

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Region 2
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May 20, 2020

VIA EMAIL

Karen Argenti
Bronx Council for Environmental Quality
80 Van Cortlandt Park South, Suite E1
Bronx, NY 10463

**Re: Bronx Point
NYS BCP Site No. C203117**

Dear Ms. Argenti:

The New York State Department of Environmental Conservation (the Department), in consultation with the New York State Department of Health, has reviewed your letter dated April 25, 2020 which provided comments on the Draft Remedial Action Work Plan (RAWP) for the referenced site. The proposed remedy will address contamination in the soil, groundwater and soil vapor. This is being done to facilitate redevelopment of the currently vacant site in order to construct an affordable housing project with public open space, playgrounds, and an extension of Mill Pond Park.

Your summarized comments are listed below, followed by the Department's response.

General Concerns

Comment 1: *The letter made several references to the use of phytoremediation and bioremediation as a preferred method for treating contaminated soil.*

Response 1: The Brownfield Cleanup Program (BCP) is a voluntary program intended to encourage private-sector cleanups to promote redevelopment. The BCP requires that an Applicant evaluate different remedial alternatives, from which the final remedy is selected. The Applicant selects their preferred remedial action from the list of alternatives. Provided that the selected remedial alternative is protective of public health and the environment for the intended use of the site, the Department will approve the remedy. Neither of the alternatives analyzed by the Applicant included bioremediation or phytoremediation. As noted in your letter, while phytoremediation generally costs less than excavation and landfilling, it is a significantly longer process to complete the remediation using those techniques. Time is a major consideration for this project, since the objective of the redevelopment is to provide affordable housing in a timely manner.

Demolition and Excavation

Comment 2: *Concerns were expressed about the disposal of excavated soil, community protection during demolition and excavation activities, and the hours to be worked by the contractor.*

Response 2: Demolition of any above-grade structures on the site falls under the jurisdiction of the NYC Department of Buildings (DOB). Prior to issuing a permit for demolition, the Applicant must complete any required asbestos and/or lead paint abatement and provide certification of same to DOB. Below-grade structures and soil excavation will be performed in accordance with the Soils/Materials Management Plan, or SMMP (section 5.4 of the RAWP). The SMMP includes specific actions that will be taken to properly stockpile, characterize and dispose of excavated materials in a manner that protects public health and the environment. Throughout all excavation activities a Community Air Monitoring Plan, or CAMP (included as Appendix E of the RAWP) will be implemented. This includes real-time monitoring for dust/particulates and volatile organic compounds that may be generated by the excavation activities. The CAMP includes action levels that trigger mitigation measures to control dust, vapors and odors that may be generated by site work. Regarding contractor work hours, while they are generally are discussed in section 4.2.4 of the RAWP, please note that work hours are established and enforced by the DOB.

Soil and Water

Comment 3: *“...we are concerned that the soil is not being cleaned to the highest use standard... This is inappropriate for a place for affordable housing as it would not be acceptable in high income housing... [T]he installation of a site cover system is not acceptable so close to the waterbody, and for residential use.”*

Response 3: The restricted residential use soil cleanup objectives established in the RAWP are appropriate for apartments, condominiums, co-operative or other multi-family residential development, regardless of income level. A site cover system is an appropriate engineering control for a restricted residential use remedy. The cover system along the waterfront must conform to the requirements of the Department's Tidal Wetlands regulations regarding pervious vs. impervious surfaces.

Comment 4: *“In the end, the developer should not look too far -- importing clean material that meets the established soil cleanup objectives (SCOs) for use as backfill should be to use the MOER's Clean Soil [Bank].”*

Response 4: The specifications for chemical quality of imported soils will be adhered to as defined in section 5.0 of the RAWP. The applicant has indicated that the MOER soil bank will be considered as an import site during site remediation.

Comment 5: *“...treating contaminated groundwater utilizing chemical oxidation may not be adequate as the waterfront park and greenway will be used for active water recreation.*

Moreover, the redevelopment should be bringing the river to its highest use, e.g. fishing and swimming. This also means that all discharges and groundwater should be treated and cleaned.

Response 5: In Situ Chemical Oxidation (ISCO) is well-established remedial technology for treating petroleum contaminated groundwater. The purpose of the ISCO treatment is to remediate contaminated groundwater before it migrates to the river. The ISCO design will be submitted under a separate technical memorandum as discussed in section 3.3 of the RAWP.

Furthermore, a Storm Water Pollution Prevention Plan (SWPPP) will be submitted to prevent the discharge of site material to the Harlem River. The SWPPP is a requirement of the NYSDEC State Pollutant Discharge Elimination System General Permit for Stormwater Discharges from Construction Activity. Stormwater management in the adjacent tidal wetland area will be addressed in the Tidal Wetland Permit. Any dewatering activities will require proper treatment prior to discharge to either the sanitary sewer or storm sewer under a permit.

New Construction

Comment 6: *What vapors do you believe you have to mitigate and to what level will they be mitigated? Is it not expected to be possible to fully mitigate whatever materials there are on the site that could be producing these vapors going forward? Have the remedial systems been designed that will be used to continuously mitigate, or remediate, whatever it is they have to remediate?*

Response 6: The proposed building on the site will include a sub-slab depressurization system (SSDS) to mitigate the chlorinated volatile organic compounds (CVOCs) that were detected in the soil vapor. SSDS is a proven technology that will ensure that the redevelopment is protective of human health and the environment. Furthermore, the excavation of contaminated soil coupled with groundwater remediation via ISCO injections is expected to reduce soil vapor concentrations over time.

Comment 7: *Who will hold the environmental easement and how will it ensure proper use of the site? What does proper use mean beyond constructing the project as approved? What improper uses should citizens be concerned about? Do they involve stewardship of the open space? What else? These measures and the HASP and the CAMP should be available for public review as soon as practicable before any construction begins. What does the Site Management Plan for long term maintenance mean? Who will be responsible for the SMP?*

Response 7: The Environmental Easement (EE), which is described in section 7.3 of the RAWP, runs with the land in favor of the New York State. The EE contains the use restriction(s) and/or any prohibition(s) on the use of land in a manner inconsistent with engineering controls. The placement of an EE provides an effective and enforceable means of encouraging the reuse and redevelopment of a controlled property at a level

that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements. For this site, the EE would restrict the use of the land to restricted residential uses (i.e., apartments, condominiums, co-operative or other multi-family residential development) which can also include commercial or industrial uses. The EE would prohibit a higher use of the site (such as single-family residential or unrestricted use) without additional remediation. The EE ensures that the Institutional Controls (ICs) are adhered to. These ICs are listed in section 7.3 of the RAWP.

The Site Management Plan (SMP) is required to ensure the safe reuse of properties where contamination will remain in place. The SMP is fully described in section 7.4 of the RAWP. The SMP will be developed following implementation of the remedy and will be submitted to the Department and NYSDOH for review and approval. The Applicant and/or the site owner is/are jointly responsible for ensuring that all site management responsibilities identified in the SMP and EE are performed.

The detailed HASP and CAMP can be found in appendices D and E of the RAWP.

Tangible Property Tax Credits

Comment 8: *Explain the intent of and eligibility of this developer. Although the name on the application is the Bronx Point Owner, LLC, as far as we know, they are not the owner. This is New York City property and as such does not qualify for tax credits.*

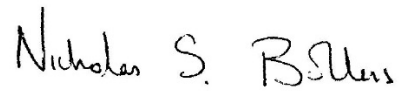
Response 8: Bronx Point Owner LLC (the Volunteer) is the selected developer of the Bronx Point development site and is in the process of acquiring a leasehold interest from the City. The Volunteer is eligible for tangible property credits under the BCP since the proposed development will include affordable housing and the site is located in an En-Zone (i.e., a census tract that has a poverty rate of 20 percent and unemployment rate at least 1.25 times the statewide unemployment rate, or a poverty rate at least double the rate for the county in which the tract is located).

Comment 9: *In conclusion, we request that the DEC review this RWP and update it to meet the criteria of the highest use standard.*

Response 7: A Track 1 Unrestricted Use cleanup was evaluated in the RAWP as alternative I. It was evaluated using the NYSDEC BCP threshold and balancing criteria in section 3.4 of the RAWP. Alternative II, which is the selected remedy, was found to be equally protective of human health and the environment. To achieve a Track I cleanup approximately 174,200 cubic yards of soil would have to be excavated and removed, compared to approximately 26,700 cubic yards for the selected remedy. The associated increase in truck traffic through the local community would be considerable and would result in additional air and noise pollution. The estimated cost for a Track I cleanup is \$92.0 million versus \$11.3 million for the selected remedy.

Thank you for taking the time to provide comments on the is project. The Department appreciates your input. If you have any further questions, please contact me at shaun.bollers@dec.ny.gov.

Sincerely,

A handwritten signature in black ink that reads "Nicholas S. Bollers". The signature is written in a cursive, slightly informal style.

Nicholas S. Bollers
Assistant Environmental Engineer

ec: Shaun Surani – NYSDOH