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May 19, 2010

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VIA EMAIL HILLARY.GITELMAN@COUNTYOFNAPA.ORG & US MAIL

Hillary Gitelman
Director
Department of Conservation, Development and Planning
County of Napa
1195 Third Street
Suite 210
Napa, CA 94559

Re: Napa County Housing Element

Dear Ms. Gitelman:

As you requested, we have evaluated the June 26, 2009 letter that was sent to Cathy Creswell, the Deputy Director of California's Department of Housing and Community Development, by Robert Doty, the attorney for Napa Redevelopment Partners ("NR Partners"). The primary purpose of Mr. Doty's letter was to argue that environmental cleanup requirements applicable to the 150-acre Napa Pipe site in Napa, California (the "Site") undermine the implementability of the County of Napa's (the "County's") proposed Housing Element. As you know, the Housing Element commits the county to rezone a 20-acre portion of the Site, indicating that 20 acres would be suitable for construction of 304 residential units at densities of at least 20 units to the acre, as well as associated open space and neighborhood-serving uses.

We have extensive experience advising clients regarding the investigation, remediation and redevelopment of contaminated sites in California. Both an overview of our practice and our biographies are attached to give you a sense of our level of expertise in this area. Based on our experience and on our review of the cleanup plan for the site, Mr. Doty's suggestion that environmental concerns would prevent or impede redevelopment of a portion of the Site for residential use, as reflected in the Housing Element, is not accurate.

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No New Cleanup Plan is Required

First, Mr. Doty suggests that a new cleanup plan would have to be approved by the Regional Water Quality Control Board (“Regional Board”) before construction of the 304 proposed residential units could proceed. That is simply not true. The existing cleanup plan for this Site (approved by the Regional Board in 2007) does not restrict the type of development that can occur on the Site. Rather, the existing cleanup plan allows for any kind of redevelopment – commercial, industrial or residential – with preparation and approval of an appropriate Remedial Design Implementation Plan (RDIP).

In general, a residential redevelopment scenario requires application of the most stringent cleanup standards. We contacted the Regional Board staff who have been overseeing investigation and remediation of the Site to confirm that the existing cleanup plan provides flexibility to accommodate changes in the redevelopment plan and would allow the residential scenario that has been proposed by the County. Staff confirmed that the cleanup plan allows future residential development and places no restriction on future redevelopment of the Site. As we understand it, Regional Board staff is currently reviewing NR Partner’s revised RDIP, which could be further revised to address issues associated with a phased clean up.

Contrary to Mr. Doty’s suggestion, the existing plan has broad flexibility to accommodate different development scenarios. According to Regional Board staff, changes in the redevelopment plans would not trigger the need for changes in the cleanup plan. The 20-acre/304-unit scenario described in the Housing Element can be accommodated under the existing approved cleanup plan, without revision and without substantially extending the regulatory process.

Phasing of the Cleanup is Common

Mr. Doty also suggests that cleanup of the 20 acre site could not be accomplished without cleaning up the entire site as a whole. This suggestion is contrary to our experience. A phased approach to cleanup, where some portions of a site are remediated ahead of other portions of the site, is common. Phasing can be done either to accommodate redevelopment plans or to allow responsible parties to prioritize particular components of the cleanup. We are currently working on several sites where some phased implementation of the remedial work is happening or is anticipated, including the Mission Bay project in San Francisco, the Alameda Landing site in Alameda, and the MacArthur BART site in Oakland.

Mr. Doty is correct that such phasing may require additional analysis to ensure that the phasing is implemented in a safe manner, but such analysis is relatively routine. In our experience at Mission Bay, for example, the cleanup has been proceeding in a phased manner for several years. During that time, redevelopment plans have been modified to adjust to market conditions and other drivers. Mission Bay’s consultants have been able to adjust the phasing of the cleanup work, as needed, to accommodate such modifications,

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including evaluating potential migration pathways for subsurface contaminants and implementing procedures to ensure that existing occupants and workers are properly protected. It has been our experience that the Regional Board has worked cooperatively with the Mission Bay developers over time to facilitate a long-term phased approach.

When we talked to Regional Board staff, they could identify nothing special about conditions at this Site or the approved cleanup plan that would prohibit phased implementation of the remedy. They also confirmed that phasing could be addressed through the on-going remedial design process and that phasing would not trigger any need for revision of the cleanup plan. In other words, according to the agency that has responsibility for overseeing the environmental cleanup, regulatory approval of a phased approach for this Site would be straightforward and could be handled in a routine manner.

Source Removal is Already Addressed in the Cleanup Plan

Mr. Doty is correct that source removal (i.e. removing the source of the contamination) is a Regional Board priority. The issue, however, is a red herring. The Regional Board has already addressed source removal at this Site in the approved cleanup plan. As explained above, no new cleanup plan is required to implement the 20-acre/304-unit scenario. Source removal does not, itself, impact the implementability of the 20-acre/304-unit scenario one way or the other.

Housing Element Property is Clean

Finally, the suggestion by Mr. Doty, that environmental conditions will restrict implementation the proposed Housing Element, is particularly perplexing given that the 20 acres identified for the Housing Element is in the northeast portion of the Site. Based on prior environmental investigation of that area, the Regional Board has determined that no further action is required there. In other words, based on the cleanup plan, the Housing Element provides for rezoning of an area of the Site that has already essentially been determined to be clean and is excluded from actions proposed in the approved cleanup plan. This fact clearly undermines Mr. Doty's arguments that developing the Housing Element will be problematic from an environmental perspective.

Moreover, while the site for the 304 proposed residential units would qualify as suitable for lower income housing under State Housing Element law because of its density (CGC Section 65583.2(c)(3)(B)(iii)), the developer is in fact proposing to provide housing at a mix of income levels, and that housing would be constructed on the least environmentally impacted area of the Site. Any suggestion that proceeding with the Housing Element raises environmental justice issues would appear to lack factual support.

Hopefully, the additional information provided here will allow the Department of Housing and Community Development (HCD) to revise their assessment of the County's adopted Housing Element. Should you have questions or need more detailed information, please do not hesitate to contact me.

Paul *Hastings*

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Sincerely,

A handwritten signature in black ink that reads "Beth Deane". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

M. Elizabeth Deane
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

MED/jld

Attachments

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