Message

From: Hobel, Lawrence [Lhobel@cov.com]
Sent: 9/1/2015 9:16:52 PM
To: Bradfish, Larry [Bradfish.Larry@epa.gov]
CC: LaFortune, Michael [Michael.LaFortune@EastonLLC.com]; Fennessy, Christopher (christopher.fennessy@Rocket.com) [christopher.fennessy@Rocket.com]; Russell Austin [RAustin@murphyaustin.com]; Goulart, Scott [scott.goulart@Rocket.com]
Subject: FW: Area 40 and Environmental Requirements Email 2
Attachments: Hillsborough PSA (w-Exhibits) Executed 3-4-15.pdf

Email 2 of 3

Lawrence Hobel

Covington & Burling LLP
One Front Street, San Francisco, CA 94111-5356
T +1 415 591 7028 | Lhobel@cov.com
www.cov.com

COVINGTON

This message is from a law firm and may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

From: Hobel, Lawrence
Sent: Tuesday, September 01, 2015 1:54 PM
To: Bradfish, Larry (Bradfish.Larry@epa.gov)
Cc: Fennessy, Christopher (christopher.fennessy@Rocket.com); LaFortune, Michael; Russell Austin ; Goulart, Scott
Subject: Area 40 and Environmental Requirements

Larry: EPA had requested that we provide additional information on the requirements for remedy and agency sign-offs associated with development of Hillsborough as they they relate to contamination conditions at Area 40. I am providing a memorandum below summarizing the key requirements. I am attaching the entire Hillsborough Purchase-Sale agreement (the original agreement and four amendments) and certain portions of development related documents that are more fully described in the memorandum.

Please let me know if you have any questions or would simply like me to walk through the documents with you or others at EPA. Chris Fennessy will be forwarding this email to the program managers at EPA and the State (showing a cc to us so you know where they went).

Best,
Larry

Summary of Environmental Requirements Relative to Area 40 and Development

September 1, 2015

Responding to Request of EPA

I. Overview

EPA has requested that Aerojet Rocketdyne ("Aerojet") provide the key documents that describe environmental requirements related to the development of the Hillsborough property. There are several related environmental requirements that arise from a combination of documents.

- **City of Folsom BackBone Infrastructure Project Initial Study (December 2014) ("Initial Study")**: This Project was the subject of a recent Initial Study and requires certain mitigation measures associated with Area 40 and adjacent properties relative to roadways and utilities. We provide the key pages from the Initial Study as approved by the City of Folsom (pages 122-124).

- City of Folsom EIR Folsom South of U.S. 50 Specific Plan Project: We are providing the draft EIR discussion on Hazardous Materials ("Draft EIR") and we are providing the Final EIR portion that contains the final mitigation measures as to Area 40 ("Final EIR"). Please note that the structure of the EIR is that remediation would be undertaken through PCD agency oversight and the mitigation measures described are principally to avoid impairment of remedial actions taken.

- City of Folsom Development Agreement ("Development Agreement"): The Development Agreement establishes, among other matters, what the City requires relative to the Park, including schedule. We refer you to pages 16 and following as to the Park.

- Hillsborough Purchase and Sale Agreement ("PSA"): The PSA establishes the obligations of the Parties relative to obtaining approvals for Roadways and Utilities and for Area 40 remedy selection, including the potential that the periphery of or adjacent to Area 40 may be affected by remedy decisions or actions. The Agreement has four amendments (provided).

To facilitate your review, we have structured the summary by issue and then include reference to the provisions of the documents.

II. Roadways and Utilities

Overview: The Folsom Planning Area development requires infrastructure which was described in the City of Folsom's Infrastructure Plan ("Folsom Infrastructure Plan"). The Folsom Infrastructure Plan includes roadways, utilities and detention basins (for storm water management). The Folsom Infrastructure Plan and the Hillsborough Purchase and Sale Agreement (PSA) contains provisions relative to such infrastructure.

- The Initial Study requires the City to work with Aerojet and the Environmental Agencies (U.S. EPA, the Regional Water Quality Control Board and the California Department of Toxic Substances Control (collectively the "PCD Agencies") to obtain concurrence/approvals. See Initial Study attached pages.

- The PAS requires Aerojet to work with the Purchaser to obtain approvals on a timely basis. See particularly 2.6 of the Hillsborough Agreement (as described in the Second Amendment at 11 et seq)

A. Roadway and Utilities Requirement 1: Obtain approvals/concurrence respecting Prairie City Road Alignment and Detention Basin Siting

- approvals for alignment of Prairie City Road and White Rock Road intersection (located adjacent to development). The alignment will require notice under the Partial Consent Decree ("PCD") Paragraph 11E notice and approvals of the PCD Agencies, because a portion of property subject to the PCD would become part of the roadway corridor.

- approvals for siting of detention basin on Aerojet Operating Plant (and adjacent to Area 40), which will require PCD Paragraph 11E notice and approvals of the PCD Agencies. Aerojet has worked with the Purchaser and consultant to generate "typical" construction standards for the basin.

B. Roadway and Utilities Requirement 2: Roadways and Utilities that Transect the Area 40 Holdback

- Approvals are required under the Initial Study and PSA. See references above.

- Under the PSA, Buyer is responsible for construction of the roadways , including the draft plans, vapor mitigation and worker health and safety plans. Aerojet is obligated to seek approvals of the Agencies of the "typical construction specifications" for the construction.

    - Timing: Buyer can trigger approval process by submitting the pertinent plans and specifications no less than 120 days following closing. The PSA anticipates no more than 450 days for Agency approvals.

III. Development of Park Property and Area 40 Holdback and Property to the South

Overview: The Development Agreement focuses on the portion of Area 40 to be used as a park. The PSA focuses on the portion of the Area 40 property that is currently identified as developable property (commercial and residential) and property adjacent (Area 40 and the adjacent property are collectively referred to as Area 40 Holdback) and additional acreage to the south.

A. Requirement 3: Obtain Approvals Necessary for Development of the Area 40 Holdback and Impact on Property to the South of the Holdback

- Park Requirement 1: Regulatory approvals (including PCD Agency approvals) necessary for use of the property as a park are to be obtained by September 1, 2018 (Hillsborough Agreement at 2.6)

- Park Requirement 2: Approvals necessary for **transfer** of the property to the City for use by the City as a park by the date required in the Development Agreement (1200th residential unit). Development Agreement at page 16-18; Hillsborough Agreement at 2.6

- Developable Property Requirements: The EIR assumes that the property will be remediated to meet land use needs. Development of the Area 40 Holdback would not take place until remedy is selected and is implemented to the extent necessary to support land use (or requires modification in land use).

- The PSA contains provisions for purchase price adjustment or termination of obligation to purchase relative to property within Area 40 Holdback depending upon environmental requirements imposed. It is anticipated that remedy selection associated with Area 40 will identify any material environmental requirements (including LUCs) required for property within the Area 40 Holdback or to the south of it.

Lawrence Hobel

Covington & Burling LLP
One Front Street, San Francisco, CA 94111-5356
T +1 415 591 7028 | Lhobel@cov.com
www.cov.com

COVINGTON

This message is from a law firm and may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.