



April 13, 2021

VIA E-MAIL AND U.S. MAIL

Reed Moulds, Managing Director
Vallco Property Owner, LLC
965 Page Mill Road
Palo Alto, CA 94304
E-Mail: rmoulds@shpco.com

Re: Comments on Excavation Management Plan (Rev. March 2021) and Other
Environmental Concerns

Dear Mr. Moulds:

As you know by now, our office has been retained by the City of Cupertino City Manager's Office to provide special legal services to the City on various land use matters as part of the City's transition to an in-house City Attorney in the coming months. We have been assisting the City with reviewing the outstanding issues related to the Vallco Town Center SB 35 Project ("Project").

In the brief conversations we have now had with your team, we understand Vallco's priority is sorting through the Excavation Management Plan issues. We appreciate that from Vallco's perspective, the main concern, with respect to having a regulatory agency involved in overseeing the remedial work related to the polychlorinated biphenyls ("PCB") found in the soil of the Project Site, is the length of time it might take to process the remedial work under a regulatory agency's oversight. We have been mindful of this concern in the comments provided herein. We have strived to balance Vallco's concerns against the City's obligations to protect the public health and safety in addressing the contaminants on the property.

The City has reviewed the most recent Excavation Management Plan (dated 3-5-21(A)) ("EMP"), which contains an updated Appendix A: Investigation and Management of PCB Contaminated Soil Former Vallco Mall, submitted pursuant to the requirements of Chapter 16.08 of the Cupertino Municipal Code ("CMC") and Project Condition of Approval No. 50 as a prerequisite prior to obtaining any grading permit, which includes work for any excavating, filling, recontouring, or combination thereof. (CMC § 16.08.020(11).) Specific Comments on the EMP are attached hereto in the memorandum from the City's Planning Department (Exhibit A).

In conversations with staff, we have come to understand that (i) the EMP is intended to essentially function as a Remedial Action Plan ("RAP") for the PCBs found on the Project Site that exceed residential screening levels, although it is not clear what agency with appropriate jurisdiction would process such RAP; and (ii) Vallco intends to separately begin grading activities on the remainder of the Project Site.

Understanding these intentions, we submitted the EMP to an expert with whom we have worked extensively on similarly impacted sites, Dr. Susan Mearns. We have received her report and recommendations, which are attached as Exhibit B. The questions we addressed to her, as well as her responses, are summarized as follows:

- (a) Is the EMP adequate as a RAP (as further described below) to undertake the characterization and removal of the PCB contaminated soils? No.
- (b) Has an appropriate reviewing agency been identified and was the EMP prepared under that agency's requirements? No.
- (c) Is there an agency you would advocate which could timely process a RAP safely? Yes, CalEPA's Office of Environmental Health Hazard Assessment ("OEHHA") could process a Human Health Risk Assessment pursuant to its regulations.
- (d) What is the estimated timeframe to completion? 60 days.
- (e) Is a USEPA waste generator identification number required? Yes.
- (f) Can other Project Site grading and excavation be permitted concurrently? Not generally condoned by the regulatory agency.

In addition to the foregoing, the City has the following environmental- and soil-related concerns that must be addressed prior to the issuance of grading permits: (i) explanation of the Human Health Risk Assessment process for soils and PCBs; (ii) confirmation of asbestos-containing materials assessment; (iii) USEPA waste generator ID; (iv) soil vapor survey; (v) Bay Area Air Quality Management District ("BAAQMD") Regulation 8 Rule 40 Compliance Plan; and (vi) Proposition 65 notice.

The City previously made an offer to issue a grading permit, but only for remediation purposes to address existing environmental concerns related to soils and PCB contamination. The City is again offering to issue a grading permit for remediation purposes to address the environmental- and soil-related concerns prior to the issuance of any grading permit for excavation, construction, or other purposes. However, this would not authorize grading activity on the remainder of the Project Site until the remediation work is performed as explained below.

1. Human Health Risk Assessment (HHRA) for Soil and PCBs

As stated above, Dr. Mearns is recommending utilizing the process of obtaining a Human Health Risk Assessment ("HHRA"). Though her report fully explains the reasons for this recommendation, we think the reasons can be summarized as: (i) the EMP itself is deficient in important respects from being acceptable as a RAP; (ii) no agreement has been reached on an agency to process a RAP; and (iii) past experience with OEHHA suggests that preparing and processing a HHRA through OEHHA would meet Vallco's and the City's goals.

(a) General.

The 2016 Geosphere report showed PCB testing samples near Wolfe Road that exceeded the State's residential screening levels for PCBs. The 2016 Geosphere report was attached to Vallco's

Site Characterization Report (“SCR”) dated April 2019. However, the April 2019 SCR was not clear about the PCB levels at the Project Site, stating that PCBs were not detected above laboratory reporting limits in testing samples. To review the April 2019 SCR, the City hired a third-party consultant, Baseline, to conduct a peer review. In June 2019, Baseline submitted comments to the City regarding PCB levels being in excess of residential screening levels. Accordingly, this was the first time the City became aware that testing samples detected PCB levels above the screening threshold, as the City was not provided with the 2016 Geosphere report or other documents regarding detection of PCBs above screening levels prior to April 2019.

Upon being made aware of the PCB levels, the City required Vallco to revise the SCR. Vallco updated the SCR twice, in June 2019 and August 2019, correcting prior mischaracterizations that no PCBs were detected above screening levels. Furthermore, additional testing samples in 2020 revealed more PCB contamination at the Project Site.

(b) Remedial Action Plan

As a result of the testing samples from 2020 showing PCB contamination in the soil, the City is requiring environmental remediation to prevent PCBs from posing a public safety and health risk to the community. Because PCBs are listed as a toxic substance by USEPA and CalEPA, the City must ensure proper management, control, and disposal of PCBs, in accordance with Part 761 of Title 40 of the Code of Federal Regulations and state law. Accordingly, Vallco prepared the EMP for purposes of serving as a RAP. However, Dr. Mearns’ report in Exhibit B identifies the following shortcomings in the EMP for such purposes:

- (1) Required confirmation that the project scope has been submitted to the BAAQMD to ensure compliance with Regulation 11, Rule 2 to control emissions of asbestos to the atmosphere during demolition, renovation, milling and manufacturing and establish appropriate waste disposal procedures;
- (2) Requirement to obtain a USEPA waster generator identification number for the disposal of the PCB-contaminated waste;
- (3) Confirmation of the performance of a baseline Human Health Risk Assessment; and
- (4) Confirmation of the performance of monitoring volatile organic compounds (“VOCs”), pursuant to BAAQMD Regulation 8, Rule 40 during soil disturbance activities.

Additionally, Dr. Mearns states:

“What is apparent after review of these reports is the ad-hoc approach to site characterization, delineation of impacts to the soil matrix and soil vapor underlying the site, in addition to a lack of quantitative assessment of the potential risk and hazard to human health via exposure to contaminants in site soils and soil vapor underlying the site resulting in a willy-nilly approach to remediation. The project itself then suffers from this disjointed approach.”

(c) An Agency of Appropriate Jurisdiction

As Dr. Mearns' report describes, no appropriate entity has been identified to process a RAP. Neither the Santa Clara County Fire Department nor the Department of Environmental Health Care have accepted jurisdiction to process a RAP, and the City does not have authority to do so.

We understand Vallco's desire not to face a burdensome cleanup process under the jurisdiction of the USEPA, the State's Department of Toxic Substances Control ("DTSC") and/or State's Water Board. We hope Vallco can in turn appreciate and understand the City's obligations to protect and ensure the public health and safety. We have tried to balance these two interests. Accordingly, we asked Dr. Mearns to suggest other more expeditious options, where Vallco is not self-regulating and the City is carrying out its obligations to properly protect its residents. We have discussed this with City staff.

(d) OEHHA

The City offers as an alternative that the HHRA and the Project's environmental remediation plan be submitted instead to OEHHA. OEHHA acts as the regulatory agency to provide review and approval of the HHRA without having to go through DTSC, Water Board, or other State or County agency.

The objectives of the baseline HHRA are: (i) to evaluate potential health risks to human receptors posed by concentrations of constituents detected at least one time in the soil matrix and soil vapor underlying the property, and (ii) to determine mitigation measures protective of human health for the proposed redevelopment.

As Dr. Mearns' report makes clear, the HHRA should follow the guidance in the DTSC Preliminary Endangerment Assessment (PEA) guidance manual (DTSC 2015); USEPA Risk Assessment Guidance for Superfund volume 1, Human Health Evaluation Manual (RAGs) (USEPA 2004); the USEPA Risk Assessment Guidance for Superfund volume 1, Human Health Evaluation Manual (Part F, Supplemental Guidance for Inhalation Risk Assessment) (USEPA 2009); the DTSC Guidance for the Evaluation and Mitigation of Subsurface Vapor Intrusion to Indoor Air (DTSC, October 2011); the DTSC and SWRCB Supplemental Guidance Screening and Evaluating Vapor Intrusion (February 2020); the DTSC LeadSpread 8.0 Model, the San Francisco Bay Regional Water Quality Control Board ("SFRWQCB") Environmental Screening Level (ESL) model 2019 (Rev. 2) with an attenuation factor of 0.03; and the Virginia Department of Environmental Quality, Virginia Unified Risk Assessment Model ("VURAM") v 3.1, or more recent versions of these guidance documents and models.

Dr. Mearns states that the baseline HHRA should quantitatively assess the potential risks and hazards due to exposure to the detected constituents for the following receptors: (i) residential, (ii) commercial worker, and (iii) construction worker, via the exposure pathways. Vallco would prepare a workplan providing the guidance documents and models to be used, rationale for using the 95UCL as the exposure point concentrations, identifying the receptors and the exposure pathways, and identifying the proposed future use of the development to the City for review and approval prior to starting work on the HHRA.

Upon receipt of the HHRA, the City will submit the HHRA for review to CalEPA's OEHHA. Should OEHHA have comments that require a response, the City will forward those comments to Vallco. A response to the comments and/or revised HHRA should then be generated by Vallco and forwarded to the City, which will submit the same to OEHHA for review and approval.

The process to have the HHRA completed is estimated to take four weeks. Thereafter, review and approval of the HHRA by OEHHA typically takes an additional four or five weeks. Overall, the process to conduct, review, and approve the HHRA is estimated to be completed within two months. Once the HHRA is approved, Vallco can proceed with remediation and request the issuance of grading permits.

(e) Excavation of Remainder Site

The City believes that given the foregoing, grading or excavation work should proceed on the remainder of the Project Site after the contaminants are dealt with properly. The reasons are as follows: (i) Final EMP (ver. 3-5-21A) is deficient, with respect to the four environmental issues outlined above; (ii) Vallco's own consultant (EKI) stated to USEPA (February 9, 2021) that the intent was to excavate and dispose of the contaminated soils first; (iii) this Final EMP (ver. 3-5-21A) advocates for excavation of the parking garages without proper delineation and disposal of the PCB-contaminated soils adjacent to the proposed parking garages; (iv) if the HHRA process were extended or the actual remediation delayed, or if the area need to be extended after the excavation for the parking garages, there would be large open excavations present onsite for an indefinite future; and (v) the consultant's experience is that review agencies like remediation work to be completed before beginning other site grading and construction, and proposing concurrent activity could delay the approval of the HHRA.

2. Explanation of Additional Necessary Requirements

(a) Confirmation of Asbestos-Containing Material (ACM) Assessment

Many of the structures at the former Vallco Mall may have been constructed with or may contain asbestos and lead-based paints. Accordingly, Vallco should have required ACM and lead-based paint samplings in order to assess whether additional compliance measures are necessary prior to demolition of the former Vallco Mall structures. The City needs confirmation that an ACM assessment was made, which would have included sampling, proper abatement and disposal, if necessary, and that licensed professionals conducted such work. If such work was already completed, please forward the confirmation report to the City for review. To the extent additional structures will be demolished, the City will require an ACM assessment and a proper disposal and abatement plan from licensed professionals.

(b) USEPA Waste Generator ID

Following approval of the HHRA and PCB remediation plan, Vallco will need to remove PCBs from the Project Site and properly dispose of them. Section 761.61(b) of Title 40 of the Code of Federal Regulations regulates the disposal of PCB waste, but allows for disposal without notification or approval from the USEPA. Nonetheless, PCB waste must be disposed at a Toxic Substances Control Act ("TSCA")-regulated facility such as ChemWaste in Kettleman Hills,

Kings County or US Ecology in Beatty, Nevada. TSCA-regulated facilities require a USEPA Waste Generator ID number, in order to keep track of disposers for liability purposes.

Accordingly, in order to remediate PCBs from the Project Site, Valco will be required by law to obtain a USEPA Waste Generator ID to facilitate PCB waste disposal and provide accountability.

(c) Soil Vapor Survey

Pursuant to the DTSC and Water Board Vapor Intrusion Guidance (dated 2011, updated Draft dated February 2020), the presence of VOCs will require a new soil vapor study. Because VOCs are located at the Project Site, the City will require a survey to be conducted within the planned development footprint, with vapor probes set at five feet and fifteen feet below final elevation and with at least 48 hours prior to sample collection. Prior to implementation, the City will require a completed workplan and review thereof. The City will ensure that the analytical results of the survey are incorporated into the ESL Vapor Intrusion Model and VURAM in the baseline HHRA. Furthermore, the City will require that a soil management plan be created that incorporates cleanup goals calculated in the HHRA and/or mitigation measures presented in the HHRA, in order to guide contractor(s) in next steps in the event that odiferous, discolored, or impacted soils are discovered during excavation and grading activities.

(d) BAAQMD Regulation 8 – Rule 40 Compliance Plan

During the Phase I and Phase II environmental assessments of the Project Site, 29 soil samples, rather than eight samples, were taken for analysis. Although VOCs were not detected in concentrations greater than the respective screening samples, the VOCs were nonetheless detected in such samples. Therefore, a compliance plan is warranted, pursuant to BAAQMD Regulation 8 Rule 40. Such plan shall be in place prior to soil disturbance associated with excavation and grading activities. Additionally, monitoring shall be required every 15 minutes with a photo ionization detector (“PID”) held no more than three inches from the soil. Such monitoring shall be recorded on monitoring logs, and a report shall be provided within 30 days once soil disturbance activities have ceased.

(e) Proposition 65 Notice

Due to the presence of PCBs in the soil, and the fact that PCBs are listed as a potentially cancer-causing substance under Proposition 65, the City is requiring that a notice or sign be placed on the Project Site entrance during construction. Proposition 65 requires businesses to provide warnings to Californians about certain exposures to chemicals that cause cancer, birth defects, or other reproductive harm. The Prop 65 Notice regarding the presence of PCBs at the Project Site during excavation and grading is in compliance with statutory law and is not uncommon at construction sites.

3. Conclusion: Need for Completion of Remediation

We understand and appreciate Valco’s efforts to move the Project forward and have been working in good faith to proceed with the next steps. The City will be prepared to issue the grading permits once the PCBs and soil-related concerns have been adequately addressed to protect the public

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health and safety of the City's residents, employees, and construction workers. During the time that Vallco is working on these important environmental concerns, the City will put any excavation bond in abeyance.

Furthermore, we understand that there are outstanding issues related to the approval of a Final Map for the Project Site. We believe it is important that the City and Vallco get organized on all these outstanding issues and work collaboratively towards resolving the same. A letter regarding those outstanding issues will be provided under separate cover.

If you have questions or would like to discuss, please contact me at (949) 533-8155 or Dave Aleshire at (949) 250-5409. We look forward to meeting you in person very soon and moving this important project forward in a timely and responsible fashion.

Very truly yours,

ALESHIRE & WYNDER, LLP



Sunny K. Soltani
Partner

SKS:krb
Enclosures

cc: Miles Imwalle *via email* (mimwalle@coblentzlaw.com)
Deborah Feng, City Manager *via email*

EXHIBIT A



COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
(408) 777-3308 • FAX (408) 777-3333

April 12, 2021

Section I: Planning Department Comments re: Construction Management Plan (dated 2.8.2021) (Appendix F) submitted with Excavation Management Plan (3.11.2021)

1. **ARCHAEOLOGICAL MONITOR:** Please identify qualified archaeological monitor to be used for requirement in Section 3.1
2. **PALEONTOLOGICAL MONITOR:** Please identify paleontological monitor to be used for requirement in Section 3.4
3. **CONTAMINATED SOIL:** Please update Section 4.2 to refer to the ESMP and the **EMP**. The language currently states that the activity will comply with the ESMP and the PCBs report. However, since the EMP contains the PCBs Report as well as other applicable documents, please update.
4. **NOISE CONTROL:** Section 7.1
 - a. What 24-hour noise monitoring system is being used? Please describe so the City knows where the receptors are located.
 - b. What is the noise control hotline number?
5. **VIBRATIONS AND GROUND MOVEMENT:** Who is the report on existing surrounding buildings and pavement being provided to?
6. **PRECONSTRUCTION SURVEYS:** Please retain copies of all preconstruction surveys, which must be provided promptly to the City upon request.
7. **TREE RELOCATION:** Please provide the City details on the tree relocation. How are these trees going to be preserved for relocation?
8. **SITE LOGISTIC (sic.) PLAN:**
 - a. **Truck entrance and exit ramp:** The proposed truck entrance and exit ramp on the Perimeter Road side appears to encroach on the area of PCB contaminants from the PCBs at the Sears Auto Center. Please confirm whether this is correct. If so, relocate or else please provide SCCDEH "No further action" letter or equivalent approval to use the proposed location.
 - b. **Signs:** Please indicate locations of all required signs identified noise control hotline, noise disturbance coordinator, dust control coordinator.

Section II: Baseline comments re: Excavation Management Plan (dated 3.11.2021)

1. **SWPPP:** The first response to comment regarding the SWPPP indicates that "*the EMP notes that contaminated soils will be direct loaded into trucks during excavation and no stockpiling is anticipated*". However, there are various places in the EMP where the potential for stockpiling of soil is noted, so this response is not appropriate. Details regarding how stockpiles would be managed are included in the EMP, although specific locations for stockpiling are not identified. Please add proposed stockpile locations to the figure in the SWPPP.
2. **Soil Vapor Investigation Report and DEH oversight:** Please revise the paragraph extending from the bottom of page 5 to the top of page 6 of the PCBs Report (referred to by WSP as the "Summary Report") as follows:

"Remediation of the former Sears Automotive Center was planned to be performed with oversight/review from the SCCFD under the approved Closure Plan. In August 2020, the SCCFD transferred this responsibility to the Santa Clara County Department of Environmental Health (SCCDEH). The SCCDEH indicated that it may not assume an active oversight role in the removal activities outlined herein but would review the Completion Report for the removal activities (referenced below). A Soil Vapor Investigation Report prepared by WSP dated January 26, 2021 was submitted to the SCCDEH on (insert date) to address a request from SCCDEH to evaluate potential impacts in soil vapor prior to performing removal activities at the former Sears Automotive Center. The oversight issue with the SCCDEH is pending final resolution following their review of the Soil Vapor Investigation Report. Following the SCCDEH's review of the Soil Vapor Investigation Report and prior to the start of removal actions, VPO will provide the City with written documentation from the SCCDEH documenting their response to the Soil Vapor Investigation Report and SCCDEH's final determination as to whether removal actions can be performed without their oversight. If the SCCDEH indicates that they will provide active oversight of removal actions and/or additional actions are requested by the SCCDEH prior to performing removal actions (e.g., further investigation or modification to the proposed remediation plans), VPO will perform the additional actions requested by the SCCDEH and will provide the City with written documentation from SCCDEH indicating their approval for implementation of proposed removal actions either with or without active oversight from SCCDEH." If SCCDEH determines removal actions can be performed without their oversight please provide a regulatory agency that will assume this function to the City for concurrence.

3. BAAQMD Regulation 8 Rule 40-306, Rule 40-402, Rule 40-601.4, Rule 40-604: As VOCs have been detected in site soils and a Soil Vapor Investigation confirmed the presence of VOCs in the vapor phase BAAQMD Regulations 8-4-306 Contaminated Soil Excavation and Removal, 8-40-402 Reporting, Excavation Contaminated Soil, 8-40-601.4 Contaminated Soil Sampling and 8-40-604 Measurement of Organic Concentration apply as do proper Notification to the BAAQMD at least 5 days prior to soil disturbance including excavation activities. Please revise the Excavation Management Plan to reflect these regulations and how compliance will be achieved.

4. Baseline Human Health Risk Assessment: A baseline Human Health Risk Assessment pursuant to USEPA and DTSC guidelines should be performed prior to performing excavation activities as construction workers will be exposed to contaminated soils and VOCs in the vapor phase. The baseline HHRA should evaluate the following receptors: residential, commercial workers and construction workers for the following exposure pathways ingestion/dermal contact, inhalation of particulates and inhalation of volatiles. If a chemical was detected one time in the media sampled it should be retained as a chemical of concern and quantitatively assessed in the baseline HHRA. Please revise the Excavation Management Plan to reflect results of the baseline HHRA.

EXHIBIT B

MEARNS CONSULTING LLC

ENVIRONMENTAL CONSULTANTS

RISK ASSESSORS

738 Ashland Avenue, Santa Monica, California 90405

Cell 310.403.1921

Tel 310.396.9606 Fax 310.396.6878

Mearns.Consulting@verizon.net

www.MearnsConsulting.com

April 7, 2021

via email

Ms. Sanaz K. Soltani
Aleshire & Wynder LLP
18881 Von Karman Avenue, Suite 1700
Irvine, California 92612

RE: **Environmental Issues to be Addressed
Vallco Redevelopment Project, Cupertino, California**

Dear Ms. Soltani:

The following environmental issues are outstanding for the proposed redevelopment project at the former Vallco Shopping Mall located at 10123 North Wolfe Road, Cupertino, California (the site): (1) confirmation that an asbestos containing material survey was completed by an appropriately licensed professional and abatement and disposal, if necessary, were performed by an appropriate licensed professional prior to demolition of onsite structures; (2) a USEPA waste generator identification number was obtained for the disposal of PCB-contaminated waste, including, but not limited to PCB-contaminated soils, (3) a baseline Human Health Risk Assessment, and (4) monitoring of volatile organic compounds (VOCs) pursuant to the Bay Area Air Quality Management District (BAAQMD) Regulation 8, Rule 40 during soil disturbance activities.

The following reports have been made available for review in addition to general correspondence, including comments on the below-referenced reports, from Baseline Environmental (the City's environmental consultant) and City Staff:

1. Environmental Site Management Plan, versions 4-16-19, 6-28-19, 7-24-19 and 8-2-19, prepared by WSP on behalf of Vallco Property Owner LLC
2. Site Characterization Report, versions 4-10-19, 4-16-19 (rev. June 2019), 7-24-19 and 8-2-19, prepared by WSP on behalf of Vallco Property Owner LLC
3. Polychlorinated bi-phenyls (PCBs) Workplan, versions 8-6-19, 8-20-19, prepared by WSP on behalf of Vallco Property Owner LLC
4. Final Excavation Management Plan, versions 2-14-20, 12-18-20 (corrected 1-19-21), 2-26-21, 3-5-21A, prepared by WSP on behalf of Vallco Property Owner LLC
5. Soil Vapor Investigation Report, version 1-26-21, prepared by WSP on behalf of Vallco Property Owner LLC
6. Summary Report, Approach to PCB-contaminated Soil, versions 8-14-20, 2-4-21, prepared by WSP on behalf of Vallco Property Owner LLC

What is apparent after review of these reports is the ad-hoc approach to site characterization, delineation of impacts to the soil matrix and soil vapor underlying the site, in addition to a lack of quantitative assessment of the potential risk and hazard to human health via exposure to contaminants in site soils and soil vapor underlying the site resulting in a willy-nilly approach to remediation. The project itself then suffers from this disjointed approach.

Specifically the most recently generated report, Final Excavation Management Plan version 3-5-21A is deficient as the four environmental issues outlined above have not been addressed. Additionally this Final EMP 3-5-21A advocates for excavation of the parking garages without proper delineation and disposal of the PCB-contaminated soils adjacent to the proposed parking garages even though the consultant, Ms. Michelle King (EKI Consultants, Inc.), stated in an email on February 9, 2021 to Mr. Steve Armann (USEPA) that the intent was to excavate and dispose of the PCB-contaminated soils onsite first. Furthermore there is no path forward in Final EMP 3-5-21A after the excavation for the parking garages, resulting in large open excavations present onsite for an indefinite future. Consequently it is not prudent for the excavation of the parking garages to move forward.

CONFIDENTIAL ATTORNEY CLIENT PRIVILEGE

Establishing a process allows for involvement of the local regulatory agencies Santa Clara County Fire Department and Santa Clara County Department of Environmental Health in addition to a clear path forward resulting in a completed project. Steps towards this path include preparation of a baseline Human Health Risk Assessment that will be used to guide remediation and redevelopment.

Baseline Human Health Risk Assessment - As the former Vallco shopping center property is considered for residential redevelopment and as soil matrix and soil vapor investigations have determined impacts to the property that may affect human health a baseline Human Health Risk Assessment is required. This baseline HHRA should be prepared prior to executing the Final EMP 3-5-21A.

The objectives of the baseline HHRA are: (1) to evaluate potential health risks to human receptors posed by concentrations of constituents detected at least one time in the soil matrix and soil vapor underlying the property and (2) to determine mitigation measures protective of human health for the proposed redevelopment.

The HHRA should follow the guidance in the Department of Toxic Substances Control (DTSC) Preliminary Endangerment Assessment (PEA) guidance manual (DTSC 2015), U.S. Environmental Protection Agency Risk Assessment Guidance for Superfund volume 1, Human Health Evaluation Manual (RAGs) (USEPA 2004), the U.S. Environmental Protection Agency Risk Assessment Guidance for Superfund volume 1, Human Health Evaluation Manual (Part F, Supplemental Guidance for Inhalation Risk Assessment) (USEPA 2009), the DTSC Guidance for the Evaluation and Mitigation of Subsurface Vapor Intrusion to Indoor Air (DTSC, October 2011), The DTSC and SWRCB Supplemental Guidance Screening and Evaluating Vapor Intrusion (February 2020), the DTSC LeadSpread 8.0 Model, the San Francisco Bay Regional Water Quality Control Board (SFRWQCB) Environmental Screening Level (ESL) model 2019 (Rev. 2) with an attenuation factor of 0.03; the Virginia Department of Environmental Quality, Virginia Unified Risk Assessment Model (VURAM) v 3.1, or more recent versions of these guidance documents and models.

The baseline HHRA should quantitatively assess the potential risks and hazards due to exposure to the detected constituents for the following receptors: (1) residential, (2) commercial worker and (3) construction worker, via the following exposure pathways: (1) ingestion and dermal contact and (2) inhalation of volatiles and non-volatiles.

The risk assessor should prepare a workplan providing the guidance documents and models to be used, rationale for using the 95UCL as the exposure point concentrations, identifying the receptors and the exposure pathways and identifying the proposed future use of the development to the City for review and approval prior to starting work on the HHRA.

Upon receipt of the HHRA the City will submit the HHRA for review to the State of California, Environmental Protection Agency, Office of Environmental Health Hazard Assessment (OEHHA). Should OEHHA have comments that require a response, the City will forward those comments to the risk assessor. A response to comment letter and/or revised HHRA than will be generated and submitted for review and approval to OEHHA.

BAAQMD Regulation 8, Rule 40-306, Rule 40-402, Rule 40-601.4, Rule 40-604 - As VOCs have been detected in site soils and a Soil Vapor Investigation confirmed the presence of VOCs in the vapor phase BAAQMD Regulations 8-4-306 Contaminated Soil Excavation and Removal, 8-40-402 Reporting, Excavation Contaminated Soil, 8-40-601.4 Contaminated Soil Sampling and 8-40-604 Measurement of Organic Concentration apply as do proper Notification to the BAAQMD at least 5 days prior to soil disturbance including excavation activities. The Final EMP 3-5-21A must be revised to reflect these regulations and how compliance will be achieved.

Sincerely,

 X *Susan Mearns*

Susan L. Mearns, Ph.D.

Mearns Consulting LLC