

Agenda Report

May 13, 2019

TO: Honorable and Mayor and City Council

FROM: City Manager

SUBJECT: PLANNED DEVELOPMENT 36 – PASADENA GATEWAY MIXED-USE PROJECT 3200 E. FOOTHILL BLVD. (“Space Bank”)

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to transmit to the Department of Toxic Substance Control the attached Comment Letter regarding the Draft Remedial Action Workplan (DRAW) for the Pasadena Gateway Mixed-Use Project located at 3200 E. Foothill Boulevard.

BACKGROUND:

On July 9, 2018 the City Council took a number of actions including the approval of a Sustainable Communities Environmental Assessment, to approve Planned Development 36, a mixed use project to be located at 3200 E. Foothill Boulevard, which includes the demolition of 29 existing structures on approximately 8.53 acres; construction of eight separate residential and mixed-use buildings, subterranean and above-ground parking structures, and landscaping. The proposed buildings would include a total of 550 apartment units and 9,800 square feet of retail and restaurant space.

The project site was initially developed in the late 1920s as a light industrial property. From the 1940s through the 1970s the site was used for weapons research and development, primarily by the U.S. Navy. Subsequent to U.S. Navy use, the site has been used as a mini-storage facility and space for commercial and manufacturing businesses. Historical use of the project site for research, testing, and assembly of torpedoes and other weapon systems has generated the presence of hazardous materials.

On April 8, 2019 the City Council heard public testimony regarding concerns related to the environmental analysis, adequacy of the DRAW and the proposed method and extent of clean-up. On April 9, 2019, the Mayor sent a letter to DTSC requesting an extension of the public comment period until July 30, 2019. DTSC subsequently extended the comment period but only to May 14th.

On April 29th staff advised the City Council and public that in order to better ensure the adequacy of the RAW, and by extension adequacy of site clean-up, staff had engaged the environmental consulting firm of Alta Environmental. Alta's scope of services was review the Draft Removal Action Workplan and all other environmental analysis previously prepared regarding the site and prepare a Comment Letter on behalf of the City. The proposed Letter is attached for the Council's consideration.

Additionally, during discussions related to this matter, a number of questions/topics were raised that, while not fitting for the comment letter from a technical point of view of Alta's work, nevertheless, deserve some clarification. The balance of this report is devoted to addressing those items.

California Environmental Quality Act Process: EIR vs. SCEA

The California Environmental Quality Act (CEQA – Public Resources Code 21000-21189) is a statute that requires State and local agencies to assess and disclose environmental impacts associated with proposed projects and to identify mitigation measures. The CEQA process is a mandated protocol for assessment of potential environmental impacts which may occur due to certain planned activities, such as the cleanup and subsequent redevelopment of the Project site.

There has been some public discussion as to whether or not the proper environmental document has been prepared for this project, specifically, whether or not an Environmental Impact Report (EIR) should have been prepared. Pursuant to Section 21155 of the Public Resources Code, the City of Pasadena prepared a Sustainable Communities Environmental Assessment (SCEA) for the Project, to identify potential environmental impacts from the proposed mixed-use project as authorized by SB 375 in 2008. The SCEA was properly prepared and the City Council has previously certified this document. The project's CEQA clearance is considered complete for City purposes under the statute.

By way of background, SB 375 coordinated local regional housing needs allocations with regional transportation planning for the express purpose of meeting targets for the reduction of greenhouse gas emissions. It also incentivized the development of projects that are consistent with these plans and their goals, so that certain "transit priority projects" could move through a more focused CEQA process with a SCEA,¹ without compromising the statute's goal of disclosing and analyzing all environmental impacts associated with new development. A SCEA includes the following major contents: a complete analysis of all environmental impacts associated with the project; analysis of consistency with SCAG's Sustainable Communities Strategy (SCS), project description,

¹ A "transit priority project" is a project that (1) contains at least 50 percent residential use; (2) provides a minimum net density of at least 20 dwelling units per acre; and (3) is within one-half mile of a major transit stop or high-quality transit corridor. See CEQA Section 21155(b).

and the incorporation of appropriate mitigation measures. Although an EIR was not prepared for this project, the analysis of environmental impacts in a SCEA utilizes the exact same methodologies and thresholds of significance as the analysis of project impacts in an EIR – i.e., the environmental analysis is equivalent.

Thorough Background Investigation to Design Appropriate Cleanup Plan

Understanding the nature and extent of the contaminants present at a project site is paramount to developing and implementing the appropriate cleanup plan. Numerous environmental site assessments have been conducted of the site by various consultants and have been documented in the following reports:

- *Memorandum, Defense Environmental Restoration Program (DERP) Report for Army Corps of Engineers, Formerly Used Defense Sites (FUDS) Site No. J09CA105200, December 1992-April 1994, prepared by Wheeler and Gray*
- *Space Bank, Ltd, Phase I Environmental Assessment Final Report, February 10, 1994, prepared by Tetra Tech, Inc.*
- *UST Closure Report, Removal and Disposal of One 2,000-Gallon and Two 200-Gallon Underground Storage Tanks, NIRF Under Sea Center, October 2, 1998, prepared for US Army Corps of Engineers, prepared by Maness Corporation*
- *Draft Site Investigation Report, NIRF Under Sea Center Site Inspection, Pasadena, California, DERP-FUDS Project Number J09CA105200, June, 1999, prepared by US Army Corps of Engineers*
- *Phase I Environmental Site Assessment Report, Space Bank, Ltd., June 21, 1999, prepared by*
- *Draft Site Investigation Report and Site Assessment, NIRF Undersea Center, Pasadena, California, prepared for US Army Corps of Engineers, Los Angeles District, July 12, 2002, prepared by Science Applications International Corporation (SAIC)*
- *Final Report, Nonpoint Source Pollution of the Stormwater Drainage System, Naval Information Research Foundation, Undersea Center (AKA NOTS Pasadena), Prepared for US Army Corps of Engineers, December, 2003, prepared by SAIC*
- *Draft Final Preliminary Endangerment Assessment (PEA) Report, NIRF Undersea Center, Pasadena, California, August 2005, US Army Corps of Engineers (ACE), Los Angeles District, prepared by Enviroguide*
- *Expedited Phase 2 Environmental Site Assessment Report, Space Bank Mini Storage, February 1, 2006, prepared by SECOR International, Incorporated*
- *Expedited Phase I Environmental Site Assessment Report, Space Bank Mini Storage, March 30, 2006, prepared by SECOR International, Incorporated*
- *Final Focused Site Investigation, Naval Information Research Foundation (NIRF), Undersea Center, Pasadena, California, November 2006, prepared for US Army Corps of Engineers, prepared by Innovative Technical Solutions, Inc.*
- *Soil Vapor Survey Report, Former NIRF Site, April 13, 2007, prepared by Kennedy/Jenks Consultants*

- *Environmental Summary Report, Former NIRF Site/Space Bank, May 22, 2007, prepared by Kennedy/Jenks Consultants*
- *Draft Final Phase I Environmental Site Assessment, Space Bank Mini Storage Facility, April 17, 2008, prepared by Ninyo & Moore*
- *Tenant History Report, Space Bank Facility, July 3, 2008, prepared by Kennedy/Jenks Consultants*
- *Removal Action Workplan (RAW), Former Naval Information Research Foundation Under Sea Center (AKA Space Bank Mini Storage Facility), June 16, 2017, prepared by Ninyo & Moore*
- *Draft Final Remedial Investigation and Feasibility Study (RI/FS), Former Naval Information Research Foundation Undersea Center (AKA Space bank Mini Storage Facility), December 11, 2017, prepared by Ninyo & Moore*
- *Review of Remedial Investigation and Feasibility Study Report for the Former Naval Information Research Foundation Under Sea Center (AKA Space Bank Mini Storage Facility), DTSC, February 22, 2017.*

These investigative reports, which have been conducted over the course of the last 20+ years, along with the proposed use of the site, have been considered in creating the appropriate cleanup plan for the Project site.

Developer Obligation: RAP vs. RAW - Site Cleanups with Regulatory Agency Oversight

Having been informed by investigative studies, sites undergoing environmental cleanup with regulatory agency oversight are required to prepare either a RAW or a Remedial Action Plan (RAP). Pursuant to State law a RAP is prepared when response actions exceed \$1,000,000, (in some instances this number is up to \$2,000,000) but both the RAW and RAP are required to be designed and implemented to protect public health and safety and the environment and both are governed by California Health and Safety Code section 25356.1 (HSC 25356.1). Moreover, a RAW and a RAP are both required to include a detailed engineering plan for conducting the response action, a description of the contamination, the goals to be achieved by the response action, a discussion of alternative methods considered or rejected and the basis for the rejection, and public participation. The cleanup standards required by the State do not vary by type of document and are the same for both the RAW and the RAP response actions.

Cleanup standards are developed according to the specific planned future use of a site and are independent of the response action, whether it be a RAW or a RAP. The cleanup standards are determined based on contaminant concentrations and the potential exposure duration for site users. For example, cleanup standards for a property with planned residential site use will be based on contaminant exposure durations that are much longer than for a property with a planned commercial or recreational site use. A residential property will have cleanup standards based on an exposure period of 26 years for 24 hours a day, seven days a week, while a commercial property will have standards based on an exposure period of 25 years for 8 hours a day,

five days a week, regardless of whether to response action document is a RAW or a RAP.

Response Action: Alternative 2 vs. Alternative 3

There has been no change in the City's position on cleanup or the developer's obligation. The SCEA prepared by the City and approved by City Council had detailed information about the RAW (see pp. 10-15 and 120-121), including a detailed description of the proposed remediation approach and techniques (see pp. 14-15). All of the information included in the SCEA, including the remediation approach and techniques, are consistent with the Draft RAW published by DTSC.

Environmental cleanup of the property is being conducted under DTSC oversight and a draft RAW (DRAW) has been developed which has been reviewed on behalf of the City by Alta Engineering and is currently under review by the DTSC. The DRAW presents four general contaminant areas of concern (AOCs) which were identified during previous investigations of the property. The DRAW also presents site-specific cleanup goals for the contaminants of concern and an evaluation of three possible cleanup approaches (as required by the DRAW) which are based on the planned residential use of the property.

Cleanup approach Alternative 1 is "No Action" and is included in the DRAW as a baseline for comparison with the other cleanup approaches. Implementation of Alternative 1 would not be feasible as it does not address the existing potential health-risk impacts of the identified onsite contaminants.

Alternative 2 includes the excavation of contaminated soil and follow-up confirmation soil and soil vapor sampling to assess the effectiveness of the soil removal. If the results of the confirmation sampling indicate residual impacts at concentrations above cleanup goals, then additional soil removal activities will be performed to the extent practicable. If the residual contaminant concentrations are still above cleanup goals when the limits of practicable excavation are reached, mitigation measures will be employed to protect future site users. The mitigation measures afforded in the DRAW are the installation of slurry-cap at the bottom of excavations where elevated soil contaminants remain and the installation of sub-slab impermeable vapor barriers and venting systems (vapor mitigation systems [VMSs]) beneath all slab-on-grade residential structures. As discussed in the DRAW, a health risk assessment will be conducted following the completion of the RAW to ensure that conditions at the Site do not pose an unreasonable health risk for future site users. To help ensure with compliance and health protections for future residents of the Site, a land use covenant will be required to ensure the VMSs are constructed and maintained for life of the project.

Alternative 3 is similar to Alternative 2; however, Alternative 3 utilizes soil vapor extraction (SVE) instead of VMSs to address the presence of remaining residual vapor impacts above cleanup goals. SVE systems are utilized to physically remove impacted soil vapor; however, doing so can take months and sometimes years. If SVE

successfully remediates the vapor intrusion concern, then the use of VMSs and the corresponding LUC would likely not be required for residential land use. However, if SVE does not remove vapors down to unrestricted use levels, then a VMS and a LUC would still be required for future residential land use.

Based on some of the public comments that have been received, there appears to be confusion regarding the thoroughness of Alternative 2 versus Alternative 3. There also appears to be an idea that Alternative 3 is a “full” remediation, while Alternative 2 is a “partial” remediation. This confusion is likely a simple misunderstanding of terminology context. The terms “full” and “partial” are not definitive in this context. In fact, the successful completion of Alternative 2 would result in the reduction of concentrations of harmful chemicals to below cleanup goals, the same as Alternative 3.

Health and Safety Measures and Protection of the Public During Removal Activities

The DRAW provides multiple methods of protection to mitigate potential exposure to site contaminants of concern during remediation activities. These measures include a Health and Safety Plan (HASP) which has been developed in accordance with Health and Safety Code 1910.20 and compliance with South Coast Air Quality Management District (AQMD) Rule 403 – Fugitive Dust, Rule 1166 – VOC Emissions from Excavation of Soil, and Rule 1466 – Control of Particulate Emissions from Soils with Toxic Air Contaminants. These protection measure will be implemented during all field activities associated with the RAW to protect workers and the general public from potential exposures to the site chemicals of concern.

Prospective Purchaser Agreement

A Prospective Purchaser Agreement (PPA) is an agreement “not to sue” between the prospective property purchaser, in this case, Pasadena Gateway, LLC, and the DTSC and the California Regional Water Quality Control Board, Los Angeles Region. The purpose of a PPA is to encourage a non-polluting prospective purchaser to clean up a site where perceived liability for existing contamination may otherwise result in the site being left in a contaminated state indefinitely. The agreement is specifically limited to known “Existing Contamination” (Section 2.2) and specifically excludes previously unknown conditions and new information (Section 5.3). The PPA requires that Pasadena Gateway, LLC satisfactorily perform certain scopes of work as a condition of the agreement. These scopes of work are described in Section 4 and in Exhibit E of the PPA (the “SOW”) and include but are not limited to an initial groundwater investigation and four quarters of monitoring, and the satisfactory development and implementation of an approved RAW.

The benefit of the PPA for Pasadena Gateway, LLC is the settlement and resolution of potential liability of Existing Contamination that would otherwise result from Pasadena Gateway, LLC becoming the owner of the property which was contaminated by a third party, not Pasadena Gateway, LLC. The benefit of the PPA to the State, and thus to the

public, would be the satisfactory cleanup of a property which otherwise may not be cleaned up for some time.

FISCAL IMPACT:

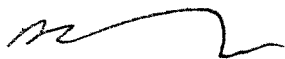
There is no fiscal impact associated with this action.

Respectfully submitted,



STEVE MERMELL
City Manager

Prepared by:



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Attachment: (1)

Attachment A – Letter to DTSC dated May 13, 2019