



Birch Hills Golf Course Transfer to the City

Background

Birch Hills Golf Course, an 18-hole executive course originally developed in the early 1970s, is part of Chevron's La Floresta development project approved by City Council in June 2010. That development consisted of two sites. Site 1, located at the northeast corner of Imperial Highway and Valencia Ave., is now a mix of housing and retail. Site 2, located at the southwest corner of Birch St. and Kraemer Blvd., includes the golf course and housing. Because of the project's size, City Council negotiated a Development Agreement (DA) and an Agreement Regarding Birch Hills Golf Course and California Domestic Water Company Stock (Golf Course Agreement) to mitigate adverse impacts and obtain public benefits. Based on widespread community demand, rather than require payment of a fee to satisfy park/recreational facility requirements of the Quimby Act and the zoning ordinance, these contracts required that ownership of Birch Hills Golf Course be transferred to the City in order to safeguard a major recreational amenity.

Remediation, Reopening, and Renegotiation

In late 2010 and early 2011, Chevron commenced construction on Site 2 to realign the golf course in order to accommodate new housing parcels on the southern portion of the land. At that time, it was anticipated that the realignment would take 12 months and that the golf course ownership would then be transferred to the City. However, in 2011, the realignment and ownership transfer was put on hold due to discovery of arsenic and other hazardous materials along the former rail line, and discovery of polychlorinated biphenyls (PCB) on the south side of the Loftus Channel.

Chevron prepared and implemented a full remediation plan to address the contamination in compliance with legal requirements. The environmental analysis included what are commonly called "Phase 1" and "Phase 2" reports. The extensive remediation work took more than four years to complete and included the creation on the north side of the Loftus Channel, under what is now the golf course parking lot, of a "Consolidation Area" for the lower level PCB materials.

Birch Hills Golf Course reopened to the public on May 31, 2015 under Chevron's ownership. In spring 2017 the [United States Environmental Protection Agency](#) (USEPA) and the [Orange County Health Care Agency](#) (OCHCA) issued closure letters (a.k.a. "no further action" letters) for the golf course. These agencies mandated that, prior to transferring the golf course, Chevron had to record Covenants, Conditions, and Environmental Restrictions on Real Property (Environmental CC&Rs). The Environmental CC&Rs give Chevron an easement to perform any remediation obligations imposed in the future by environmental agencies based on existing or new laws. The Environmental CC&Rs also designate permitted and non-permitted uses of the property. Permitted uses include a golf course or other outdoor recreational use,

including a community or banquet facility at a specified location. Non-permitted uses include residences, medical facilities, schools, and food cultivation.

Because the contamination was unknown when the DA and the Golf Course Agreement were executed, the City and Chevron had to negotiate new agreements to address land use restrictions and indemnity obligations. The City and Chevron also had to resolve disputes over various matters including course conditions and improvement responsibilities. Completion of these negotiations took several years.

Ownership Transfer

City Council approved the transfer of ownership of Birch Hills Golf Course to the City on October 1, 2019. The transfer does not include the Consolidation Area, which remains in Chevron's ownership. A new Phase 1 report was deemed unnecessary due to the prior soil studies, completed remediation work, and closure letters from the USEPA and OCHCA. This determination is consistent with the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), which is primarily intended to ensure that the costs of remediating contaminated sites is borne by the parties responsible for the contamination. By completing the remediation to the satisfaction of the environmental agencies, Chevron has greatly reduced the possibility of a third party CERCLA case. Should there ever be such a case, a new Phase 1 report alone would not immunize the City; rather, the City still would have to demonstrate that it has exercised appropriate care with respect to the contamination and that it has complied with all of the applicable constraints and conditions of which it has been aware.

As part of the transfer, the City and Chevron executed an "As Is" and Indemnity Agreement imposing mutual indemnification requirements that apportion the risks arising from the existing contamination. In key part, as long as the property is used for a golf course or other outdoor recreational use (including a community or banquet facility) Chevron is subject to expansive indemnity and remediation requirements. These requirements, together with Chevron's obligations under the Environmental CC&Rs, afford the City greater protection than is provided by the Golf Course Agreement alone. In the unlikely event an environmental agency issues a remediation order in the future based on new cleanup standards, the City will look to Chevron to perform that work.

The following attorneys from the law firm of Richards, Watson & Gershon worked with City staff on the Birch Hills Golf Course project: [Bruce Galloway](#) (real estate); [Lisa Bond](#) (environmental); and [Nick Ghirelli](#) (environmental).