

STAFF SUMMARY REPORT
STAFF: Stephen Morse
MEETING DATE: March 17, 2004

- ITEM:** 5. I.
- SUBJECT:** Authorizing the Executive Officer to Sign a Mutual Release and Covenant Not to Sue With Arrowhead Marsh LLC, a Delaware Limited Liability Company, for the Former Port of Oakland Overflow Parking Lot, Pardee Drive & Swan Way, Oakland, Alameda County – Adoption of Resolution
- CHRONOLOGY:** Not previously considered by the Board
- DISCUSSION:** During the review and comment period, verbal and written comments were received from Department of Toxics Substances Control (DTSC), the Port of Oakland (Port), and Arrowhead Marsh LLC (Arrowhead). From the verbal comments of DTSC, it was mentioned that commercial hotel and motel land use are sometimes considered “residential”. The Tentative Resolution (Appendix A) and Deed Restriction (Attachment C) were specifically drafted to prohibit commercial hotel and motel use by considering them permanent human habitation.
- While Arrowhead agrees that permanent residential use of this site would be prohibited, Arrowhead objected to the hotel/motel limitation. Arrowhead cites that while they do not have plans for a hotel or motel use for the property at this time or for the foreseeable future, they would prefer that such land use limitations not be included unless absolutely necessary to allow for future development flexibility, that any hotel/motel residency would be temporary and short term, and the human health risks for hotel/motel use would be minimal as the risk is from soil contact.
- After further review, staff agrees with Arrowhead’s position that prohibiting hotel/motel use or requiring the Executive Officer’s approval for temporary habitation (e.g., on-site security trailer) is not necessary to assure protection of human health. Other, significant risks are fully covered in the Deed Restrictions and Soil Management Plan.
- Staff proposes minor amendments (Appendix A) to the Tentative Resolution and DRAFT Covenant and Environmental Restriction on Property that would eliminate the prohibition on commercial hotel/motel use on the property and requirement of Executive Officer review of temporary habitation.
- RECOMM-
ENDATION:** Adoption of the Tentative Resolution and attachments with the amendments in Appendix A.
- FILE NO.:** 01S0599 (SIM)
- APPENDIX:** A: Amendment of Tentative Resolution’s “Whereas” 7.
Amendment of Exhibit C’s DRAFT Covenant and Environmental Restriction on Property Article III. 3.1.a.

SUPPLEMENTAL APPENDIX A

Proposed Amendment of Tentative Resolution's Finding 7

(strikeouts are recommended eliminations; double underline are recommended additions):

- “7. **Deed Restriction:** As a condition of the Mutual Release and as part of the Property Redevelopment, Arrowhead will submit for the Executive Officer's approval and execution a satisfactory deed restriction referred to as a Covenant and Environmental Restriction on Property (CERP). Upon execution by the Board's Executive Officer, Arrowhead will record the CERP on the Property. In relevant part, the CERP will restrict the land use to commercial, office, and industrial uses only (i.e., no permanent human habitation under any land use, or including single or multi-family housing, ~~or hotel or motel or similar business; short term temporary habitation may be allowed upon approval of the Board's Executive Officer~~), notify future owners of sub-surface contamination, restrict the extraction of groundwater, prohibit groundwater use as a source of drinking water, require implementation of the approved SMP, and allow for reasonable access by the Board and/or any other person required by the Board to conduct future investigations, monitoring and any necessary remediation.”

Proposed Amendment of DRAFT Covenant and Environmental Restriction on Property Article III.3.1.a.

(recommended additions are double-underlined; recommended eliminations are strikeouts):

“ARTICLE III

DEVELOPMENT, USE AND CONVEYANCE OF THE PROPERTY

3.1 Restrictions on Development and Use. Covenantor promises to restrict the use of the Property as follows:

- a. Development of the Property is prohibited for permanent human habitation under any land use, or including single or multi-family housing, ~~or hotel or motel or similar use; short term temporary habitation may be allowed upon approval of the Board's Executive Officer~~. Office, retail, commercial, and industrial uses are acceptable uses.

...”