

ATTACHMENT 12

Plan for Environmental Investigation and Remediation During Development at Hunters Point Shipyard

Purpose

Redevelopment activities on Parcels A' and B' are or will be subject to mitigation measures set forth in the Environmental Impact Report, deed notices, restrictions or other environmental covenants (collectively, "deed restrictions"), and state, local and federal requirements addressing contamination, human health and safety and the environment. This document describes the understanding and agreement between the San Francisco Redevelopment Agency (SFRA) and Lennar/BVHP that redevelopment activities at Hunters Point Shipyard (HPS) which include disturbance of soil and/or groundwater must be conducted in compliance with all applicable mitigation measures, deed restrictions and any state, local and federal requirements and outlines the process for ensuring that environmental investigation and soil and groundwater management during redevelopment of Parcels A' and B' are conducted in compliance with these requirements.

The parties anticipate that the City and County of San Francisco and its departments (City) will, prior to the closing for each transfer of property, enact an ordinance or other legislation and necessary implementing regulations to facilitate implementation and enforcement of these requirements for the transferring property (all action by the Board of Supervisors and Mayor and all rule-making and formal directives by any City department is collectively referred to herein as "legislative action" or "legislation"). Lennar/BVHP must comply with the legislation prior to undertaking any disturbance of soil or groundwater or similar activities.

The parties agree that the requirements imposed by the mitigation measures, deed restrictions and state, local and federal requirements apply regardless of whether the City takes legislative action. Accordingly, if the City fails to enact legislation prior to closing, Lennar/BVHP agrees to enter into an agreement with SFRA, including the terms described below, to implement these requirements.

Background

Past Navy operations at HPS resulted in contamination subject to regulation and cleanup under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) process, Toxic Substances Control Act (TSCA) (for polychlorinated biphenyl (PCB) sites), the California Porter-Cologne Water Quality Control Act (for petroleum constituents) and other similar federal and state laws. Because some residual contamination may remain after transfer, special requirements apply to soil and groundwater disturbance and management activities as set forth in the mitigation measures and deed restrictions. In addition to these special requirements, state, local and federal law impose requirements on activities involving discovery, disturbance and cleanup of contamination and protection of human health and safety and the environment.

Implementation

City Legislative Action

In order to facilitate compliance with these requirements, staff for the City have proposed that the City enact legislation for each parcel that would establish a program to describe and integrate the special requirements with other existing City requirements. The legislation would be modeled on existing City ordinances, such as the “Maher Ordinance” (Health Code Article 22A). Among other things, the legislation would: (i) set forth a process for preparing and submitting a site history and soil analysis report for approval by the City and taking other action as directed as a prerequisite to obtaining building or grading permits (described in detail below); (ii) require reimbursement of administrative costs; (iii) authorize City departments to adopt implementing regulations and take other actions consistent with the legislation; and (iv) establish an enforcement scheme, including penalties, for violations. Where deed restrictions apply, legislation or implementing regulations may take the form of a standard Soil and Groundwater Management Plan (SGWMP) or a series of such plans that would describe and mandate specific soil and groundwater management procedures for development activities. A standard or site-specific SGWMP may be separately subject to approval by state and federal agencies (including the Navy) that have jurisdiction over deed restrictions.

All legislative action will be governed by the Brown Act and the City’s Sunshine Ordinance.

The basic elements of the procedures that would be embodied in the City’s proposed legislation are described below.

(1) Consistent with mitigation measures, special requirements will apply when required by institutional controls imposed by regulatory agencies or where warranted by site-specific information. Special requirements will apply to activities that would result in the disturbance of soil and/or groundwater at the site. Redevelopment activities involving soil disturbance include, without limitation, demolition/deconstruction, utility installation and maintenance, grading, trenching, pile driving, drilling, soil removal, construction of subsurface structures. Groundwater-related activities include dewatering. Consistent with the scope of the “Maher Ordinance” and mitigation measures, certain requirements may not apply to areas that have been used continuously for residential purposes, are not located in historic fill areas and where there is no evidence based on previous information or investigations that the soil may contain hazardous substances.

(2) For persons undertaking these activities, proof of compliance with the procedures will be a prerequisite of the issuance of various building permits issued by the City, including:

- Building, Grading or Demolition Permit
- Well Permits
- Underground Storage Tank Permit
- Encroachment Permits
- Sidewalk and Street Use Permits.

- (3) To demonstrate compliance, applicants for permits will be required to:
- Prepare a summary of historical information and describe any prior site characterization and remediation performed by the Navy;
 - Perform any additional site characterization (soil sampling and analysis) necessary to manage soil and groundwater in accordance with requirements;
 - Prepare a project environmental management plan for permit application submittal and City approval. The plan would provide details of the development activities and how the soil and/or groundwater will be managed and would include items such as: scope and extent of excavation or grading; schedule; specific protocols for managing soil and groundwater; field sampling and laboratory analysis plan; transportation plan identifying routes of travel and final destination of wastes; contingency procedures for unanticipated conditions; site-specific health and safety plan; and site mitigation plan, if necessary;
 - Obtain City approval and any other required permits or environmental notifications.
 - Submit summary closeout report that includes any additional site characterization information, unanticipated conditions, and scope changes.

(4) Soil Reuse/Disposal and Groundwater Management. All excavated soil that is intended to be reused on-site will need to be evaluated to determine if additional characterization is necessary. The legislation will set forth protocols for soil reuse. For example, if there is adequate existing data (or supplemental data), and that data indicates that there is no contamination, the excavated soil may be reused on-site in compliance with the required protocols. Soil that does not meet soil reuse criteria will be disposed of at an appropriate facility. All excavated soil that is intended to be disposed off-site will be evaluated and characterized to the extent necessary to comply with applicable laws governing solid and hazardous waste management and worker protection.

All encountered groundwater will be considered potentially contaminated. Discharge to the ground surface or storm drain is prohibited without City approval. Groundwater encountered in excavations must be extracted to the extent necessary to perform the work and containerized (in tanks or drums) for chemical analysis prior to discharge. Depending on the analytical results, contaminated water will be discharged to either the sanitary sewer or an approved off-site facility for treatment and disposal in compliance with law.

Alternative to City Legislative Action

The City's failure to take legislative action does not relieve Lennar/BVHP or any other party from compliance with the requirements imposed by the mitigation measures, any applicable deed restrictions or state, local or federal requirements. If the City fails to enact legislation prior to closing, Lennar/BVHP will enter into an agreement with SFRA and/or the City prior to closing to ensure compliance with these requirements and the procedural and substantive requirements outlined above. Such agreement will include, without limitation, the following terms and other mutually agreeable terms:

(1) Lennar/BHVP will develop a written program and necessary protocols, subject to approval by the SFRA and the City, which will describe how each requirement of the mitigation measures, applicable deed restrictions and state, local and federal requirements will be met; how human health and safety will be protected during and after development; and a reporting protocol. The program shall incorporate compliance with existing local, state and federal laws, including those governing permitting and cleanup.

(2) Lennar/BHVP will comply with the approved program and protocols as a prerequisite to obtaining various necessary permits, such as those listed above.

(3) Lennar/BHVP will reimburse SFRA for all administrative costs, including without limitation, costs of reviewing and approving the program and reports, and acting as liaison to City departments with jurisdiction.

(4) Lennar/BHVP will reimburse City for all administrative costs.

(5) Lennar/BHVP will obtain whatever approvals or waivers are required to comply with deed restrictions, including seeking approvals or waivers from state and/or federal regulators (including the Navy).

(6) Lennar/BVHP will acknowledge that its failure to comply with these requirements may result in the non-issuance, revocation or enforcement of permits by the City.