

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

**STAFF SUMMARY REPORT
STAFF: Martin Musonge
MEETING DATE: September 21, 2005**

ITEM: 5.G.

SUBJECT: Authorizing the Executive Officer to Enter into an Agreement for Mutual Release and Covenant Not to Sue with the City of Hayward and Browman Development Company for the Proposed Sky West Plaza Shopping Center, Hesperian Boulevard and A Street, Hayward, Alameda County

CHRONOLOGY: The Water Board has not previously considered this item.

DISCUSSION: The Browman Development Company (BDC) plans to purchase a site at Hesperian Boulevard and A Street in Hayward from the City of Hayward (City) and redevelop it into commercial retail stores. Prior to redevelopment of the site, BDC plans to perform focused remedial action for onsite contaminated soil and groundwater under the oversight of the Water Board. This focused work, required by the Water Board, is only a portion of an overall remedial action that will be performed at the site. The remaining remedial actions will be performed by the off-site parties whose contaminant plumes have migrated to the site.

Groundwater contamination exists throughout most of the southeastern one-quarter of the site. The extent of petroleum hydrocarbon impact to soil on the site has been adequately defined; impacts to groundwater originate from the former Airport Alliance (AAS) station located offsite to the east-northeast of the site, and petroleum hydrocarbons and MTBE continue to migrate onto the site from the former AAS.

The City and BDC seek our assurance that they will not be held liable or responsible for known conditions of contamination on the site provided they implement the Environmental Screening Assessment and Risk Mitigation Plan (ESA/RMP) prepared by the Twining Laboratories, Inc. and dated August 17, 2005. As such, the City and BDC have 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 the City and BDC

would not be subject to Water Board enforcement to clean up known site contamination provided they implement the ESA/RMP.

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 Brownfields sites, while allowing necessary cleanup work to continue. In no case 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 the City and BDC for a Mutual Release and a Covenant Not to Sue (PPA). The draft PPA is attached in Appendix A.

Staff concludes that a PPA for this site will be beneficial and that the risk of default by the City and BDC is minimal. We received minor comments within the public review period from BDC and incorporated them into the Tentative Resolution. No other comments were received from the public and we expect this item to remain uncontested.

**RECOMMEN-
DATION:**

Adopt the Tentative Resolution.

File No.:
APPENDICES:

- 01S0640(MYM)
A. Tentative Resolution
B. Site Location Map