



(PRACTICE AREA)

Environmental, Land Use, and
Natural Resources
Real Estate and Business Law

Emeryville Transit Center Project Leaves The Station

SITUATION

Nearly 25 years in the making, the \$130 million Transit Center project is finally under construction in the City of Emeryville. Along the way, Burke lawyers Mike Biddle, Jerry Ramiza, and Leah Castella were instrumental in processing land use entitlements, negotiating funding and development agreements, obtaining federal and state approval of environmental remediation plans, and successfully litigating the enforceability of necessary public funding with the State Department of Finance.

CHALLENGES

The Transit Center site was previously an EPA-approved hazardous waste dump located in the heart of Emeryville. Westinghouse Electric Corporation (later “CBS”) occupied the site from 1924 until the 1980s as part of larger operation built out for the repair and servicing of transformers. PCB contamination was the predominant environmental concern at the site. In 1985, the property was converted into a waste cell for the deposition and containment of PCB-bearing soil waste excavated from neighboring Westinghouse parcels during their individual remediation pursuant to a Consent Agreement and Final Order between Westinghouse and the United States Environmental Protection Agency (“U.S. EPA”).

PROCESS

A design review and use permit was approved by the City Council in 2010, and the former Redevelopment Agency (“RDA”) engaged the U.S. EPA and Cal EPA, Department of Toxic Substances Control (“DTSC”), and prepared a Final Feasibility Study and Remedial Action Plan (“FS/RAP”), for remediation of soil and groundwater contamination. DTSC and the U.S. EPA approved the Final Remedial Design and Implementation Plan (“RDIP”) in February 2011. Concurrently, the City, RDA, CBS and developer Wareham Development entered into an agreement whereby CBS would undertake the environmental remediation of the Transit Center site in accordance with the FS/RAP, the parties (excluding the City) would share in the costs of the remediation work, and CBS would transfer the Transit Center site to Wareham for redevelopment. Effective February 1, 2012, the RDA was dissolved pursuant to the Redevelopment Dissolution Act. Further, Wareham and CBS were unable to timely fulfill certain provisions of the aforementioned agreement with the

City and RDA which technically terminated the agreement. Hence the RDA's contribution to assist with the site cleanup was at risk. However, the Dissolution Act allowed for the Successor Agency to the former RDA to reenter into agreements with the City upon obtaining the approval of the Emeryville Oversight Board. On June 26, 2012, the Oversight Board approved an agreement between the City and Successor Agency and authorized approximately \$4.2 million in funding for the Transit Center project. Notwithstanding clear authority under the Dissolution Act, the State Department of Finance denied the agreement as an enforceable obligation, and the City and Successor Agency, represented by Burke, successfully challenged the DOF's decision (see *City of Emeryville, Emeryville Successor Agency v Michael Cohen*(2015) 233 Cal.App.4th 293).