

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

STAFF SUMMARY REPORT (Max Shahbazian)  
MEETING DATE: October 19, 2005

ITEM: 5 d

SUBJECT: **Authorizing the Executive Officer to Enter into an Agreement for Mutual Release and Covenant Not to Sue with Summit Commercial Properties, Inc. for development of a self-storage facility at 901 and 902 Thompson Place, Sunnyvale, Santa Clara County – Adoption of Resolution**

CHRONOLOGY: Not previously considered by the Board.

DISCUSSION: Summit Commercial Properties, Inc. (“Summit”) intends to purchase the former Advanced Micro Devices, Inc. AMD (“AMD”) property at 901/902 Thompson Place in Sunnyvale. AMD, the prior owner of the property, vacated the premises in 1994. Westcore Thompson II, LLC purchased the Property in May 2005 and contracted to sell the Property to Summit on June 27, 2005. Summit proposes to redevelop the property for use as a public storage facility, but seeks our assurance that it will not be held liable or responsible for pre-existing environmental conditions. As such, Summit 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 Summit and related entities would not be subject to Water Board enforcement to clean up known site contamination. Without this assurance from the Water Board, Summit says it will not be able to complete the purchase.

The vacant site contains known soil and groundwater contamination. AMD has been performing cleanup of site groundwater for twenty years under Water Board cleanup orders, and AMD will remain responsible for remediation of contamination after the property transfer. Summit’s plans for redevelopment have taken into consideration AMD’s cleanup requirements. 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 17 PPAs. In each case, the PPA facilitated redevelopment of vacant or under-utilized properties, including a number of Brownfield sites, while allowing necessary cleanup work to continue. Site cleanup has not been delayed or terminated in any

of these cases because the existing responsible parties went bankrupt or failed to perform.

The Tentative Resolution would authorize the Executive Officer to enter into an agreement with Summit for a mutual release and a covenant not to sue (PPA). The Tentative Resolution and draft PPA are presented in Appendix A, and a site map is presented in Appendix B.

Staff concludes that a PPA for this site is beneficial and that the risk of default by AMD 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.:	43S0004 (MS)
Appendix A:	Tentative Resolution and draft PPA
Appendix B:	Site Map

# APPENDIX A

Tentative Resolution  
and Draft PPA

# APPENDIX B

Site Map