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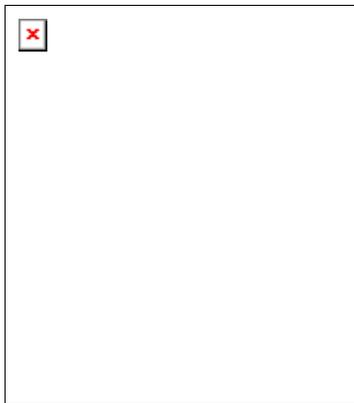
# Berkeley Daily Planet

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## Outcry Spurs Cleanup Shift to Toxics Agency: By RICHARD BRENNEMAN



Bowing to public and legislative pressure, state officials Monday agreed to a change in jurisdiction over the toxic cleanup of Campus Bay, the South Richmond site where developers hope to build a condo project atop a hazardous waste dump.

"It's my understanding that the water board and the state Department of Toxic Substances Control (DTSC) are working on a transfer plan to have DTSC become the lead agency," said East Bay Assemblymember Loni Hancock Monday.

The move follows a heated joint legislative hearing convened Saturday in Richmond by Hancock and state Assemblymember Cindy

Montañez, a Southern California lawmaker who chairs the Assembly's Rules Committee and as well as the Select Committee on Environmental Justice.

Speaker after speaker at Saturday's meeting voiced outrage at the water board's handling of the site and demanded that site jurisdiction be removed from the San Francisco Regional Water Control Board over to the DTSC.

"I'm not going to celebrate until I see all the details," said Peter Weiner, a San Francisco attorney who represents a citizens' group which has challenged the project on public health and safety issues.

Formal word came from Rick Brausch, assistant secretary for external affairs of the California Environmental Protection Agency, in an e-mail to legislators and regulators.

DTSC and the Regional Board are discussing the logistics for transitioning lead

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regulatory oversight. . .to DTSC," said Brausch wrote.

The toxic control agency will control all aspects of the dry land portion of the site, and the water board will continue to play a role in the restoration of marsh and wetlands near the shore, he said.

"It's a great, great thing," said Sherry Padgett, a BARRD member who has worked next to the site for seven years and whose struggle with rare forms of cancer led her to become a leading critic of the Campus Bay project.

"Once the camel gets its nose into the tent, it's going to be hard to keep it out," she said. "From now on there will be public participation and formal logs of complaints."

Padgett praised the two legislators for listening to residents' complaints and acting on their concerns.

Karen Stern, publicist for Cherokee Simeon Ventures, the joint venture proposing to build the housing complex, said Russell Pitto, chair of Simeon Properties, one of the two corporate partners, had requested greater DTSC involvement in a Monday morning call to Brausch.

"We are looking for clarity, and we welcome DTSC's involvement," Stern said. "Clearly both agencies have roles to play."

Richmond Showdown

All parties agreed that Saturday's hearing was instrumental in bringing about the regulatory regime change.

Saturday's drama began with Padgett's testimony, a passionate and riveting plea to the legislators and regulatory officials gathered in a packed meeting room at UC Berkeley's Richmond Field Station.

Her message was simple: Give DTSC final say over the future of the site where Cherokee Simeon hopes to build a waterfront complex of 1330 units of condos, townhouses and apartments atop a pile of buried waste.

Her testimony, a personal story of tragedy and purpose, drew a standing ovation from most of the audience.

And before the session ended, Brausch had promised he would meet Monday in Sacramento meeting with the heads of the two agencies.

Critics of the development "the large majority of the speakers" found a receptive audience in Montañez and Hancock, the member of the California Assembly Committee on Environmental Safety & Toxic Materials who had requested the hearing.

Beyond their immediate concerns over Campus Bay, the lawmakers looked at the system itself, promising new legislation designed to reform a regulatory system both agreed is seriously flawed.

Regulatory Choices

The lawmakers' questions to state regulatory officials revealed a bureaucratic landscape in which a developer seeking to build on polluted earth can choose whichever agency she thinks will make the job the easiest and cheapest "a decision which even the state's top environmental officer can't reverse.

And what are the developer's options?

One, the DTSC, is a state-wide agency staffed by scientists, toxicologists and other experts which conducts its oversight with extensive public notice and

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participation from the very outset.

“The other, the regional water board”without a single toxicologist for the last two years”is a regional entity which presents its work as a fait accompli, with public participation only at the end.

In the case of Campus Bay, the change only came after the developer agreed this week to change the jurisdiction to the DTSC.

Montañez, whose San Fernando Valley district includes several seriously polluted sites earmarked for development, told the gathering that “my passion as a legislator is the issue of brownfields and environmental justice.”

Brownfields are defined by the U.S. Environmental Protection Agency as “real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.”

#### Table Top Mountain

The reason for Saturday’s gathering lay just to the north, what Padgett described as “a 350,000 cubic yard, 30-acre, eight-foot-tall table top mountain with a concrete cap” “the toxic residue of a century of chemical manufacturing where Cherokee Simeon wants to build housing.

Cherokee Simeon Ventures began the project as a biotech park, then settled on the housing development after the tech boom tanked.

The corporate entity combines the expertise of developer Pitto’s Simeon Properties with the deep pockets of Cherokee Investment Partners, a firm which investments pension and other institutional funds in brownfields development.

Until 1998, the land housed a chemical manufacturing complex last owned by AstraZeneca, a British firm.

The site landed on the federal Superfund list, a high priority list, before the federal Environmental Protection Agency passed jurisdiction to the state, which placed it on its own Superfund list.

#### Water Board’s Role

Jurisdiction had already come under the aegis of water board in 1980, after the discovery of polluted outfall water. The board retained oversight responsibility for when the land was sold to Cherokee Simeon on Dec. 31, 2002.

AstraZeneca had originally estimated it would cost \$100 million to clean up their mess, including land at the UC Field Station where the hearing was held. But an Emeryville firm, LFR (Levine Fricke Recon) captured the deal with a \$20 million bid which called for the polluted soil to be buried on site rather than buried in an off-site toxic waste dump.

The Levine in the cleanup firm’s corporate name is Berkeley toxic cleanup up specialist turned would-be casino developer James D. Levine, who worked years ago on the water board staff with a senior water board staff member who is closely involved in the Campus Bay project.

AstraZeneca had already spent \$20 million to remediate the site to industrial and commercial standards when the sale closed, according to a handout distributed at the meeting by Cherokee Simeon.

#### Health Director’s Concerns

One of the first official voices to join Padgett’s call for a DTSC takeover at the site was Contra Costa County Public Health Director Dr. Wendel Brunner.

“For a site as complex as this, the water board doesn’t have the expertise or experience to handle it on their own,” he declared to the applause of the audience.

“The water board persists in maintaining they have adequate expertise,” Brunner said. “They have demonstrated that they do not. . .and when the developer indicated plans to build housing, the board should have transferred the lead to the DTSC and worked in support.”

While Brunner noted that Contra Costa County has the highest concentration of toxic and hazardous waste per capita in California, Richmond Mayor Irma Anderson noted that Richmond has the highest incidence of cancer in Contra Costa County.

“It appears very clearly we have a legislative problem with who makes the best decisions,” she added.

Brausch told the audience that California EPA Secretary Terry Tamminen is very interested in the issues of the site here in Richmond and in the overall issues of cooperation between the regulatory agencies.

It was then that Brausch, a veteran of 18 years with DTSC, said he would summon the heads of both agencies to his Sacramento office to work out the issue of jurisdiction.

Richmond Official Booed

Richmond elected and appointed officials have supported the housing project, looking for a boost to the city’s property tax base.

Steve Duran, director of the City of Richmond Community and Economic Development Department and a leading proponent of the project, came under intense questioning, and drew a chorus of disbelieving boos when he declared his agency’s top priority was public health.

To Duran and other city officials, the construction of a large number of condos promises a substantial increase for the tax base of a cash-starved city government. He also cited the project’s compliance with the housing goals of the county and the Association of Bay Area Governments.

Moneys generated by the site, he said, would help fund redevelopment in high-crime, low income minority neighborhoods.

A Cherokee Simeon handout distributed at the meeting and echoed on the city’s website noted that the project could bring the city \$7 million in annual tax revenues for Duran’s agency, \$6.8 million in impact fees to the West Contra Costa Unified School District, \$7.3 million in impact fees to the city, \$40 million for site infrastructure improvements and 500 temporary construction jobs.

Richmond City Councilmember Tom Butt, the highest vote-getter in last week’s election and a recipient of donations from Cherokee Simeon, and council colleague Maria Viramontes expressed frustration at not being able to rely on state agencies for adequate supervision of the site.

In an e-mail distributed after the meeting, Butt said he had no faith in either the water board or DTSC. He also faulted city staff for relegating too much regulatory authority to the state and federal government.

Newly elected Councilmember Gayle McLaughlin, a member of the Richmond Progressive Alliance and an active project opponent before her election, joined the call for DTSC to talk the helm.

West Contra Costa School Board member Karen Fenton, a former chemical technician, praised Hancock and Brunner “for being a good guy.”

## Of Fires and Dust

Jess Kray, a Marina Bay resident and the owner of Kray Cabling where Padgett works, said he initially dismissed her concerns. "I told Sherry, the most intelligent and curious person on this planet, that I'm sure we're being taken care of because I naively assumed (the regulators) acted like the fire department."

"Not only does the fire department come when they're called, but they're proactive. They come every year to my business and tell me, 'That's a fire hazard, clean it up.'"

"And it's not like you can tell them when you have a fire, 'The last time you came out and put water all over everything, so this time I'm going to call the school board.' Imagine if you could shop for who puts out your fire. That would be bad for all of us."

It was an analogy Hancock later said was illuminating.

Many speakers complained of dust being generated during the current cleanup.

"There was dust last week. You couldn't see the yellow line down the middle of the road," said Weiner. "People complain, but nothing is done and the DTSC is not asked for help."

"We need an agency that understands what air quality is about, and has the specific equipment and expertise," he said.

## Anger, Concern Voiced

The audience applauded when Jeff Hohenstein, a BARRD member and an instructor at Aikido of Berkeley, which has a martial arts studio a half block from the site, called for a halt to all work at the site until oversight issues are resolved.

He pointed to an Oct. 20 letter from DTSC which found fault with the water board's acceptable levels for dust leaving the site and called for a 620 percent reduction.

Tim Calhoun, owner of a business next to the site, was particularly angered that during the current phase of the cleanup, Levine Fricke ripped the cap off a portion of the buried waste to make room for temporary storage of contaminated muck being dredged out of a waterfront marsh.

Claudia Carr, a UC Berkeley professor of environmental science, policy and management in the College of Natural Resources, lives in Marina Bay in the residence closest to the project on the north.

"This is an enraging situation," said Carr, one of the first to join BARRD. "There is incredibly broadspread fear and anger, and issues of life and death. There must be oversight by the DTSC and EPA. I have zero faith in the water board, which, she said, relied for its scientific information on the developer and Zeneca and its cleanup agent, Levine Fricke."

The Sierra Club also wanted DTSC oversight at the project, said Norman La Force, legal chair of the club's San Francisco chapter.

DTSC "has not only public participation but long term enforcement," La Force said, "and both are absent from the water board." La Force also faulted the water board for failing to adequately address wildlife issues.

Representatives of several Richmond neighborhood associations joined in the criticism, including the Richmond Annex Neighborhood Council, the Cortez Stege Neighborhood Council, and the Richmond Panhandle council.

## Invisible Threats

One of the main concerns of neighbors and a serious challenge to any plan to put housing on the site are the volatile organic compounds that have been detected escaping from the soil at Campus Bay.

These airborne chemicals pose a wide range of health risks and have been detected above the minimal remediation levels set by the federal Environmental Protection Agency.

Compounds detected at actionable levels include acetone, benzene, carbon disulfide, chloroform, PC, TCE and vinyl chloride.

Cherokee Simeon proposes to deal with them by installing fans to blow air through channels below the proposed housing, a plan that drew sharp comments from critics at the meeting.

#### Activists Zero In

Jane Williams, executive director of California Communities Against Toxics, represents a coalition of 70 community-based environmental justice groups across the state and has served on several state and federal advisory boards. She came from her home in Rosamond in the Mojave Desert to testify at Saturday's hearing.

Williams, an economist by training, said the push for brownfields projects "comes from the economic development process, not from the public health ethic."

While the goal of the public is protection of health and the environment, the goal of local government is to add to the tax base, and the goal of the developer is profit generation, she said.

In the case of Zeneca, she said, "It's a complete mystery how a federal Superfund site went to the state and then mysteriously appears on the water board's agenda, a process she called "regulation by Russian roulette."

She described the Campus Bay site as "the poster child of bad outcomes," and noted that "the water board has no requirements for public participation except at their board meetings."

Marlene Grossman came in from Pacoima, a city in Santa Clara County's legislative district, where her organization, Pacoima Beautiful, is fighting a battle against a water board-supervised site adjacent to a heavily populated low-income neighborhood where nearly every home reports at least one case of asthma.

Grossman's concern is a heavily contaminated site that housed a facility of bathroom hardware manufacturer Price Pfister, a subsidiary of tool company Black & Decker. The companies picked the water board to oversee the cleanup.

Grossman praised Santa Clara and Williams for their help in her campaign.

"Stay vigilant, and do your work well," she told Richmond activists.

#### Differing approaches

Jim Marxen, who supervises public participation for DTSC, said his agency operates on the 1984 federal Superfund guidelines.

"We have community meetings very early on to find out what issues and concerns they have. Community input works best early, early on," he said to nods of assent from the audience.

The agency provides a 30-day comment period in the early stages of a project, and the comments and responses are posted on the agency website and mailed out as well, along with fact sheets and public notices.

In addition, a community advisory panel provides guidance throughout the cleanup process.

While Bruce Wolfe said he regarded his water board's role as a moderator between the property owner and the community to make sure the developer is responsive and the cleanup satisfactory, Barbara J. Cook, the Berkeley-based regional head of DTSC, said her primary concern is risk to public health.

Simeon Properties' Pitto attended the hearing but left the testifying to Dwight Stenseth, Managing Director of Cherokee, a firm that has purchased more than 330 brownfields sites in North America and Western Europe in the last 14 years.

Stenseth presented a picture of a socially responsible company teamed with a highly reputable developer who has worked closely with city government and community stakeholders.

"We don't necessarily care who we work with as an agency," Stenseth said.

Lawmakers Weigh In

"Whether it's Northern California or Southern California, the water boards are always under attack and the DTSC is seen as the model of public participation," said Montañez.

"A member of my staff was told by a member of your staff that you have neither the mandate, the money or the expertise to implement DTSC standards," Hancock told Bruce Wolfe, executive director of the San Francisco Bay water board.

"The state needs one process, and it should be the DTSC process," the Berkeley legislator declared.

"One of the key points I've learned is that the public, ordinary families, should not have to become experts to go about their daily life," Hancock said as the hearing grew to a close. "There needs to be a single process, transparent to all. This is the beginning, and there's a way to go."

"I'm very encouraged that there was a commitment from Cal EPA to sit down Monday and make sure the cleanup is done in a way that's good for all of us."

Afterwards, she said she preferred to see the DTSC designated as the lead agency. "We need what DTSC can provide and we need it now," she said.

Montañez said Assembly Speaker Fabian Nuñez is deeply concerned with the issues raised at the hearing, and that Hancock's concerns have very strong backing from the members of the Legislature.

Hancock wants legislation that will mandate public participation in all brownfields projects, and Montañez said the statutes will be introduced later this year.

Both were encouraged that Brausch had called the meeting Monday to hash out jurisdiction over the campus Bay site.

Padgett, Carr and the other activists said they hope Saturday's hearing marks a turning point.

"I do believe I felt the earth move," said Kray

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