

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

STAFF SUMMARY REPORT (Keith Roberson)
MEETING DATE: April 20, 2005

ITEM: 5.I

SUBJECT: **Authorizing the Executive Officer to Enter into an Agreement for Mutual Release and Covenant Not to Sue with Lowe's HIW, Inc., for property located at 811 East Arques Avenue, Sunnyvale, Santa Clara County – Adoption of Resolution**

CHRONOLOGY: Not previously considered by the Board.

DISCUSSION: Lowe's HIW, Inc., intends to purchase the former Philips Semiconductors property at 811 East Arques Avenue in Sunnyvale. Philips, the current owner of the property, vacated the premises in 2002 and moved its operations elsewhere. Lowe's proposes to redevelop the property for use as a retail home improvement center, but seeks our assurance that it will not be held liable or responsible for pre-existing environmental conditions. As such, Lowe's has requested that the Water Board enter into a Mutual Release and Covenant Not to Sue, also known as a Prospective Purchaser Agreement (PPA).

By entering into the PPA, the Water Board would be stating that Lowe's and related entities would not be subject to Water Board enforcement to clean up known site contamination. Without this assurance from the Water Board, Lowe's says it is not willing to complete the purchase.

The vacant site contains known soil and groundwater contamination. Philips has been performing cleanup of site groundwater for twenty years under Water Board cleanup orders, and Philips will remain responsible for remediation of contamination after the property transfer. Lowe's redevelopment plans have taken Philips' cleanup requirements into consideration, and the proposed redevelopment is not likely to hinder or prolong site remediation. In fact, demolition of the existing buildings may provide an opportunity to expedite cleanup activities at the site.

To date, the Water Board has entered into about 15 PPAs. In each case, the PPA facilitated redevelopment of vacant or under-utilized sites, including a number of Brownfield sites, while allowing necessary cleanup work to continue. In no cases has site cleanup been delayed or terminated because the existing responsible parties went bankrupt or failed to perform.

The Tentative Resolution (Appendix A) would authorize the Executive Officer to enter into an agreement with Lowe's for a mutual release and a covenant not to sue (PPA). The draft PPA is attached in Appendix A. The Tentative Resolution also requires Lowe's to amend the existing site deed restriction to prohibit the use of shallow groundwater beneath the subject property and restrict any use of the property for residences, hospitals, day care centers or schools until site cleanup goals that are protective of these uses have been achieved.

Staff concludes that a PPA for this site will be beneficial and that the risk of default by Philips is minimal. We received no comments on the Tentative Resolution during the public review period. We expect this item to remain uncontested.

RECOMMEN-
DATION

Adopt the Tentative Resolution.

File No.:

43S0114 (KER)

Appendices:

A. Tentative Resolution

B. Location Map

APPENDIX A

Tentative Resolution
And Attachments

Appendix B

Site Location Map