

Council Meeting of
July 15, 2008

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Fire Department – Approve a land use covenant and environmental restriction on property located at 4135 Pacific Coast Highway, Torrance, CA. Expenditure: None

RECOMMENDATION

Recommendation of the Fire Chief that City Council approve a land use covenant and environmental restriction on property located at 4135 Pacific Coast Highway, Torrance, CA.

FUNDING

None required.

BACKGROUND/ANALYSIS

The property located at 4135 PCH is a former gasoline station site that required soil clean-up as part of the commercial development. Some contaminated soil remains on the site but will pose no health risk.

The deed restriction allows the land to be used for specific commercial purposes and restricts change in use without further site evaluation and/or clean-up. This allows impacted properties to remain productive and beneficial to the City and yet control development of the site for future use. This strategy has been endorsed by the Los Angeles Regional Water Quality Control Board.

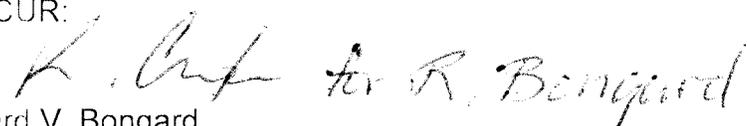
It is requested this item be brought forward for approval. This will allow the development and occupancy of the site to proceed forward

Respectfully submitted,

RICHARD V. BONGARD
Fire Chief

By Kenneth Lew 
Hazardous Materials
Specialist

CONCUR:


Richard V. Bongard
Fire Chief


LeRoy J. Jackson
City Manager

Attachment A: Covenant and Environmental Restriction on Property:
Former Chevron Station 4135 PCH. Torrance, CA

Recording Requested By and When Recorded, Mail To:

City Clerk's Office
City of Torrance
3031 Torrance Blvd
Torrance, CA 90503

COVENANT AND ENVIRONMENTAL RESTRICTION
ON PROPERTY

Former Chevron Station No. 9-2770
4135 Pacific Coast Highway, Torrance, CA 90505
Assessor Parcel Number: 7529-018-018

This Covenant and Environmental Restriction on Property ("Covenant") is made as of the ___ day of June, 2008 by Bower Properties, LLC, a California limited liability company ("Covenantor") which is the Owner of record of that certain property situated at 4135 Pacific Coast Highway, in the City of Torrance, County of Los Angeles, State of California, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter referred to as the "Subject Property"), for the benefit of the City of Torrance ("City"), with reference to the following facts:

A. Nature of Covenant. This Covenant is an environmental covenant provided for by Civil Code section 1471 and required by the City because portions of the Subject Property is contaminated by hazardous materials as defined in section 25260 of the Health and Safety Code.

B. Contamination of the Subject Property. The soil and groundwater at the Subject Property were contaminated by operations of a retail motor fuel facility formerly conducted by Chevron U.S.A., Inc. ("Chevron") on the Subject Property until 2005. The known contamination originally consisted of petroleum hydrocarbons including benzene, toluene, ethylbenzene and xylenes, which constitute hazardous materials. By means of soil excavation, the majority of the known contamination has been removed from the Subject Property by Chevron under the oversight of the California Regional Water Quality Control Board ("Board"). No concentrations of petroleum hydrocarbons were detected in groundwater underlying the Subject Property in June 2007. On August 15, 2007, the Board issued a no further action/closure letter.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil at the Subject Property. A soil gas survey was conducted in the areas of the footprint of the proposed building prior to commencement of construction thereof. Based on the results of the

soil gas survey, it is proposed that a vapor barrier be installed beneath the footprint of the proposed building.

D. Land Uses and Population Potentially Affected. The Subject Property is currently vacant but will be redeveloped and used for commercial, retail and office purposes. Adjacent uses include commercial and residential land uses.

E. Disclosure and Sampling. Disclosure of the presence of hazardous materials on the Subject Property has been made to the Board and the City and extensive sampling of the soil gas, soil and groundwater at the Subject Property has been conducted.

F. Use of Subject Property. Covenantor desires and intends that in order to benefit the City, and to protect the present and future public health and safety, the Subject Property shall be used in such a manner as to avoid potential harm to persons or property that might result from any hazardous materials that might remain present on portions of the Subject Property.

ARTICLE I GENERAL PROVISIONS

1.1 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Subject Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. These Restrictions are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on portions of the Subject Property of hazardous materials. Each and all of the Restrictions shall run with the land and pass with each and every portion of the Subject Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof for the benefit of the City and all Owners and Occupants. Each and all of the Restrictions: (a) are imposed upon the entire Subject Property, unless expressly stated as applicable to a specific portion of the Subject Property; (b) run with the land pursuant to Civil Code section 1471; and (c) are enforceable by the City.

1.2 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, and possessors of all or any portion of the Burdened Property shall become Owners or Occupants as defined herein and shall be deemed by their purchase, leasing, or possession of the Subject Property to be bound by the Restrictions and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions herein established must be adhered to for the benefit of the City and all Owners and Occupants, and that the interest of all Owners and Occupants of the Subject Property shall be subject to the Restrictions.

1.3 Incorporation into Deeds. Covenantor desires and covenants that the Restrictions shall be incorporated in and attached to each and all future purchase agreements and grant deeds for all or any portion of the Subject Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant has

been attached to incorporated into any given purchase agreement or grant deed.

1.4 Purpose. It is the purpose of this Covenant to convey to the City real property rights, which will run with the land, to protect human health and the environment by reducing the risk of exposure to residual hazardous materials at the Subject Property.

ARTICLE II DEFINITIONS

2.1 Board. "Board" shall mean the California Regional Water Quality Control Board, Los Angeles Region and shall include its successor agencies, if any.

2.2 City. "City" shall mean the City of Torrance.

2.3 Improvements. "Improvements" shall mean all buildings, structures, roads, driveways, gradings, re-gradings, and paved areas, constructed or placed upon any portion of the Subject Property.

2.4 Occupant or Occupants. "Occupant" or "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the right to use and/or occupy all or any portion of the Subject Property following the recordation of this Covenant.

2.5 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and Covenantor's successors in interest who hold fee title to all or any portion of the Subject Property.

ARTICLE III DEVELOPMENT, USE AND CONVEYANCE OF THE SUBJECT PROPERTY

3.1 Restrictions on Development and Use. Covenantor promises to restrict the use of the Subject Property as follows:

- a. Development and use of the Subject Property shall be restricted to industrial, commercial or office space;
- b. No residence for human habitation shall be permitted on the Subject Property;
- c. No hospitals shall be permitted on the Subject Property;
- d. No schools for persons under 21 years of age shall be permitted on the Subject Property;
- e. No day care centers for children or day care centers for senior citizens

shall be permitted on the Subject Property;

f. No Owner or Occupant shall conduct or permit any excavation work on the Subject Property, unless expressly permitted in writing by the City. The City may require a health risk assessment and further remediation as a condition of any permit. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by the Owner, Owner's agent, Occupant or Occupant's agent in accordance with all applicable provisions of local, state and federal law;

g. All uses and development of the Subject Property shall be consistent with any applicable health risk assessment, each of which is hereby incorporated herein by reference, and including future amendments thereto. All uses and development shall preserve the integrity of any cap, any remedial measures taken or remedial equipment installed, and any groundwater monitoring system installed on the Subject Property pursuant to the requirements of the City, unless otherwise expressly permitted in writing by the City;

h. No Owner or Occupant shall drill, bore, otherwise construct, or use a well for the purpose of extracting water for any use, including but not limited to, domestic, potable, or industrial uses, unless expressly permitted in writing by the Board; nor shall the Owner or Occupant permit or engage any third party to do such acts;

i. The Owner and Occupant shall notify the Board and City of each of the following: (1) the type, cause, location and date of any disturbance to any cap, any remedial measures taken or remedial equipment installed, and of the groundwater monitoring system installed on the Subject Property pursuant to the requirements of the Board and City, which could affect the ability of such cap or remedial measures, remedial equipment, or monitoring system to perform their respective functions and (2) the type and date of repair of such disturbance. Notifications to the Board and City shall be made by registered mail within ten (10) working days of both the date of discovery of such disturbance and the date of completion of repairs;

j. Covenantor agrees that the City and any persons acting pursuant to Board orders shall have reasonable access to the Subject Property for the purposes of inspection, surveillance, maintenance, or monitoring; and

k. No Owner or Occupant shall act in any manner that threatens or is likely to aggravate or contribute to the existing contaminated conditions at the Subject Property.

3.2 Enforcement. Failure of an Owner or Occupant to comply with any of the Restrictions set forth in Paragraph 3.1 shall be grounds for the City, by the authority of this Covenant, to require that the Owner or Occupant modify or remove, or cause to be modified or removed, any Improvements constructed in violation of that Paragraph. Violation of this Covenant shall also be grounds for the City to file civil actions against the Owner or Occupant as provided by law.

3.3 Notice in Deeds. After the date of recordation hereof, all Owners shall execute a

written instrument which shall accompany all purchase agreements and grant deeds relating to all or any portion of the Subject Property. Any such grant deed shall contain the following statement.

The land described herein contains hazardous materials in soils and in the groundwater under the property, and is subject to a Covenant and Environmental Restriction dated as of _____, 2008, and recorded on _____, 2008, in the Official Records of Los Angeles County, California, as Document No. _____, which Covenant and Environmental Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists.

ARTICLE IV VARIANCE AND TERMINATION

4.1 Variance. Any Owner or, with the Owner's written consent, any Occupant may apply to the City for a written variance from the provisions of this Covenant, as provided by law.

4.2 Termination. Any Owner or, with the Owner's written consent, any Occupant may apply to the City for a termination of the Restrictions as they apply to all or any portion of the Subject Property, as provided by law.

4.3 Term. Unless terminated in accordance with Paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Subject Property or any portion thereof to the general public.

5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (a) when delivered, if personally delivered to the person being served or an official of a government agency being served, or (b) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested, addressed:

If To "Covenantor":
 Bower Properties, LLC
 Attn: Albert J. Bower
 1 Fremontia Street
 Portola Valley, CA 94028

If To "City":

City of Torrance Fire Department
Hazardous Materials Division
Attention: Fire Marshal
3031 Torrance Blvd.
Torrance, California 90503

If To "Board":

Regional Water Quality Control Board
Los Angeles Region
Attention: Executive Officer
320 W. 4th Street, Suite 200
Los Angeles, California 90013

5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined by a court having jurisdiction to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.4 Recordation. This instrument shall be executed by the Covenantor. This instrument shall be recorded by the Covenantor in the County of Los Angeles within ten (10) days of the date of execution.

5.5 References. All references to Code sections include successor provisions.

5.6 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to preserve and implement the purpose of this instrument and the policies and purposes of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

IN WITNESS WHEREOF, Covenantor has executed this Covenant as of the date set forth above.

Covenantor: Bower Properties, LLC

By: _____

Title: _____

Date: _____

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 2008 before me, _____,
personally appeared _____,
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public

City of Torrance

Frank Scotto, Mayor

Date: _____

ATTEST:

Sue Herbers, City Clerk

APPROVED AS TO FORM:
JOHN L. FELLOWS III
City Attorney

By: _____

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

On _____, 2008 before me, _____,
Date Here Insert Name and Title of the Officer

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

The Subject Property referred to herein is reflected on the attached map and described as follows:

PARCEL 1 OF PARCEL MAP NO. 83 IN THE CITY OF TORRANCE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 9 PAGE 84 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 7529-018-018