

B. McDaniel

POLANCO REDEVELOPMENT ACT REMEDIATION AND CONDITIONAL IMMUNITY AGREEMENT

SAN DIEGO REGIONAL
WATER QUALITY
CONTROL BOARD

2003 AUG 20 P 1:31

This Polanco Redevelopment Act Remediation and Conditional Immunity Agreement ("Agreement") is entered into between the California Regional Water Quality Control Board, San Diego Region ("Regional Board") and the Redevelopment Agency of the City of Chula Vista ("Agency") as a result of the following facts and circumstances:

1.1 Deposits of waste including releases of hazardous substances at, on, beneath and around certain real property formerly referred to as the "Omar Rendering Company Site" ("Site") located within the Redevelopment Area of the City of Chula Vista ("City") have caused discharges of waste to ground water and have caused and threaten to cause conditions of pollution, contamination and nuisance. The current owner of the Site is Otay Mesa Ventures II, L.L.C., a Louisiana limited liability company ("Owner"), which is a wholly owned subsidiary of The LandBank Group, Inc., a Louisiana corporation ("LandBank").

(The Site shall be more particularly described in the Conceptual Remedial Action Plan ("Conceptual RAP") referred to below in Section 1.4.)

1.2 The Regional Board has issued to Owner Waste Discharge Requirements (WDRs) for closure and post-closure maintenance of the Class I waste management unit ("landfill cell") constructed in 1981 to contain hazardous waste from prior activities at the Site. (Regional Board Order No. 80-06, "Closure Requirements for the Omar Rendering Company Dumpsite in the Otay River Valley," as amended and updated by Orders Nos. 87-141 and 97-40.) The WDRs include on-going monitoring and reporting requirements. In addition, the Regional Board has issued Cleanup and Abatement Order No. R9-2003-0080 requiring Owner to undertake cleanup and abatement for waste deposited in soil and discharged to ground water at the Site. (Regional Board Orders applicable to the Site are attached hereto as Exhibits A,B,C, and D.)

1.3 The Agency is a duly formed redevelopment agency entitled to "take any actions that the agency determines are necessary and that are consistent with other state and federal laws to remedy or remove a release of hazardous substances on, under, or from property within a project area...." (Health and Safety Code §33459.1(a)(1).) The Agency has the authority to require persons responsible for Sites associated with conditions of pollution or nuisance and releases of hazardous substances, including Owner, to undertake and complete remedial action on properties throughout the redevelopment areas of the City of Chula Vista, including at the Site. The Agency has proposed this Agreement with the Regional Board to facilitate sale of the Site to a prospective purchaser for redevelopment. The Agency has approved plans for the development of the Site (the "Approved Project"), as proposed by Knowlton Realty Advisors, LLC ("Developer"). The plans for the Approved Project were developed in consultation with the Agency and the Owner to ensure that the Approved Project would be compatible with any activities or facilities needed by Owner to complete the RAP and comply with applicable Regional Board orders.

1.4 In contemplation of this Agreement, the Agency has required the preparation of a Conceptual RAP that provides a framework for the investigation and cleanup and abatement of

conditions of pollution, contamination and nuisance associated with discharges of waste and releases of hazardous substances at the Site. The Conceptual RAP is attached hereto as Exhibit E. The Conceptual RAP includes: (1) the grading and soil management plan for the shallow soils at the Site necessary for redevelopment (the "Soil Requirements"); (2) a summary of actions needed to comply with existing environmental requirements currently applicable to the Site, including WDRs issued by the Regional Board; and (3) a framework for responding to Cleanup and Abatement Order No. R9-2003-0080 (CAO) and any addenda to the CAO that the Regional Board will issue to Owner requiring Owner to finalize assessment and cleanup and abatement related to groundwater contamination at the Site. Plans for remedial or cleanup and abatement activities developed by Owner (or by Developer where remedial effects or cleanup and abatement will be integrated with or incidental to redevelopment) with the concurrence of the Agency will be incorporated into the Conceptual RAP upon approval by the Regional Board. Once all of the plans necessary to address all Regional Board orders applicable to the Site have been submitted and approved by the Regional Board, the Conceptual RAP shall become the approved Remedial Action Plan ("RAP") for the Site, as contemplated by Section 33459.3 of the Health & Safety Code. It is intended that the Soil Requirements will be implemented by Developer concurrently with or prior to Owner's response to the Regional Board's CAO in a manner that will not impede compliance with any regulatory requirements the Regional Board may impose upon the Owner related to conditions at the Site.

1.5 On April 1, 2003 the Agency adopted a Resolution approving an Agreement with the Regional Board to proceed with remedial action at the Site as provided for in the Polanco Redevelopment Act, Health & Safety Code §33459, et seq. (the "Act"). The Agency relies on the understanding that completion of the RAP to the satisfaction of the Regional Board will satisfy the requirements of the Act and trigger immunity under the Act as set forth in §§33459.1 and 33459.3 of the Health and Safety Code. Prior to completion of the RAP, the Agency has arranged for the Regional Board to provide conditional immunity from responsibility for cleanup and abatement for Developers (defined below), as specified below in Section 3.0.

1.6 Concurrent with its approval of this Agreement, the Agency approved that certain Risk Allocation Agreement between the Agency, LandBank, Owner, and Developer ("Risk Allocation Agreement"). Agency would not have entered into this Agreement but for the agreement of LandBank, Owner, and Developer to enter into the Risk Allocation Agreement and their fulfillment of their respective obligations thereunder. In addition, the Agency and the Developer will enter into an agreement for redevelopment of the Site.

NOW, THEREFORE, Agency and the Regional Board agree as follows:

2.1 The Agency shall assist the Regional Board in overseeing Owner's development and implementation of the RAP and shall cooperate with the Regional Board in overseeing CAO No. R9-2003-0080, WDRs in Order No. 97-40, and any amendments or addenda to these orders and plans issued or approved by the Regional Board, together with any other administrative requirements the Regional Board may impose on Owner related to environmental conditions at the Site, other than Soil Requirements (collectively, the "Remedial Requirements"). Agency's assistance and cooperation shall include Agency review of any work plan or report submitted by Owner or Developer that is required by the Conceptual RAP or RAP, and, (b) upon request of the Regional Board project manager, reports to the Regional Board on the progress of

implementation of Remedial Requirements to the extent such reports are within Agency's expertise. After reviewing work plans or reports Agency shall notify the Regional Board as to whether or not such work plans and reports are consistent with the requirements of the Approved Project and the Remedial Requirements, to the extent such work plans and reports are within the expertise of the Agency, or other responsible agencies of the City. The Agency's notification shall identify the scope of the Agency's review and shall identify issues that require independent technical review by the Regional Board. In order to assist the Regional Board with groundwater oversight, the Agency agrees to meet and confer with property owners near the Site to the extent reasonably necessary to facilitate off-site placement and inspections of monitoring wells, or other reasonable non-invasive testing, as may be required by the Regional Board.

2.2 Once Owner has provided Agency with certification that Owner has completed all remedial action required by the RAP and Agency has determined that, to the best of Agency's knowledge and belief, Owner has completed all remedial action required by the RAP, or, in the case of long-term treatment or extraction facilities, that Owner has installed and is operating all necessary facilities, the Agency shall notify the Regional Board of its determination. The Agency's notice shall identify the scope of the Agency's review and shall identify matters that require independent technical review by the Regional Board. Within sixty (60) days following the date on which the Regional Board finds that the remedial actions required under the RAP have been completed, the Regional Board shall notify the Agency in writing that the statutory immunity set forth in §33459.3 of the Health and Safety Code is applicable to the Agency and all other parties entitled to such immunity. The Regional Board acknowledges that: (1) any long-term operations and maintenance activities ("O&M") will be undertaken subsequent to the Regional Board's determination that the remedial actions required under the RAP have been completed; and (2) the existence of any such O&M obligations shall not affect the applicability of statutory immunity under the Act.

2.3 The Agency has arranged for the County of San Diego's Department of Environmental Health (the "Health Department") to oversee implementation and completion of the Soil Requirements by the Developer in a manner consistent with the grading plan and soil management plan in the Conceptual RAP. The Agency shall cooperate with the Health Department in this regard. When the Agency, in consultation with the Health Department, determines to the best of Agency's knowledge and belief, that the Developer has completed the Soil Requirements in a manner consistent with the grading plan and soil management plan in the Conceptual RAP, the Agency will notify the Regional Board that the Soil Requirements of the RAP have been completed and provide the Regional Board with an endorsed copy of the notice to that effect from the Health Department, identifying the scope of any technical review undertaken by Agency and Health Department and identifying any issues that require independent technical review by the Regional Board. Within thirty (30) days of the Regional Board's determination that the Soil Requirements have been satisfactorily completed, the Regional Board shall send a letter to the Developer stating that no further action is necessary with respect to the Soil Requirements. The Regional Board shall make such determination promptly following receipt of the Agency's and the Health Department's notification and endorsement.

2.4 The Agency shall cause Owner to reimburse the Regional Board for actual costs incurred by the Regional Board for regulatory oversight of development and implementation of

the RAP for the Site. The Regional Board shall administer cost recovery pursuant to this Agreement in accordance with the State Water Resources Control Board Cost Recovery Program for Spills, Leaks, Investigations, and Cleanups (SLIC).

3.0 Conditional Immunity

3.1 As a result of, and in reliance upon, this Agreement, the Regional Board shall not require the Developer, future owners of all or any portion of the Site, or any person who provides financing to Developer or such future owners ("Developers") to undertake further investigation or remediation of releases or discharges at the Site, provided that:

3.1.1 Owner has provided assurances of financial responsibility, guaranteed by The LandBank Group, Inc. (by executing this Agreement, the Regional Board acknowledges receipt of such assurances satisfactory to it) until Owner can arrange for alternative assurances, for satisfaction of Owner's obligations for closure and post-closure maintenance of the landfill cell and for further investigation and cleanup and abatement or remedial work at the Site required by the RAP and Regional Board orders applicable to the Site; and

3.1.2 Developers include only those persons who will be entitled to immunity under the Act once the Regional Board has approved completion of the remedial actions required by the RAP and no person who, prior to the date of this Agreement, could have been required to undertake cleanup or abatement under §13304 of the Water Code for the discharge or deposit of waste or release of hazardous substances at the Site; and

3.1.3 Developers, their affiliates, assigns, and successors, and their agents, employees, and contractors, shall consult with Owner and Agency, as needed, to ensure that the Approved Project will not exacerbate either the discharge of hazardous substances from the Site to waters of the state or any known or threatened condition of pollution or nuisance associated with prior discharge or deposit of waste or hazardous substances at or from Site; and shall not modify the Approved Project at the Site in any manner that could exacerbate either the discharge of hazardous substances from the Site to waters of the state or any known or threatened condition of pollution or nuisance associated with prior discharge or deposit of waste or hazardous substances at or from the Site; and

3.1.4 Developers, their affiliates, assigns, and successors, and their agents, employees, and contractors, shall not unreasonably prevent, delay, impair, or interfere with current or prospective closure or post-closure maintenance activities or investigation or cleanup and abatement activities, if any, but shall rather cooperate to achieve the goals of the RAP; and

3.1.5 Developers, their affiliates, assigns, and successors, and their agents, employees, and contractors, shall allow the Agency and the Regional Board, its employees and agents, access to the Site during normal business hours or upon request to investigate the conditions described in the Conceptual RAP, CAO, or WDR(s), that could affect water quality, to monitor ground water, and to obtain samples of soil and ground water at this Site; and

3.1.6 Developer and any subsequent owner of all or any portion of the Site shall acknowledge responsibility for cleanup and abatement of any discharge or deposit of waste, including hazardous substances, at or from Site which exist as a result of such party's own activities at the Site that causes or threatens to cause conditions of pollution or nuisance; and

3.1.7 The Agency shall, in consultation with the Regional Board, oversee implementation of the RAP in accordance with the Policies and Procedures for Investigation, Cleanup, and Abatement of Unauthorized Releases of Hazardous Substances Under Section 13304 of the Water Code, State Water Resources Control Board Resolution No. 92-49, as amended.

3.2 Once the Regional Board has approved completion of the remedial actions required under the RAP, the Agency and all parties entitled to immunity under the Act, including Developers, shall be entitled to statutory immunity under the Act, and this Conditional Immunity shall terminate and be of no further force or effect.

4.0 Circumstances Supporting Determination

4.1 The following circumstances support the determination that it is not against the public interest for the Regional Board to refrain from asserting its authority under §13304 of the Water Code over the Developers, in this case.

4.2 The Regional Board has identified persons, including Owner, none of whom are the Developers, who have assumed responsibility for the discharge or deposit of hazardous substances at and from the Site and has directed Owner to propose and implement all necessary measures to clean up waste causing or threatening to cause conditions of pollution or nuisance, and to mitigate and to abate existing or threatened pollution or nuisance associated with the discharge or deposit of hazardous substances.

4.3 Owner has been identified as a responsible party and remains responsible for any investigation, clean up, or abatement that may be required under §13304 of the Water Code in the future.

4.4 Owner has provided assurance of financial responsibility, guaranteed by The LandBank Group, Inc. until Owner can arrange alternative assurances that will ensure there are adequate resources available to complete further investigatory and remedial work at the Site.

4.5 Uncertainty regarding the potential liability for cleanup or abatement of environmental conditions at this Site has hindered redevelopment and economic revitalization of such properties in City's redevelopment area.

5.0 General Provisions

5.1 The Agency's obligations under this Agreement are undertaken for the benefit of the Regional Board and the Developers only, and no rights of any other third parties to enforce these obligations are created hereby.

5.2 Except as expressly provided herein, neither the Regional Board nor the Agency shall have any obligations with respect to the Site, or any physical condition existing thereon. Agency's and Regional Board's obligations under this Agreement are limited by the scope of the provisions herein, and nothing herein is intended to create the status of "responsible party" or "discharger" as a result of this exercise of either party's authority hereunder.

5.3 This Agreement shall be effective as of the date of Regional Board approval hereof.

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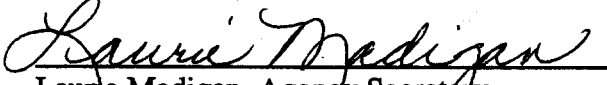
**SIGNATURE PAGE TO POLANCO REDEVELOPMENT ACT REMEDIATION AND
CONDITIONAL IMMUNITY AGREEMENT**

IN WITNESS WHEREOF, each if the parties hereto have caused this Agreement to be executed.

Redevelopment Agency of the
City of Chula Vista

By: 
Steve Padilla, Chairman


ATTEST:


Laurie Madigan, Agency Secretary

APPROVED AS TO FORM:


Glen R. Googins, Agency Attorney

California Regional Water Quality Control Board,
San Diego Region

By: 
John Robertus, Executive Officer