



Legislation Text

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Report to Carson Reclamation Authority

Monday, September 11, 2023

Discussion

SUBJECT:

CONSIDER A DRAFT LAND USE COVENANT AND ENVIRONMENTAL RESTRICTIONS FOR THE FORMER CAL COMPACT LANDFILL (APN 7336-010-903 AND 7336-010-905) WITH THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL

I. SUMMARY

A Land Use Covenant and Agreement ("Covenant") is proposed to be made by and between Carson Reclamation Authority (the "CRA"), and the Department of Toxic Substances Control (the "Department"). The Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260. The CRA and the Department agree that pursuant to Civil Code section 1471 and Health and Safety Code section 25355.5, the use of the Property be restricted as set forth in this Covenant and that the Covenant shall conform with the requirements of California Code of Regulations, title 22, section 67391.1.

This Covenant is presented in draft form because there are still some minor changes proposed, but the final Covenant shall be required to be approved by the Authority Counsel.

II. RECOMMENDATION

1. REVIEW AND APPROVE THE DRAFT LAND USE COVENANT AND ENVIRONMENTAL RESTRICTIONS FOR THE FORMER CAL COMPACT LANDFILL (APN 7336-010-903 AND 7336-010-905) WITH THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL; and
2. AUTHORIZE the Executive Director to execute the Covenant, with the allowance for any further minor changes to the Covenant in a form acceptable to the Authority Counsel.

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III. ALTERNATIVES

TAKE another action the Authority Bard deems appropriate.

IV. BACKGROUND

Development History of the Site

The 157-acre site known as the former Cal-Compact Landfill consists of five (5) cells. Installation of Remedial Systems at each cell is required prior to occupancy of that cell. The Property has been vertically subdivided into a surface lot (APN 7336-010-905, the "Surface Lot") and a subsurface lot (APN 7336-010-903, the "Subsurface Lot"). The Subsurface Lot includes two operable units ("OUs"): the Upper OU, defined as "site soils, the waste zones above and within the Bellflower Aquitard, and the Bellflower Aquitard down to, but not including the Gage Aquifer"; and the Lower OU, which includes the deeper groundwater aquifers beneath the Upper OU.

The Property was operated as a landfill prior to the incorporation of the City of Carson ("City") in 1968 and as a result, the Property has soil and groundwater contamination that requires remediation. Because the Property is a former landfill site, on October 25, 1995, the Department approved a Remedial Action Plan for the Upper OU of the Property, which Upper OU Remedial Action Plan requires the installation, operation and maintenance of certain remedial systems, including a landfill cap, landfill gas collection and control system, and groundwater extraction and treatment system on the Property. A separate Remedial Action Plan for the Lower OU was prepared in January 2005 and recommended sampling only (no remediation) in the Lower OU wells due to the absence of detectable concentrations of contaminants. The Lower OU wells were sampled in 2011, 2012, 2018, and 2020 with no detections of contaminants.

On September 28, 2006 the Department entered into a Compliance Framework Agreement with the then-current Property owner, Carson Marketplace LLC for the purpose of setting forth a plan for implementing the requirements of the Consent Decrees and addressing the environmental condition of the Property. The Compliance Framework Agreement required Carson Marketplace LLC to establish financial assurance for implementation of the Upper OU Remedial Action Plan, including long-term operation and maintenance of the Remedial Systems and compliance with applicable regulatory requirements at the Property for a period of at least twenty years. The CRA acquired the Property from Carson Marketplace LLC on May 20, 2015, and assumed the Compliance Framework Agreement per the Assignment and Assumption Agreement dated May 18, 2015, between CRA, the Department, and Carson Marketplace LLC, and has taken over the responsibility for implementation, operation and maintenance of the Remedial Systems and the other obligations under the Upper OU Remedial Action Plan.

To satisfy the financial obligations required in the Consent Decrees and the Compliance Framework Agreement, the Department and CRA entered into an Enterprise Fund Agreement dated January 25, 2017, to establish an Enterprise Fund for the Property.

Together with the Community Facilities District No. 2012-1 (the "CFD"), the Enterprise Fund provides financial assurance for completion of the Upper OU Remedial Systems and long-term operation and maintenance at the Property. The Department, in its Oil/Water Well Investigation Final Report Approval Letter dated July 21, 2008, acknowledges that the obligations to locate and abandon potential oil or water wells on the Property under the Consent Decrees and Compliance Framework Agreement have been satisfied, but if wells are found by construction or development workers, CRA will implement the Contingency Plan referenced in that letter.

As of the date of this Covenant, the remaining actions to be completed on the Property are primarily outlined in the Enterprise Fund Agreement, the CFD and the Management Approach to Phased Occupancy (File No. 01215078.02) approved by the Department in April 2018 (as the same may be amended, supplemented, or modified from time to time, the "Management Approach to Phased Occupancy"). The Department continues to oversee the development of the Property, and actions that affect the Remedial Systems continue to be subject to the Department's approval.

The Remedial Systems which have been or will be constructed, include: (i) a groundwater extraction and treatment system, which has been completed and approved by the Department; (ii) a landfill cap comprised of an impermeable linear low density polyethylene geomembrane with a minimum of one foot of overlying protective cover soil, which has been completed in portions of the Property, and a clay cap that has been constructed along the perimeter slopes adjacent to the I-405 freeway and the Torrance Lateral channel; and (iii) a landfill gas collection and control system, which also has been completed in portions of the Property. Completion of the remaining portions of the landfill cap and landfill gas collection and control system installation will be coordinated with vertical development of each Cell. The Remedial Systems constructed/installed within the Subsurface Lot or Surface Lot of the Property must meet all the requirements of the Department approved Upper OU Remedial Action Plan and will include additional design refinements necessary to support development, such as: membrane integration into the structural pile caps; grading of landfill cap elevations to accommodate placement of utility trenches and Property drainage; and integration of development infrastructure, as needed.

Subject to certain requirements, the Property is anticipated to be developed for mixed-use development, which may include, among other uses, retail; hospitality; logistics; warehousing; entertainment; open space; multi-family residential and associated amenities and infrastructure. The details of such development and uses cannot be finally determined until vertical development of the Property (or vertical development upon any of the Cells) actually proceeds, thus CRA shall be entitled to a flexible approach to remediation that allows for phased construction and occupancy. The terms for the phased development of the Property are set forth in the Management Approach to Phased Occupancy and that certain letter regarding phased development matters, issued by the Department to the CRA, dated October 17, 2017 (the "Phased Development Letter").

Under the phased occupancy approach described in the Management Approach to Phased Occupancy and Phased Development Letter, each Cell's development will be independently evaluated for health risks posed by not only that Cell's development activities, but also for the possible impacts to and from other Cells and the associated

potential exposures and risks. Cell-specific mitigation measures will be designed to offset potential risks that are identified, consistent with the Roadmap to Occupancy incorporated into the Management Approach to Phased Occupancy.

Preparation of a Cell-specific Remedial Action Completion Report (each, "Remedial Action Completion Report") will begin following installation of the Remedial Systems on the applicable Cell. The Remedial Action Completion Report will include engineering details of the installation of the Remedial Systems on such Cell. The Department will review and approve the final Cell-specific Remedial Action Completion Report, which approval will confirm completion of active remedial work pursuant to the Upper OU Remedial Action Plan on the applicable Cell.

Health Risk Assessment. Following completion of vertical construction (i.e., core and shell), any applicable Los Angeles County approval for building protection systems, and implementation of any post-construction Cell-specific mitigation measures (such as land use controls, covenants, conditions, and restrictions, etc.), a Cell-specific Health Risk Assessment (each, a "Health Risk Assessment") will be prepared. The Health Risk Assessment will evaluate the risk to all potentially exposed populations and will be reviewed and approved by the Department.

Basis for Environmental Restrictions

As a result of the presence of hazardous substances at the concentrations detected prior to the date hereof set forth on Exhibit D attached in the Covenant, which are also hazardous materials as defined in Health and Safety Code section 25260, at the Property, the Department has concluded that it is reasonably necessary to restrict the use of the Property in order to protect present or future human health or safety or the environment, and that this Covenant is required as part of the Department-approved remedy for the Property. The Department has also concluded that the Property, as remediated and when used in compliance with the Environmental Restrictions of this Covenant, does not present an unacceptable risk to present and future human health or safety or the environment.

The Covenant shall run with the land; be binding upon Owners/Occupants of the Property, their heirs, successors, and assignees; and (b) the agents, employees, and lessees of the Owners and the Owners' heirs, successors, and assignees; shall be incorporated into Deeds and Leases; and, and the CRA and any applicable Owner shall provide Notice to the Department not later than 30 calendar days after any conveyance of any fee interest ownership in the Property (excluding Leases, and mortgages, liens, and other non-possessory encumbrances).

Environmental Restrictions

These restrictions are contained in Article 4 of the Land Use Covenant:

4.1. Prohibited Uses. The Property shall not be used for any of the following purposes without prior written approval by the Department:

- (a) A single-family residence, including any mobile home or factory-built housing, constructed or installed for use as residential human habitation. Multi-family residential

development is explicitly prohibited on Cells 3, 4 and 5 but could be permitted on Cell 1 and Cell 2 pursuant to the terms and conditions set forth in Section 4.4 of this Covenant.

- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.2. Soil Management. Soil management activities at the Property are subject to the following requirements in addition to any other applicable Environmental Restrictions:

(a) No activities that will disturb the cap or soil below demarcation fencing or below the building foundations in areas with no demarcation fence (e.g., digging, excavation, grading, removal, trenching, filling, earth movement, mining, or drilling) shall be allowed at the Property without a Soil Management Plan pre-approved by the Department in writing. The Soil Management Plan may be incorporated into one or more of the other deliverables provided to the Department, as allowed under the Management Approach to Phased Occupancy and the Roadmap to Occupancy.

(b) Any soil brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.

(c) As used in this Paragraph 4.2, the term “cap,” refers to the landfill cover system located below the demarcation fence, (or) areas below the building foundation system with no demarcation fence, or the portion of any slopes not improved with a demarcation fence.

4.3. Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Drilling for any water, oil, or gas without prior written approval by the Department.
- (b) Extraction or removal of groundwater without pre-approval by the Department in writing (except operation of the Department-approved groundwater extraction and treatment system or as required for sampling the groundwater or for construction dewatering in accordance with all applicable legal requirements).
- (c) Any activity that may alter, interfere with, or otherwise affect the integrity or effectiveness of, or the access to, any Remedial System or any Remedial System related investigative, monitoring, operation or maintenance system or activity required by the Department for the Property except (i) with the prior written approval of the Department or (ii) in connection with development of a Cell pursuant to Department-approved plans, including the Management Approach to Phased Occupancy, and otherwise in compliance with the other Environmental Restrictions set forth herein.

4.4. Development Criteria. The following development criteria must be adhered to in

order to allow for implementation of a phased development and occupancy program:

- (a) Residential multi-family development, if any, is hereby restricted to Cell 1 and, by administrative permit, in the westernmost portion of Cell 2. Any residential occupancy shall be delayed until all Remedial Systems and any necessary piles and pile-supported structural slabs have been installed on all Cells.
- (b) There shall be no intra-Cell phasing for purposes of Remedial System installation. That is, once begun, the Remedial Systems must be installed across the entirety of each Cell sufficient to obtain Department approval of a Remedial Action Completion Report for the Cell, and no occupancy will be permitted until a Remedial Action Completion Report and associated Health Risk Assessment for the entire Cell are approved, all as more fully described in the Management Approach to Phased Occupancy.
- (c) Vertical construction may begin in one portion of a Cell while Remedial Systems are being completed in another portion of the same Cell. This would only occur, however, under one of the following conditions: (i) all of the construction is being performed by hazardous waste operations and emergency response trained workers pursuant to Title 29 of the Code of Federal Regulation, Section 1910.120 (“**HAZWOPER-trained**”); or (ii) the Department has approved a plan to create an exclusion zone that would adequately separate and protect the area of vertical construction (which could be conducted without HAZWOPER-trained workers) from the area where Remedial Systems are being installed by HAZWOPER-trained workers.
- (d) Design of the Remedial Systems must be coordinated by Covenantor for the entire Property and the fundamental design of the Remedial Systems will be consistent with the Upper OU Remedial Action Plan throughout the Property. Remedial Systems must be installed on a Cell-by-Cell basis, and engineering details (e.g., the specific locations of gas collection piping and location of piles) will necessarily be tailored to the specific development plans for that Cell. Nonetheless, it is intended that the design of the Remedial Systems will be consistent with the Upper OU Remedial Action Plan and thus substantially the same throughout the Property.

The remainder of the Covenant contains sections on Notice, Inspection, Review, and Enforcement.

V. FISCAL IMPACT

There is no fiscal impact from this Covenant.

VI. EXHIBITS

1. Draft Land Use Covenant (pgs.. 7-35)

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Prepared by: John S. Raymond, Executive Director