

File No. 100575

Committee Item No. 4

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date June 14, 2010

Board of Supervisors Meeting Date _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
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OTHER

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Figure 1 Map</u> |
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Completed by: Alisa Somera Date June 11, 2010

Completed by: _____ Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

1 [Hunters Point Shipyard - Health Code Amendment]

2 Ordinance amending Article 31 of the Health Code to extend, to the entire Hunters
3 Point Shipyard area, the special permit processing requirements that now apply to
4 Hunters Point Shipyard Parcel A to address potential residual contamination, and
5 imposing fees to administer this Article; amending Sections 804 and 1227 of the Health
6 Code to make conforming amendments; and making environmental findings.
7

8 Note: Additions are *single-underline italics Times New Roman*;
9 deletions are *strikethrough italics Times New Roman*.
10 Board amendment additions are double underlined.
11 Board amendment deletions are ~~strikethrough normal~~.

12 Be it ordained by the People of the City and County of San Francisco:

13 Section 1. Findings.

14 A. In conjunction with Ordinances [PWC] _____, and [DBI] _____ on file
15 with the Clerk of the Board of Supervisors in File Nos. 100576 and 100577, this Ordinance
16 amends Chapter 31 of the Health Code to extend to the entire Hunters Point Shipyard area
17 the special permit processing requirements that now apply at Hunters Point Shipyard Parcel A
18 to address potential contamination.

19 B. In accordance with the actions contemplated herein, this Board adopted
20 Resolution No. _____, concerning findings pursuant to the California Environmental
21 Quality Act (California Public Resources Code sections 21000 et seq.). Said Resolution is on
22 file with the Clerk of the Board of Supervisors in File No. 100572 and is incorporated
23 herein by reference.
24
25

1 Section 2. San Francisco Health Code is amended by amending Article 31 to read as
2 follows:

3 **SEC. 3100. - HUNTERS POINT SHIPYARD.**

4 Findings. The Board of Supervisors of the City and County of San Francisco hereby
5 finds and declares as follows:

6 A. This ordinance is designed to protect human health and safety and the environment
7 at the former Hunters Point Shipyard during and after development and to facilitate
8 redevelopment as envisioned in the Hunters Point Shipyard Redevelopment Plan, which the
9 Board of Supervisors adopted in 1997 *and amended in 2010*, and its Environmental Impact
10 Reports.

11 B. The United States designated Hunters Point Shipyard as a U.S. Naval Shipyard in
12 1945. The United States Environmental Protection Agency (EPA) placed the Hunters Point
13 Shipyard on the National Priorities List pursuant to the Comprehensive Environmental
14 Response, Compensation and Liability Act (CERCLA) in 1989. The U.S. Navy ("*Navy*") *has*
15 divided the site into *six* parcels *designated Parcels A-F* for purposes of remediation.

16 C. The ~~U.S.~~ Navy issued a CERCLA Record of Decision (ROD) for Parcel A which was
17 approved by the EPA, the California Department of Toxic Substances Control (DTSC), and
18 the San Francisco Bay Region Regional Water Quality Control Board (RWQCB) in November
19 1995. The ROD concluded that "no action" was needed to clean up Parcel A. Effective April 5,
20 1999, EPA removed Parcel A from the National Priorities List after EPA and the State of
21 California found that all appropriate responses under CERCLA had been implemented, that
22 no further cleanup is appropriate for Parcel A and that the remedial actions conducted on
23 Parcel A remain protective of public health, welfare, and the environment.

24
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1 D. On September 1, 2004, the Navy issued a draft final Finding of Suitability to
2 Transfer (FOST) for Parcel A. On September 30th and October 6th and 7th 2004,
3 respectively, the EPA, DTSC and the RWQCB concurred with the Navy's FOST. The Navy
4 signed the FOST on October 14, 2004. The FOST for Parcel A contains requirements for
5 certain notices, restrictions and covenants to be included in the deed for Parcel A. These
6 notices, restrictions and covenants are also referred to as "institutional controls" and are
7 binding on all successive owners of any portion of Parcel A.

8 E. On December 3, 2004, the Navy transferred portions of Parcel A to the San
9 Francisco Redevelopment Agency.

10 F. The Navy issued a CERCLA ROD Amendment for Parcel B in January 2009, a ROD for
11 Parcel D-1 in September 2009, a ROD for Parcel G in February 2009, a ROD for Parcel UC-1 in
12 August 2009 and a ROD for Parcel UC-2 in December 2009. The EPA, DTSC and the RWQCB
13 approved these RODs. The RODs concluded that additional action was needed for the parcels to be
14 protective of public health, welfare, and the environment in light of the redevelopment plans for the
15 site. The Navy is preparing a ROD for Parcel C and issued a Draft Proposed Plan in January 2009.
16 The Navy issued a Draft Final No Further Action ROD for Parcel D-2 in January 2009. The Navy
17 completed a Draft Final Remedial Investigation Report for Parcel E in February 2008 and a Draft
18 Feasibility Study in July 2009. The Navy issued a Draft Final Remedial Investigation Feasibility Study
19 (RI/FS) for Parcel E-2 in February 2009 and a Draft Final Radiological Addendum to the RI/FS in
20 March 2010. The Navy issued the Final Feasibility Study for Parcel F in April 2008.

21 G. In addition to Parcel A, which the Navy already transferred to the San Francisco
22 Redevelopment Agency ("Agency"), it is anticipated that the Navy will offer the remaining parcels for
23 transfer to the Agency in accordance with a Conveyance Agreement between the Agency and the Navy.
24 Prior to transfer of any parcel, the Navy will issue a draft final FOST or a draft final Finding of

1 Suitability for Early Transfer (FOSET) for the parcel. If the Navy issues a FOST, the Conveyance
2 Agreement requires the Navy to obtain the concurrence of the EPA, DTSC, and RWOCB in the final
3 FOST before it offers the parcel to the Agency. If the Navy issues a FOSET, CERCLA requires the
4 Navy to obtain the approval of EPA and the concurrence of the Governor of California which will be
5 based on input from DTSC and the RWOCB. A FOST or FOSET may require the deeds for the property
6 to include certain environmental notices, restrictions or covenants, also referred to as "institutional
7 controls" that will be binding on all successive owners of the transferred property to which such
8 notices, restrictions or covenants apply. The Navy also is expected to enter into a Covenant to Restrict
9 Use of Property (CRUP) with DTSC, which will be binding on subsequent owners and will provide for
10 DTSC enforcement of the covenants, restrictions or conditions to which the property is subject. A Land
11 Use Control Remedial Design (LUC RD) for each parcel will lay out the inspection and reporting
12 requirements for the institutional controls and activity and land use restrictions. For property that
13 transfers via a FOSET, the EPA and the Agency and possibly subsequent private developers, will be
14 required to enter into an Administrative Order on Consent (AOC), also approved by state
15 environmental regulatory agencies, which will detail the required corrective or cleanup actions and
16 restricted activities associated with the property covered by the AOC and provide for EPA enforcement
17 of its terms. Additionally, for property that transfers via a FOSET, the Navy and the Agency will enter
18 into an Early Transfer Cooperative Agreement (ETCA), which will provide for the Agency to cause to
19 be performed certain environmental remediation activities to facilitate redevelopment in exchange for
20 funding of such activities by the Navy.

21 H. The Board of Supervisors by Resolution _____, adopted CEQA
22 findings, including a mitigation monitoring and reporting program ("MMRP") for the Candlestick
23 Point-Hunters Point Shipyard Phase II Development Plan Project ("Project"), for which the Agency
24 and Planning Commissions certified a Final Environmental Impact Report ("FEIR") in

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1 2010. The Project contains all of the property in the Hunters Point Shipyard
2 except the property designated as Parcel A by the Navy. The MMRP contains mitigation measures
3 that address potential hazardous materials impacts associated with the Project. It is the intent of the
4 Board to create a process for the Department of Public Health to enforce in the Hunters Point Shipyard
5 portion of the Project certain hazardous materials mitigation measures identified in the FEIR through
6 this Article 31.

7 **SEC. 3101. - DEFINITIONS.**

8 In addition to the general definitions applicable to this Code, whenever used in this
9 Article, the following terms shall have the meanings set forth below:

10 (a) "Applicant" means a person applying for any of the following authorizations for
11 subsurface activities on portions of the Hunters Point Shipyard subject to this Ordinance:

12 (1) For property determined by the applicable ROD to be suitable for unrestricted residential
13 use (i) any building or grading permit that involves the disturbance of at least 50 cubic yards
14 (38.23m3) of soil; (ii) any permit pursuant to the Public Works Code that involves the
15 disturbance of at least 50 cubic yards (38.23m3) of soil; (iii) any improvement plan pursuant to
16 Division 3 of the Subdivision Code that involves the disturbance of at least 50 cubic yards
17 (38.23m3) of soil; (iv) any permit to operate or approval to close an underground tank,
18 pursuant to Sections 1120 and 1120.1 of the Health Code that involves the disturbance of at
19 least 50 cubic yards (38.23m3) of soil; (v) any well construction, modification, operation or
20 maintenance permit pursuant to Article 12B of the Health Code; or (vi) any permit that involves
21 demolition of structures with lead-based paint.

22 (2) For property which is subject to a deed restriction or covenant containing an environmental
23 restriction requiring a durable cover or engineered cap (i) any building or grading permit that involves
24 the disturbance of soil; (ii) any permit pursuant to the Public Works Code that involves the disturbance

1 of soil; (iii) any improvement plan pursuant to Division 3 of the Subdivision Code that involves the
2 disturbance of soil; (iv) any permit to operate or approval to close an underground tank, pursuant to
3 Sections 1120 and 1120.1 of the Health Code that involves the disturbance of soil; or (v) any well
4 construction or destruction permit pursuant to Article 12B of the Health Code.

5 (3) Notwithstanding the preceding subdivisions, Aan Applicant does not include a person
6 applying for a permit for the sole purpose of conducting environmental characterization.

7 (b) "Director" means the Director of the San Francisco Department of Public Health or
8 the Director's designee.

9 (c) "GIS" is a geographic information system, for the Hunters Point Shipyard. The GIS is a
10 computer-based system containing site-specific environmental information.

11 (d) "Hunters Point Shipyard parcels" or "HPS parcels" mean that area of the City and County
12 of San Francisco shown on Figure 1 which is maintained for public distribution by the Director.
13 A copy of said figure is on file with the Clerk of the Board of Supervisors in File No. 100575

14 (de) "Improvement Plan" means an improvement plan as required under the
15 Subdivision Map Act, California Government Code Sections 66410 et seq.

16 (ef) "Parcel A" means that area of the City and County of San Francisco shown on Figure
17 1 which is maintained for public distribution by the Director. A copy of said figure is on file
18 with the Clerk of the Board of Supervisors in File No. 100575 that parcel or parcels of land of
19 the Hunters Point Shipyard as indicated on the Map filed with the Recorder of the City and County of
20 San Francisco on December 3, 2004 situated in the City and Count of San Francisco, that was
21 transferee to the San Francisco Redevelopment Agency by the U.S. Navy.

22 (fg) "Prescribed Subsurface Activity Area" means the specific location and horizontal
23 and vertical extent of the proposed disturbance, excavation, grading or other subsurface
24 activity defined using coordinates compatible with the GIS to the extent feasible.

1 **SEC. 3102. - APPLICABILITY OF ARTICLE.**

2 (a) Applicants must comply with this Article. The Department of Public Works (for any
3 permit or improvement plan subject to this Article), the Department of Building Inspections (for
4 building and grading permits) and the Department of Health (for underground tank permits
5 and approvals and water well permits) shall inform the Director whenever a permit or
6 improvement plan application is submitted for Hunters Point Shipyard and shall refer
7 Applicants to the Director. The Director shall determine the applicability of this Article to the
8 permit application or improvement plan and shall implement and enforce the provisions of this
9 Article. If the Director determines that a permit or improvement plan is subject to the
10 provisions of this Article, the permit or improvement application shall not be deemed complete
11 until the Applicant has complied with the requirements of this Article or shall be conditioned
12 upon compliance with this Article as specified herein.

13 (b) Any person that obtains environmental sampling data shall submit that data to the
14 Director in a form acceptable to the Director.

15 ~~(c) The following sections of this Article apply:~~

16 ~~All Parcels Section 3100 et seq.~~

17 ~~Parcel A Section 3120 et seq.~~

18 ~~Parcel B Section 3130 et seq.~~

19 ~~Parcel C Section 3140 et seq.~~

20 ~~Parcel D Section 3150 et seq.~~

21 ~~Parcel E Section 3160 et seq.~~

22 ~~Parcel F Section 3170 et seq.~~

23 (d) Prior to applying for a permit or improvement plan any person that desires to
24 comply with this ordinance may enter into a voluntary agreement with the Director. The

1 voluntary agreement shall be signed as to form by the City Attorney and shall require the
2 person to comply with the substantive requirements of this Article and any regulations
3 adopted by the Director; require payment of fees; and provide for Director notification to the
4 relevant department that the person has complied with this Article.

5 (ed) Compliance with this Article does not relieve any person of compliance with any
6 applicable federal, state, regional or local law, and does not take the place of compliance with
7 any requirement of any regulatory agency that has jurisdiction to enforce any legal
8 requirement that this Article is intended to address.

9 **SEC. 3103. - REPORTS BY DIRECTOR.**

10 The Director shall monitor compliance with this Article and provide an annual summary
11 of compliance with this Article to the Board of Supervisors.

12 **SEC. 3104. - GENERAL WELFARE; NON-ASSUMPTION OF LIABILITY.**

13 The degree of protection required by this Article is considered to be reasonable for
14 regulatory purposes. This Article shall not create liability on the part of the City, or any of its
15 officers or employees for any damages that result from reliance on this Article or any
16 administrative decision lawfully made in accordance with this Article. All persons handling
17 hazardous materials within the City should be and are advised to determine to their own
18 satisfaction the level of protection desirable to ensure no unauthorized release of hazardous
19 materials.

20 In undertaking to require Applicants to comply with this Article, the City and County of
21 San Francisco is assuming an undertaking only to promote the general welfare. It is not
22 assuming, nor is it imposing on itself or on its officers and employees, any obligation for
23 breach of which it is liable for money damages to any person who claims that such breach
24 proximately caused injury.

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1 All inspections specified or authorized in this Article shall be conducted at the discretion
2 of the City and nothing in this Article shall be construed as requiring the City to conduct any
3 such inspection nor shall any actual inspection made imply a duty to conduct any other
4 inspection.

5 **SEC. 3105. - CONSTRUCTION ON CITY PROPERTY.**

6 All departments, boards, commissions and agencies of the City and County of San
7 Francisco that authorize construction or improvements on land under their jurisdiction under
8 circumstances where no building, grading, street use or other permit or approval is required
9 pursuant to the San Francisco Municipal Codes shall adopt rules and regulations to insure
10 that the procedures set forth in this Article are followed. The San Francisco Redevelopment
11 Agency and the departments of Public Health, Public Works, and Building Inspection shall
12 assist other departments, boards, commissions and agencies to ensure that these
13 requirements are met.

14 **SEC. 3106. - FORMER LANDFILL DISPOSAL AREAS.**

15 Upon receipt of a site evaluation report from an Applicant, the Director, ~~in consultation~~
16 ~~with the Local Enforcement Agency and the California Integrated Waste Management Board,~~ shall
17 determine whether the Prescribed Subsurface Activity Area is subject to the provisions of the
18 California Integrated Waste Management Act (Cal. Public Resources Code § 40000 et seq.)
19 as amended, relating to development on or near a former landfill disposal site. In making this
20 determination, the Director may consult with the Local Enforcement Agency and the California
21 Integrated Waste Management Board.

22 (a) For any Prescribed Subsurface Activity Area or portion thereof that is subject to
23 such provisions, the Director shall require the Local Enforcement Agency to approve
24 proposed land uses and determine any necessary protective measures or requirements to the

1 extent necessary to comply with California Code of Regulations, Title 27, Chapter 3,
2 Subchapter 4, Article 6 (Section 20917 et seq.) and Subchapter 5 (Section 20950 et seq.), as
3 amended.

4 (b) For any Prescribed Subsurface Activity Area or portion thereof that is located within
5 1,000 feet of a former landfill disposal site, but which is not subject to the above- referenced
6 provisions of the California Integrated Waste Management Act, the Director shall review any
7 proposed structures to ensure that the construction or use of the structure will not pose a
8 threat to public health and safety or the environment. In making this determination, the
9 Director shall consider the potential for adverse impacts on public health and safety and the
10 environment, taking into account the following: the amount, nature and age of solid waste in
11 the landfill disposal area; current and projected gas generation; effectiveness of existing
12 controls; proximity of the proposed land uses to landfill disposal area; and other relevant
13 geographic or geologic features. Based on these factors, the Director shall determine whether
14 the structure must be designed and constructed in accordance with the following measures or
15 requirements (or other design providing an equivalent degree of protection against gas
16 migration into the structure): installation of a geomembrane or equivalent system with low
17 permeability to landfill gas between the concrete floor slab of the structure and subgrade;
18 installation of a permeable layer of open graded material of clean aggregate with a minimum
19 thickness of 12 inches between the geomembrane and the subgrade or slab; installation of a
20 geotextile filter to prevent the introduction of fines into the permeable layer; installation of
21 perforated venting pipes, designed to operate without clogging, within the permeable layer;
22 construction of a venting pipe with the ability to be connected to an induced draft exhaust
23 system; installation of automatic methane gas sensors within the permeable gas layer, and
24 inside the structure to trigger an audible alarm when methane gas concentrations are

1 detected; and/or appropriate periodic methane gas monitoring, including monitoring inside
2 structures, with reporting requirements and a contingency and mitigation plan.

3 For purposes of this section, "structures" shall include: buildings, subsurface vaults,
4 utilities or any other buildings or areas where potential gas buildup would be of concern.

5 (c) If the Director determines under subsections (a) or (b) of this Section that protective
6 measures or requirements are necessary, the Director shall inform the relevant department in
7 writing that such measures or requirements must become conditions of the permit or
8 improvement plan.

9 **SEC. 3107. - RULES AND REGULATIONS.**

10 (a) Pursuant to the procedures specified in Section 1170 of the Health Code, the
11 Director may adopt rules, regulations and guidelines, including maps, necessary or
12 appropriate to implement this Article.

13 ~~(b) Pursuant to Section 3107(a), the Director may subject additional geographic areas to the~~
14 ~~requirements of this ordinance where those additional areas exhibit the same underlying conditions~~
15 ~~and will be subject to the same restrictions as areas already subject to this ordinance.~~

16 (eb) Regulations promulgated by the Health Commission shall be maintained in the
17 Office of the Clerk of the Board of Supervisors.

18 (dc) The Director shall maintain and update ~~the GIS~~ project files as site data is received
19 pursuant to this Article and provide public access to the GIS files and site data.

20 (ed) The Director shall maintain for public distribution a map that reflects the
21 boundaries of each Parcel of the Hunters Point Naval Shipyard. The map shall include former
22 landfill disposal sites and a line representing the 1,000 foot perimeter from those sites. For
23 Parcel A, the Director shall adopt a map showing historic fill areas and utility lines existing
24 prior to the date of transfer of Parcel A from Navy ownership.

1 **SEC. 3108. - FEES.**

2 The Director is authorized to charge the following fees to defray the costs of document
3 processing and review, consultation with Applicants, and administration of this Article: *for*
4 *fiscal year 2004-2005: (1) an initial fee of \$511.00 upon submission of the site evaluation report; and*
5 *(2) an additional fee of \$137.00 per hour for document processing and review and applicant*
6 *consultation exceeding three hours or portion thereof payable on an ongoing basis; for fiscal year*
7 *2005-2006: (1) an initial fee of \$514.00; and (2) an additional fee of \$145.00 per hour exceeding three*
8 *hours or portion thereof; for fiscal year 2006-2007: (1) an initial fee of \$539.00; and (2) an additional*
9 *fee of \$153.00 per hour exceeding three hours or portion thereof. Beginning with fiscal year 2007-*
10 *2008, for Fiscal Year 2010-2011, the fees are as follows: Application Fee = \$592 for up to three hours*
11 *of document review/consultation and \$197 for each additional hour, including site visits. No no* later
12 than April 15 of each year, the Controller shall adjust the allowable fees *provided in this Article*
13 to reflect changes in the relevant Consumer Price Index, without further action by the Board of
14 Supervisors. In adjusting the fees, the Controller may round these fees up or down to the
15 nearest dollar, half-dollar or quarter-dollar. The Director shall perform an annual review of the
16 fees scheduled to be assessed for the following fiscal year and shall file a report with the
17 Controller no later than May 1st of each year, proposing, if necessary, an adjustment to the
18 fees to ensure that costs are fully recovered and that fees do not produce significantly more
19 revenue than required to cover the costs of operating the program. The Controller shall adjust
20 fees when necessary in either case.

21 **SEC. 3109. - VIOLATIONS.**

22 In addition to any other provisions of this Article, fraud, willful misrepresentation, or any
23 willfully inaccurate or false statement in any report required by this Article shall constitute a
24 violation of this Article.

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1 **SEC. 3110. - ENFORCEMENT ACTIONS.**

2 The Director shall have authority to administer and enforce all provisions of this Article
3 and may enforce the provisions of this Article by any lawful means available for such purpose,
4 including taking any action authorized pursuant to Article 21, Sections 1133(a)-(d), (f), and (h)-
5 (i) of the Health Code.

6 **SEC. 3111. - RESERVED.**

7 **SEC. 3112. - REMEDIES NOT EXCLUSIVE.**

8 Remedies under this Article are in addition to and do not supersede or limit any and all
9 other remedies, civil or criminal.

10 **SEC. ~~31203113.~~ - ~~PARCEL A~~ INSTITUTIONAL CONTROLS.**

11 An Applicant must comply with institutional controls included in ~~the~~ any deed conveying
12 ownership ~~of Parcel A~~ from the United States Navy to the San Francisco Redevelopment
13 Agency pursuant to a final FOST or FOSET or included in any recorded covenant to restrict use of
14 property containing environmental restrictions for Parcel A to the extent such institutional controls
15 apply to activities authorized by a permit or improvement plan subject to this Article. The
16 Director will advise the relevant department of the specific requirement pursuant to the deed;
17 require compliance with the institutional controls as a condition of the permit or improvement
18 plan; and coordinate with the relevant department to monitor and enforce compliance with
19 such institutional controls.

20 **SEC. ~~31213114.~~ - ~~PARCEL A~~ SITE EVALUATION AND SITE MITIGATION FOR**
21 **UNRESTRICTED RESIDENTIAL PROPERTY.**

22 This section applies to property determined by the applicable ROD to be suitable for
23 unrestricted residential use that is transferred without a requirement for a durable cover or engineered
24 cap.

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1 (a) An Applicant must submit the following, satisfactory to the Director, as further
2 specified in regulations adopted by the Director: (i) ~~s~~Site ~~e~~Evaluation ~~r~~Report; (ii) ~~d~~Dust
3 ~~e~~Control ~~p~~Plan; ~~(iii) Unknown Contaminant Contingency Plan;~~ ~~(iiiiv) d~~Disposal ~~p~~Plan (if
4 applicable); ~~(ivv) Site Specific h~~Health and ~~s~~Safety ~~p~~Plan; ~~(v) stormwater and erosion control plan;~~
5 ~~(vi) Soil Importation Plan (if applicable), (vii) Foundation Support Piles Installation Plan (if~~
6 ~~applicable), (viii) a determination of whether additional information is necessary to~~
7 adequately characterize the Prescribed Subsurface Activity Area, ~~and (ix) for areas that undergo~~
8 ~~demolition of structures with lead based paint, a scope of work to collect additional information as~~
9 ~~described in the regulations.~~ The plans required by (ii) ~~(vix)~~ must be specific to the activities to
10 be conducted under a permit or improvement plan.

11 The Director shall review the site evaluation report and advise the Applicant on whether
12 additional information is necessary ~~to adequately characterize the Prescribed Subsurface Activity~~
13 ~~Area~~ as follows:

14 (1) In unrestricted residential parcels, if the Prescribed Subsurface Activity Area has already
15 been evaluated in a Site Evaluation Report in the past and a Closure Report for the Prescribed
16 Subsurface Activity Area was approved by the Director and the Closure Report included verification
17 of: (i) the placement of at least one foot of clean imported fill or equivalent on areas with fill
18 containing naturally occurring asbestos; or (ii) that the Area was cut into native bedrock and properly
19 covered, if necessary, to address any concerns about naturally occurring asbestos; or (iii) that the Area
20 has no naturally occurring asbestos concerns; then no site history, data evaluation, sampling or
21 additional characterization will be necessary with respect to such Prescribed Subsurface Activity Area.

22 (2) Unrestricted residential property that does not meet the criteria provided in subdivision (1)
23 will be evaluated as follows:

1 (~~1A~~) Tier I Areas. If a portion of a Prescribed Subsurface Activity Area has been used
2 continuously only for residential purposes, or is not located on historic fill (as defined in a map
3 maintained by the Director pursuant to Section 3107(e)), or is not or has not been underlain
4 by Navy utility lines (as defined on a map maintained by the Director pursuant to Section
5 3107(e)), and, in any case, there is no evidence that hazardous substances are present, no
6 additional information or sampling will be necessary with respect to such portions of the
7 Prescribed Subsurface Activity Area. The Director shall provide the Applicant and the relevant
8 department with written notification that the Applicant has complied with the requirements of
9 this Article as to such portions, and must comply with the plans listed in subsection (a)(ii)—
10 (~~vix~~), *as determined by the Director to be applicable*, and all laws applicable to soil removal and
11 off-site disposal.

12 (2B) Tier II Areas. In portions of Prescribed Subsurface Activity Area other than those
13 described as Tier I, if the Director determines that such portions are adequately characterized,
14 the Director shall provide the Applicant and the relevant department with written notification
15 that the Applicant has complied with the requirements of this Article as to such portions, and
16 must comply with the plans listed in subsection (a)(ii)—(~~vix~~), *as determined by the Director to be*
17 *applicable*, and all laws applicable to soil removal and off-site disposal. If the Director
18 determines that additional information is necessary to adequately characterize portions of the
19 Prescribed Subsurface Activity Area, the Applicant must submit a proposed scope of work for
20 a supplemental site evaluation in accordance with regulations adopted by the Director. Upon
21 approval of the scope of work by the Director, the Applicant shall implement the scope of work
22 and prepare a supplemental site evaluation report summarizing the new information.

23 (Aa) If the supplemental site evaluation report shows that there is no existing
24 contamination that exceeds the screening criteria established by the Director by regulation,

1 the Director shall provide the Applicant and the relevant department with written notification
2 that the Applicant has complied with the requirements of this Article, and must comply with the
3 plans listed in subsection (a)(ii)—~~(vix)~~, as determined by the Director to be applicable, and all laws
4 applicable to soil removal and off-site disposal.

5 (Bb) If the supplemental site evaluation report shows that there is existing
6 contamination that exceeds the screening criteria established by the Director and the
7 Applicant wishes to retain that soil in the Prescribed Subsurface Activity Area or elsewhere
8 within Parcel A unrestricted residential property, the Applicant must prepare and submit to the
9 Director a risk evaluation report and a site mitigation plan demonstrating the property can still
10 be used for unrestricted residential purposes consistent with the FOST. The site mitigation
11 plan must include the plans listed in subsection (a)(ii)—~~(vix)~~, as determined by the Director to be
12 applicable, and may include a deed notice, provided that any notice is consistent with use for
13 unrestricted residential purposes. The Director must review and approve the risk evaluation
14 report and the site mitigation plan. Upon approval of these documents, the Director shall
15 provide the Applicant and the relevant department with written notification that the Applicant
16 has complied with the requirements of this Article, and must comply with the site mitigation
17 plan and all laws applicable to soil removal and off-site disposal.

18 (b) If the Director finds that the Applicant intends to remove soil from the Prescribed
19 Subsurface Activity Area and dispose of that soil off-site, then the Director shall find that, as to
20 that soil, no additional information is necessary and shall provide the Applicant and the
21 relevant department with written notification that the Applicant has complied with the
22 requirements of this Article, and must comply with the plans listed in subsection (a)(ii)—~~(vix)~~,
23 as determined by the Director to be applicable, and all laws applicable to soil removal and off-site
24 disposal.

1 (c) Upon completion of the activity authorized by the permit or improvement plan, the
2 Applicant shall submit a ~~e~~Closure ~~f~~R~~e~~port to the Director including: additional information or
3 data obtained, including information on unanticipated conditions; correcting any information
4 previously submitted; and certifying implementation of the plans listed in subsection (a)(ii)—
5 *(vix), as determined by the Director to be applicable*, any applicable risk management or site
6 mitigation plan and all laws applicable to soil removal.

7 ~~SEC. 3130. PARCEL B [RESERVED].~~

8 ~~SEC. 3140. PARCEL C [RESERVED].~~

9 ~~SEC. 3150. PARCEL D [RESERVED].~~

10 ~~SEC. 3160. PARCEL E [RESERVED].~~

11 ~~SEC. 3170. PARCEL F [RESERVED].~~

12 **SEC. 3115. HPS PROPERTY WITH A DURABLE COVER REQUIREMENT.**

13 (a) For property which is subject to a deed restriction or covenant to restrict use of
14 property containing an environmental restriction requiring a durable cover or engineered cap the
15 Applicant shall submit to the Director (i) Site Evaluation Report; (ii) Dust Control Plan; (iii) Unknown
16 Contaminant Contingency Plan; (iv) Disposal Plan (if applicable); (v) Site Specific Health and Safety
17 Plan; (vi) Soil Importation Plan (if applicable); (vii) Foundation Support Piles Installation Plan.

18 The Applicant will also submit verification to the Director of the following:

19 (b) for property that is currently subject to an Administrative Order on Consent (AOC) and
20 is therefore subject to the regulatory oversight of the EPA, the Applicant must submit proof that it is
21 complying with all environmental documents and restrictions, including without limitation as
22 applicable, the AOC, ETCA, CRUP, LUC RD, pre-Remedial Action Closeout Report (pre-RACR) Risk
23 Management Plan (RMP), post-RACR RMP and Operation and Maintenance Plan (OMP). Proof of

1 compliance can be: (i) a letter from EPA detailing the compliance; (ii) a report or checklist, as
2 required by the document; or (iii) any other form acceptable to the Director demonstrating compliance.

3 (c) for property that is no longer subject to an Administrative Order on Consent (AOC) or
4 that was never subject to an AOC, the Applicant must submit proof that it is complying with all
5 environmental documents and restrictions that are applicable to the property, including without
6 limitation as applicable, an ETCA, CRUP, pre-RACR RMP, post-RACR RMP, and OMP. Proof of
7 compliance can be: (i) a report or checklist, as required by the document; or (ii) any other form
8 acceptable to the Director demonstrating compliance.

9 (d) Whether or not an AOC is in effect for the property:

10 (i) if an RMP for the property includes a requirement for a Dust Control Plan and if EPA
11 already has approved the RMP and Dust Control Plan, then the Applicant is required only to submit a
12 copy of the approved Dust Control Plan and approval letter from EPA as proof of compliance with the
13 Dust Control Plan requirement. However, if the EPA approved Dust Control Plan does not include
14 specification of particulate monitoring equipment, site specific monitoring location requirements, or
15 action levels then the Director may require submittal of this information.

16 (ii) if an RMP for the property includes a requirement for a Site Specific Health and Safety Plan
17 and if EPA has already approved the RMP and the Site Specific Health and Safety Plan, then the
18 Applicant is required only to submit a copy of the approved Site Specific Health and Safety Plan and
19 approval letter from EPA as proof of compliance with the Site Specific Health and Safety Plan
20 requirement.

21 (iii) if an RMP for the property includes a requirement for a Soil Importation Plan and if EPA
22 has already approved the RMP and the Soil Importation Plan, then the Applicant is required only to
23 submit a copy of the approved Soil Importation Plan and approval letter from EPA as proof of
24 compliance with the Soil Importation Plan requirement.

1 (e) Upon completion of the activity authorized by the permit or improvement plan, the Applicant
2 shall submit a Closure Report to the Director including: additional information or data obtained,
3 including information on unanticipated conditions; corrections as to any information previously
4 submitted; and certifications of implementation of the plans listed in Section 3115 (a)(ii)-(vii), and all
5 laws applicable to soil removal.

6
7 **SEC. 31803116. - SEVERABILITY.**

8 If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this
9 Article or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective
10 by any court of competent jurisdiction, such decision shall not affect the validity or
11 effectiveness of the remaining portions of this Section or any part thereof. The Board of
12 Supervisors hereby declares that it would have passed each section, subsection, subdivision,
13 paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more
14 sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared
15 unconstitutional or invalid or ineffective.

16
17 Section 3. The San Francisco Health Code is amended by amending Section 804, to
18 read as follows:

19 **SEC. 804. - APPLICATION.**

20 Any person proposing to construct, modify, operate and/or maintain a well or soil boring
21 shall file with the Department a completed written application on forms approved by the
22 Department and submit the appropriate application fees thirty (30) days prior to the proposed
23 commencement of such activities. For well permits in Hunters Point Shipyard *Parcel A*, such
24 permit application shall not be deemed complete until the department receives written

25 MAYOR GAVIN NEWSOM
 BOARD OF SUPERVISORS

1 notification from the Director that the applicant has complied with all provisions of Article 31
2 that are required to be met prior to permit issuance. The completed application shall include,
3 without limitation, all of the following, when applicable:

4 (a) The name and address of the owner of the property on which the well or soil boring
5 is located.

6 (b) The name and address of the operator of the well or soil boring, if different from the
7 owner.

8 (c) The name and state license number of the general contractor, if applicable, and the
9 C-57 license number of the person responsible for the construction or modification of the well
10 or soil boring.

11 (d) The address at which notices issued in accordance to this Article are to be served,
12 if different from those specified in Subsections (a) and (b).

13 (e) A plot plan showing the proposed or actual location of the well or the soil boring that
14 is being constructed, modified, operated or maintained with respect to the following items
15 within a radius of five hundred feet (500') from the well or soil boring:

16 (1) Property lines, including ownership;

17 (2) Sewage or waste disposal system, including reserved waste disposal expansion
18 areas, or works for conveying sewage waste;

19 (3) The approximate drainage pattern of the property;

20 (4) Other wells, including abandoned wells;

21 (5) Access road to the well site;

22 (6) Any structures; and

23 (7) Any aboveground or below ground utilities.

1 (f) Location of the property with a vicinity map including the legal description of the
2 property and the assessor's parcel, block and lot numbers.

3 (g) The proposed use and the operating parameters of the well or soil boring, if
4 applicable.

5 (h) The expected operational lifetime of the well or soil boring, if applicable.

6 (i) Location and classification by visual inspection of any solid, liquid, or hazardous
7 waste disposal sites within five hundred feet (500') of the proposed well or soil boring.

8 (j) Method of and a proposed schedule for the construction or modification of the well or
9 soil boring.

10 (k) The construction parameters of the well or soil boring including, without limitations,
11 the following information, if applicable:

12 (1) Total depth of the proposed well or soil boring;

13 (2) Depth and the type of casing to be used for the proposed well;

14 (3) Depth and the type of perforation; and

15 (4) Proposed depth and the type of annular seal.

16 (l) A plan for the safe and appropriate handling and disposal of drilling fluids and other
17 drilling materials resulting from the proposed work.

18 (m) An approval from the San Francisco Public Utilities Commission if drilling fluids or
19 water extracted from the well or soil boring will be discharged into the sanitary sewer.

20 (n) Submission of completion bonds, contractor's bonds, cash deposits, or other
21 adequate security of at least \$10,000 to insure that all projects are performed completely and
22 properly in a manner which protects the public health and safety and the integrity of the
23 groundwater resources. The Director may, in his or her discretion, increase the amount of the
24

1 bond, cash deposit or security deemed necessary to protect the public health and safety and
2 the integrity of the groundwater resources.

3 (o) Submission of the appropriate filing fees as provided for in this Article.

4 (p) Any other information deemed necessary by the Department to ensure adequate
5 protection of groundwater resources.

6
7 Section 4. The San Francisco Health Code is amended by amending Section 1227 to
8 read as follows:

9 **SEC. 1227. - KNOWN HAZARDOUS WASTE SITE; HUNTERS POINT SHIPYARD.**

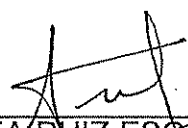
10 *PARCEL A.*

11 (a) If the soil sampling and analysis report or site history indicates that the property is
12 listed on the National Priorities List or the list of California Hazardous Substances Account Act
13 release sites, the applicant shall provide to the Director certification or verification from the
14 appropriate federal or State agency that any site mitigation required by the federal or State
15 agency has been completed and complete the certification procedure set forth in Section
16 1229. Certification by a competent State or federal agency that mitigation measures have
17 been properly completed shall constitute a conclusive determination and shall be binding
18 upon the Director.

19 (b) Applicant's activities on *Parcel A* of the Hunters Point Shipyard, as defined in Article
20 31, are governed by Article 31 of the Health Code and not by this Article.

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APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 
ANDREA RUIZ-ESQUIDE
Deputy City Attorney

MAYOR GAVIN NEWSOM
BOARD OF SUPERVISORS

LEGISLATIVE DIGEST

[Hunters Point Shipyard – Health Code]

Ordinance amending Article 31 of the Health Code to extend to the entire Hunters Point Shipyard area the special permit processing requirements that now apply to Hunters Point Shipyard Parcel A to address potential residual contamination, imposing fees to administer this Article, amending Sections 804 and 1227 of the Health Code to make conforming amendments, and making environmental findings.

Existing Law

Article 31 of the Health Code was enacted by Ordinance 303-04 and became effective on December 24, 2004. It was triggered by the transfer of Parcel A of the Hunters Point Shipyard (HPS) from the U.S. Navy to the San Francisco Redevelopment Agency (SFRA), which subjected Parcel A to the jurisdiction of the City. Its goal was to impose specific requirements on activities at HPS, in order to provide additional protection to human health and safety and the environment above and beyond what was required by federal and state law.

Article 31 provides that any person seeking permits for subsurface activities on portions of the HPS that involve the disturbance of at least 50 cubic yards and any person seeking a well construction or destruction permit (Applicant), be referred to the Department of Public Health (DPH). It authorizes DPH's Director (Director) to require the Applicant to conduct additional sampling, if DPH determines that the area was not adequately characterized; to advise the relevant departments of any specific requirements that may apply to the area, pursuant to the conveyance deed; to require compliance with the institutional controls as a condition of the permit or improvement plan; and to coordinate with the relevant departments to monitor and enforce compliance with such institutional controls.

In areas where there are proposed land uses or structures that are on top of old landfill disposal sites or within 1,000 feet of old disposal sites, and where there is evidence that landfill gas migration could pose a threat to public health and safety or the environment due to those land uses or structures, Article 31 authorizes the Director to impose protective measures, such as venting pipes, as a condition of a permit or improvement plan.

The Director and the Health Commission are authorized to charge established rates to ensure that DPH's costs of oversight are fully recovered; add and implement certain requirements by regulation; and subject additional geographic areas of HPS to Article 31.

Under Article 31 the Director must maintain, for public access, all data collected by the Navy and any subsequently gathered data, as well as maps necessary to enable compliance with the Article; and submit an annual summary of compliance to the Board.

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Finally, under Article 31 DPH may seek administrative and civil penalties for violations of the Article.

Amendments to Current Law

At the time Article 31 was adopted, it was anticipated that it would be amended to include the other HPS parcels, as they are transferred out of Navy ownership. Now, in anticipation of the transfer of the remainder of the HPS to the SFRA, the current ordinance amends Article 31 to extend to the entire HPS the special permit processing requirements that now apply at HPS Parcel A, to address potential contamination. The ordinance preserves all review and permitting requirements that are currently in existence under Article 31, but makes some important changes.

The ordinance reiterates that all Applicants must comply with institutional controls included in the any deed conveying ownership from the Navy to the SFRA or included in any recorded covenant to restrict use of property containing environmental restrictions, and that the Director will oversee and enforce compliance with such institutional controls. Beyond these general requirements, the ordinance divides the HPS parcels in two main groups. The first group is composed of unrestricted residential properties, defined as parcels that the applicable ROD determined to be suitable for unrestricted residential use, and that are transferred without a requirement for a durable cover or engineered cap (such as Parcel A, Parcel D-2, and any other parcels that may transfer to the SFRA in the future in such condition.) The second group is that of properties transferred with a durable cover requirement, defined as properties which are subject to a deed restriction or covenant to restrict their use containing an environmental restriction requiring a durable cover or engineered cap.

The distinction between unrestricted residential properties and properties transferred with a durable cover requirement is important for two main reasons. First, the applicability of the Article is triggered by different kinds of actions, depending on whether the permit sought would affect an unrestricted residential property or a property transferred with a durable cover requirement. If the first, then the Article applies only for permits that involve the disturbance of at least 50 cubic yards (38.23m³) of soil (in addition to any well construction, modification, operation or maintenance permit and any permit that involves demolition of structures with lead-based paint.) If the latter, Article 31 applies for any permit sought, regardless of the amount of soil disturbed.

A second reason why the distinction between these types of properties is relevant is that, depending on the kind of property, different requirements apply to each and, consequently, DPH's role in enforcing the Article varies. Applicants for permits in unrestricted residential properties are subject to the regulatory oversight of DPH, and are required to submit the following plans, to the satisfaction of the Director: (i) a Site Evaluation Report; (ii) a Dust Control Plan; (iii) an Unknown Contaminant Contingency Plan; (iv) a Disposal Plan (if applicable); (v) a Site Specific Health and Safety Plan; (vi) a Soil Importation Plan (if applicable), (vii) a Foundation Support Piles Installation Plan (if applicable), (viii) a determination of whether additional information is necessary to adequately characterize the

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Prescribed Subsurface Activity Area, and (ix) for areas that undergo demolition of structures with lead based paint, a scope of work to collect additional information as described in the regulations. On the other hand, Applicants for permits on property transferred with a durable cover requirement are required to submit substantially the same plans as Applicants for permits in unrestricted residential properties (except for the plans required in subsections (viii) and (ix), which do not apply) and in addition, submit proof that they are complying with all environmental documents and restrictions imposed by federal and state regulatory oversight agencies.

Another change that this ordinance seeks, vis a vis the current Article 31, is that it requires, for both types of properties, the preparation of some plans that have not been explicitly required until now: Unknown Contaminant Contingency Plans and Foundation Support Piles Installation Plan. On the other hand, the ordinance deletes the requirement of Stormwater and Erosion Control Plan, in recognition of the fact that these plans are regularly reviewed by another regulatory agency, the San Francisco Public Utilities Commission.

The ordinance preserves the authority of DPH to adopt regulations to administer the Article, to enforce the Article seeking administrative and civil penalties, and to charge fees to recover the costs of administering the Article, including document processing and review and site visits.

Finally, the ordinance makes conforming amendments to Sections 804 and 1227 of the Health Code, to reflect the fact that Article 31 now applies to the whole HPS area, not just to Parcel A.

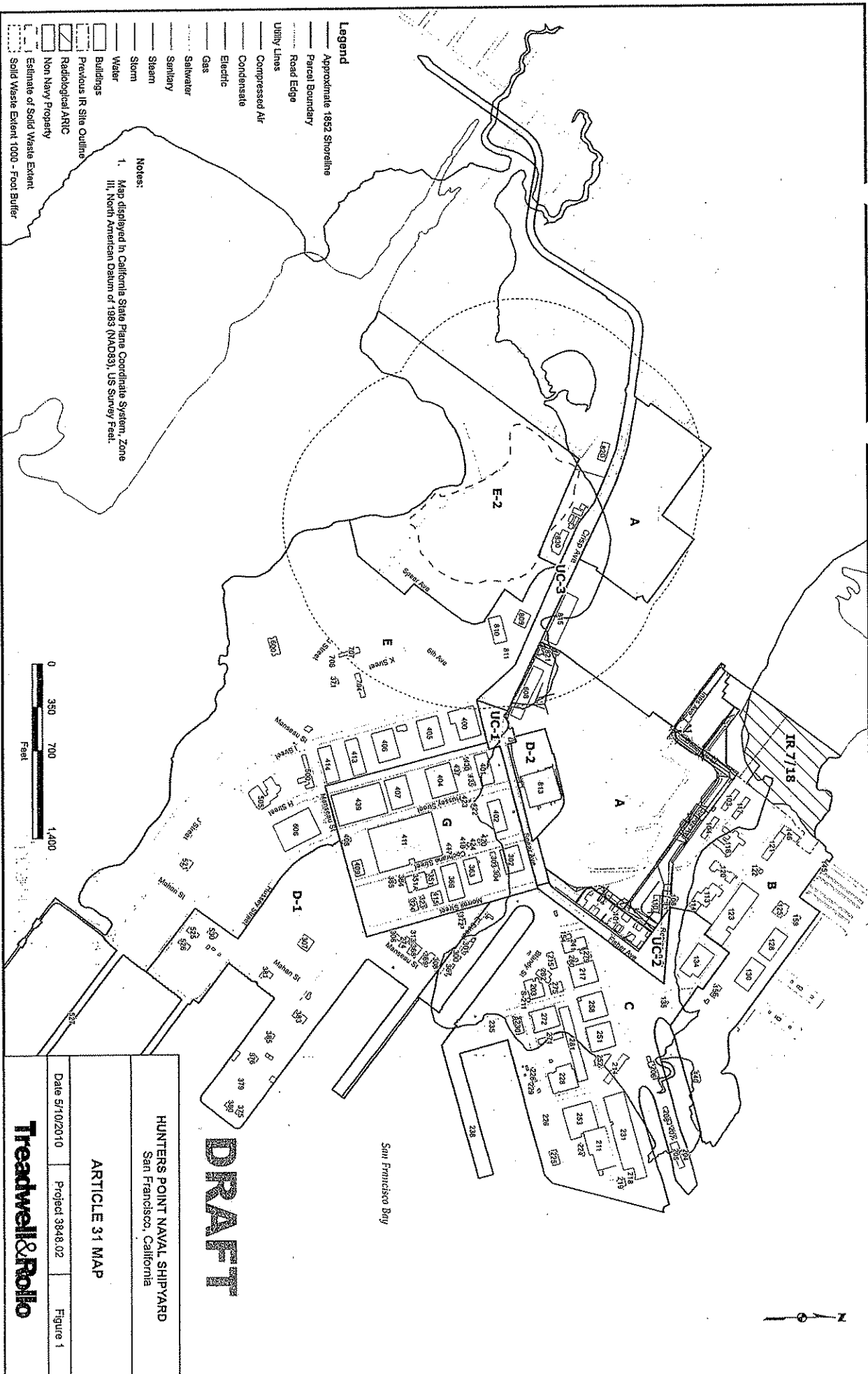
Background Information

Pursuant to CERCLA, and with oversight by the United States Environmental Protection Agency (EPA) and state regulatory agencies, the Navy is investigating and remediating the HPS. In 1989, the EPA placed the HPS on the Superfund List. For purposes of remediation, the HPS is divided into Parcels A through F. In addition to Parcel A, which the Navy already transferred to the SFRA, it is anticipated that the Navy will offer the remaining parcels for transfer to the Agency in accordance with a Conveyance Agreement between the Agency and the Navy. Prior to transfer of any parcel, the Navy will issue a draft final Finding of Suitability to Transfer (FOST) or a draft final Finding of Suitability for Early Transfer (FOSET) for the parcel, as required by law.

The Board of Supervisors by Resolution _____, adopted CEQA findings, including a mitigation monitoring and reporting program (MMRP) for the Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project (Project), for which the SFRA and Planning Commissions certified a Final Environmental Impact Report (FEIR) in _____ 2010. The Project contains all of the property in the HPS, except the property designated as Parcel A by the Navy. The MMRP contains mitigation measures that address potential hazardous materials impacts associated with the Project. It is the intent of this Board by adopting this ordinance to create a process for DPH to enforce, through this

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Article 31, certain hazardous materials mitigation measures identified in the FEIR in the HPS portion of the Project.

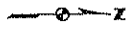
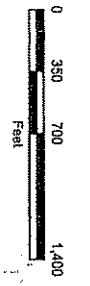


Legend

- Approximate 1952 Shoreline
- Parcel Boundary
- Road Edge
- Utility Lines
 - Compressed Air
 - Condensate
 - Electric
 - Gas
 - Sewer
 - Sanitary
 - Steam
 - Storm
 - Water
- ▭ Buildings
- ▭ Previous IR Site Outline
- ▭ Radiological ARIC
- ▭ Non Navy Property
- ▭ Estimate of Solid Waste Extent
- ▭ Solid Waste Extent 1000 - Foot Buffer

Notes:

1. Map displayed in California State Plane Coordinate System, Zone III, North American Datum of 1983 (NAD83), US Survey Feet.



HUNTERS POINT NAVAL SHIPYARD
 San Francisco, California

DRAFT

ARTICLE 31 MAP

Date 5/10/2010 Project 3848.02 Figure 1

Treadwell & Rollo