly, the City hereby advises you of its intent to move to intervene as a party on the County's side of the action, and thereafter to file a demurrer

seeking to have the court dismiss the action with prejudice, and without leave to amend. The City Council voted 4-1 (with an abstention) on Monday, November 21, 2016 to authorize this course of action.

1. **The City Of Pittsburg Has A Direct And Immediate Interest In Intervening In The Action To Unite With County In Resisting KCLC's Meritless And Unlawful Claims.**

Under Code of Civil Procedure section 387, "the trial court has discretion to permit a nonparty to intervene when the following factors are met: (1) the proper procedures have been followed; (2) the nonparty has a direct and immediate interest in the action; (3) the intervention will not enlarge the issues in the litigation; and (4) the reasons for the intervention outweigh any opposition by the parties presently in the action." (*City and County of San Francisco v. State of California* (2005) 128 Cal.App.4th 1030, 1036, internal citations and quotes omitted.)

The City of Pittsburg has direct and immediate interests in intervening and uniting with this Board in resisting the claims of KCLC. A judgment rejecting KCLC's claims, and upholding the Board's CUP condition prohibiting the direct haul of unprocessed C&D Waste to the Landfill, will directly and immediately result in (among other benefits): (1) less damaging large truck traffic over the City's streets; and (2) more fee income to the City from properly and lawfully processed C&D Waste disposal at the Landfill.

With regard to the first interest, when large trucks hauling C&D Waste are required – as the law commands – first to go to transfer stations to process and sort the waste so as to remove recyclable and reusable materials, the remaining processed and disposable C&D Waste is transported to the Landfill in smaller trucks that are much less damaging to City's streets and infrastructure. Conversely, the transport of raw C&D Waste directly to Keller Canyon has a significant adverse impact on City Streets and the local community, far beyond that which has been anticipated and analyzed by existing environmental impact reports. With regard to the second interest, the City is entitled to receive a percentage of the municipal mitigation fee paid by KCLC for all materials that go into the Landfill except "beneficial reuse" material. While such material includes properly prepared green waste, and properly and lawfully processed and ground-up C&D Waste, KCLC has been unlawfully accepting direct hauls of raw, unprocessed green waste and C&D Waste and claiming it is all beneficial reuse material, such that the City receives no fee for the disposal in the Landfill of certain materials for which it is otherwise entitled to receive the fee. It is this unlawful activity which KCLC improperly seeks to continue through its meritless and time-barred action, and which the City seeks to unite with County's Board to vigorously oppose.

On the facts here, the City is confident that the court will exercise its discretion to permit the City to protect its interests by intervening on the County's side and demurring in the lawsuit.

**2. The Lawsuit Is Meritless.**

The City has examined the lawsuit filed by KCLC and believes it to be meritless and subject to demurrer. Among other flaws the lawsuit:

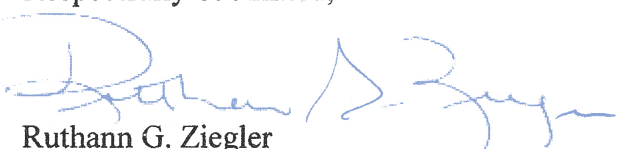
- Is barred by the applicable statute of limitations (Government Code section 65009(c)(1)(E));
- Is barred by the failure of KCLC to seek relief through a petition for writ of mandate;
- Is barred by the express terms of the Agreement and the Permit; and
- Seeks relief that is illegal under State and local law (including California Green Building Standards Code, §§ 4.409, 5.408; County Code, Chapter 418-14; and the Countywide Integrated Waste Management Plan).

The City contends that these defects should result in the Court sustaining a demurrer to the lawsuit.

**3. Conclusion.**

The lawsuit filed by KCLC is entirely without merit. It is contrary to the Permit, the Agreement, the law, environmentally sound waste management practices, and the interests of the City, the County and the citizens of both. For all the reasons set forth above, the City encourages the County to vigorously oppose it and to fully support the City's efforts to join with the County in doing so. Should members of the Board have any questions, they or County Counsel (copied hereon) are welcome to contact me.

Respectfully Submitted,



Ruthann G. Ziegler  
City Attorney  
City of Pittsburg

RGZ:mlb

c: Sharon L. Anderson, County Counsel  
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