

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

STAFF SUMMARY REPORT (Max Shahbazian)
MEETING DATE: June 15, 2005

ITEM: 5.E.

SUBJECT: **Authorizing the Executive Officer to Enter into an Agreement for Mutual Release and Covenant Not to Sue with FC Oakland, Inc., and the Redevelopment Agency of the City of Oakland for the Oakland Uptown Mixed Use Site, Oakland, Alameda County – Adoption of Resolution**

CHRONOLOGY: Not previously considered by the Water Board.

DISCUSSION: The Redevelopment Agency of the City of Oakland (“ORA”) is purchasing the 6.5-acre property commonly known as Oakland Uptown Mixed Use Site bounded by San Pablo Avenue, Telegraph Avenue, 19th Street, and 20th Street. FC Oakland, Inc., (“Forest City”) proposes to lease the property from ORA and redevelop it for use as a high density residential and retail center. ORA and Forest City seek our assurance that they will not be held liable or responsible for known conditions of contamination on the property provided they implement the Remedial Action Plan/ Risk Management Plan (RAP/RMP) for the site. As such, ORA and Forest City 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 ORA and Forest City would not be subject to Water Board enforcement to clean up known site contamination provided they implement the RAP/RMP.

The property is contaminated with heavy metals, chlorinated solvents, and petroleum hydrocarbons from various past commercial activities. Groundwater monitoring has been conducted intermittently in and around the property since 1988. The RAP/RMP consists of soil excavation, soil vapor and groundwater extraction and treatment, long term groundwater monitoring, and a deed restriction on future soil excavation and groundwater use.

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 ORA and Forest City 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 ORA and Forest City is minimal. We received no comments on the Tentative Resolution during the public review period. We expect this item to remain uncontested.

RECOMMEN-: Adopt the Tentative Resolution.
DATION

File No.: 01S0520 (MS)
Appendices: A. Tentative Resolution
B. Site Location Map

APPENDIX A

Tentative Resolution
And Attachments

Appendix B

Site Location Map