

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

**TENTATIVE RESOLUTION NO. R2-2005-XXXX**

**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 SKYWEST PLAZA  
SHOPPING CENTER, HAYWARD, ALAMEDA COUNTY**

WHEREAS, the California Regional Water Quality Control Board, San Francisco Bay Region (the “Water Board”) finds that:

1. **Site:** The proposed Hayward Skywest Plaza Shopping Center site (approximately 13.4 acres) is located at the northwest corner of Hesperian Boulevard and “A” Street in the City of Hayward, Alameda County, California (“Property”). The Property is bounded by Golf Course Road to the northwest with Kennedy Park and Skywest Golf Course beyond, by Hesperian Boulevard to the northeast and a commercial development beyond, and by West A Street to the southeast and southwest and commercial area and Hayward Executive Airport beyond. The Property is owned by the City of Hayward and is more particularly described in Attachment 1. The City of Hayward intends to terminate leases with various tenants on the Property to allow Browman Development Company (BDC) to purchase and redevelop the Property and sell a portion of the Property to Target Stores.
2. **Historical Use:** The Property was a portion of the Hayward Army Airfield and/or Hayward Executive Airport from approximately 1942 to 1943. The Property was released by the Federal Aviation Administration for non-aviation purposes back to the City of Hayward in 1966 and sometime around 1973 the Property was developed into commercial uses as it is today. Current onsite commercial establishments include Carrows restaurant, Vagabond Inn, and JTS Fuel and Service (JTS). The Board issued JTS a case closure for the southwest portion of the Property with no further action required, in a letter dated October 17, 2001. No significant manufacturing operations are known to have been present on the Property. Current and historical tenants at or in the vicinity of the Property use or have used fuels, oils, and other materials that may pose a potential threat to human health and environment if released.
3. **Investigations and Remediation Accomplished:** A Phase I Environmental Site Assessment, subsurface investigation, and groundwater investigation has been conducted at the Property. Phase II Environmental Site Assessments were completed in October 1, 1998 and April 5, 2004. These reports indicate that

groundwater contamination exists throughout most the southeastern one-quarter of the Property. These reports indicate that the extent of petroleum hydrocarbon impact to soil on the Property has been adequately defined; impacts to groundwater originate from the former Airport Alliance station (AAS) located offsite to the east-northeast of the Property and dissolved phase and separate phase petroleum hydrocarbons and MTBE continue to migrate onto the Property from the former AAS. Therefore, additional cleanup and/or risk management is necessary to protect human health and water quality with respect to pollutants migrating onto the site.

4. **Redevelopment Plans:** The proposed development of the Property will include the construction of an approximately 136,000 square-foot major retail store, associated parking lots and driveways, as well as other associated improvements. A 20,400 square foot junior anchor retail store is also proposed to be attached to the southeast side of the proposed major retail store. Three other retail stores (Shops A, B, and C), approximately 5,800; 11,700; and 8,000 square feet in plan dimensions respectively, are also planned on the southwest side of Hesperian Boulevard and the northwest side of West A Street. It is anticipated that the proposed construction will consist of single story structures with wood-frame, concrete tilt-up, concrete masonry unit (CMU), or metal stud walls, a combination of steel and wood frame roof system, and concrete slab-on-grade floors. Basements are not anticipated; however, a depressed truck ramp and loading dock is anticipated in the southeast corner of the major retail store. The project will also include asphaltic concrete parking and drive areas, Portland cement concrete flatwork, isolated landscaped areas, as well as various underground utility service lines.
5. **Risk Based Assessment:** A risk-based assessment will be prepared to determine if any special construction techniques or methods will be required as a result of the known soil and groundwater contamination, and to aid in the development of remedial actions for the site. This Tier 2 risk assessment will be conducted prior to permitting and construction of any buildings on the site as a means to augment vapor intrusion controls, so as to better evaluate the potential for migration of contaminants relative to indoor air quality. The methodology used for the assessment will be a Tier 2 Risk Assessment with the aid of the software RBCA Tool Kit for Chemical Releases (version 1.3b) developed by Groundwater Services, Inc. This program evaluates baseline risk and site-specific target levels for both on-site and off-site receptors based on site-specific soil and groundwater conditions. A soil-vapor study will be required to conduct the proposed risk-based assessment and this study will be conducted in conjunction with groundwater sampling.

The results of this study will be used to develop design systems, if required, for the proposed structures to mitigate adverse potential impacts due to the soil and groundwater contamination. In addition, the results of this study will also be used to assess the need and extent of remedial actions for the site.

6. **Focused Remediation -- In-Situ Enhanced Natural Biodegradation:** Analytical data obtained from the baseline hydrogeologic assessment will direct locations for augmenting in-situ natural biodegradation. Selective geoprobe, direct push borings will be placed in a grid fashion at areas of concern. Pressure injection of nutrients and an oxygen source via these boring locations will enhance naturally occurring biodegradation. Prior to initiation of any of this work, a workplan will be prepared and submitted for review and approval by the Water Board staff as well as appropriate agency permits and landowner access. A second phase of injections of nutrients and an oxygen source could be required.
7. **Service Station Demolition:** Following removal of underground storage tanks, lifts and appurtenances, as well as demolition of the Service Station at the Property, the City of Hayward or operator will have appropriate soil and groundwater (if encountered during tank removal) sampling conducted and observed by the relevant regulatory agency. These data will be incorporated into the site-specific database, if necessary this can be used to validate the results of the risk based assessment.
8. **Soil and Groundwater Management Plan, and Health and Safety Plan:** A soil and groundwater management plan will be prepared for review and approval by the Water Board prior to start of construction. In addition, a health and safety plan will be prepared for the project.
9. **Continuing Remediation Obligations:** Groundwater and soil gas monitoring will continue after the planned construction. Natural attenuation indicators will be monitored to evaluate long-term biological degradation of residual hydrocarbons. The natural attenuation monitoring will continue until (1) the decrease of residual hydrocarbons concentration has stabilized and the Water Board approves a request to cease performance monitoring or (2) the long-term cleanup goals are attained pursuant to the Environmental Screening Assessment/Risk Mitigation Plan (ESA/RMP).

BDC and subsequent landowners of the Property will be required to provide access to the adjacent and upgradient responsible parties for existing and ongoing soil and groundwater investigations and remediation.

10. **Deed Restriction:** The Water Board intends to approve a Deed Restriction for use of Property (the "Deed Restriction") to be recorded with the Alameda County Recorder's office. The Deed Restriction will restrict the site to commercial or industrial uses and will also restrict the excavation of soil and require notification to future owners and occupants of subsurface conditions. The use of groundwater will be restricted for all uses, including, but not limited to, drinking, irrigation, and industrial uses. The Deed Restriction will be binding against successors and

require that the uses and development of the Property be consistent with the approved ESA/RMP including amendments thereto.

11. **Request by City of Hayward and BDC:** The City of Hayward and BDC seek a commitment from the Water Board that it will not name City of Hayward, BDC, subsequent purchasers, owners, tenants, owners associations, tenants associations, lenders, and any occupants of the Property, as well as all of their respective successors in interest, as dischargers or responsible parties in any Water Board enforcement order with regard to known conditions of pollution, solely by virtue of being involved in the purchase, leasing, ownership, and redevelopment of the Property. Specifically, the City of Hayward and BDC request that the Water Board issue a Mutual Release and Covenant Not to Sue (“Mutual Release”) to Forest City and BDC for the Property, as set forth in Attachment 1.
12. **Water Board Authority:** Pursuant to Water Code Section 13304, the Water Board has authority to enter into agreements whereby the Water Board covenants not to name current owners, prospective purchasers, tenants, lenders, and related parties in enforcement actions for known conditions of contamination. For example, the Water Board may enter into such agreements if it is sufficiently in the public interest to warrant expending public resources necessary to reach an agreement.
13. **Benefits of Redevelopment:** BDC plans to develop the Property to a productive use that will benefit the public and the community. Estimated benefits to the community from the proposed mix-use redevelopment project include, the convenience of a new retail shopping center, and the collection of municipal sales taxes and fees.
14. **CEQA:** The purchase or lease of the Property is not an activity that requires Water Board approval. Furthermore, neither the Property transaction nor the Water Board’s approval of the Mutual Release is a “project” as defined by Public Resources Code Section 21065 and 14 CCR 15378(a) such that the California Environmental Quality Act (CEQA”) applies.
15. **Public Notice:** The Water Board provided notice of its intent to consider this matter at the September 21, 2005 Water Board meeting and provided an opportunity for interested persons to comment on the draft resolution and its attachments.
16. **Public Hearing:** The Water Board, at a public meeting held on September 21, 2005, heard and considered all comments pertaining to this matter.

THEREFORE, BE IT RESOLVED THAT the California Regional Water Quality Control Board, San Francisco Bay Region, authorizes the Executive Officer to sign the Mutual Release with City of Hayward and BDC.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on September 21, 2005.

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Bruce H. Wolfe  
Executive Officer

Attachment 1: Mutual Release and Covenant Not to Sue