

Appendix B

Evaluation of PPA Criteria

**Evaluation of PPA Criteria for
Watt Investments at Sunnyvale LLC
915 DeGuigne Drive, Sunnyvale**

The State Water Resource Control Board's July 9, 1996, Guidance Memo regarding Prospective Purchaser Agreements (PPA) allows entering into a PPA with a current owner if certain criteria are present. Because PPAs may result in a shift of risk to the public, the Guidance Memo advises that all of the criteria should be present and cautions against using a PPA where a less formal document or agreement will serve the proponent's needs. The following discussion evaluates each criterion with respect to the proposed PPA. Each criterion is shown in bold followed by staff's discussion.

- 1. The site is within the Regional Water Board's jurisdiction because of a threatened or actual condition of pollution, nuisance, or contamination.**

This criterion is met. This is a federal Superfund site under a Regional Water Board Cleanup and Abatement Order for the investigation and cleanup of chlorinated solvents.

- 2. The current owner is financially viable and seeks to protect future owners, tenants, and/or lenders from liability for known pollution. A mechanism must be in place to bind beneficiary successors to the agreement.**

These criteria are met. Watt Investments at Sunnyvale LLC (Watt) seeks such liability protection and there is a release attached to the PPA as Exhibit B that beneficiary successors to the agreement will sign.

- 3. The current owner is willing to enter into an agreement with the Regional Water Board to pay oversight costs, remediate the condition, and has provided financial assurances, and reopeners are in the agreement with the Board that would limit the scope of the covenant not to sue under appropriate conditions.**

This criterion is not met; however, the former property owner, AMD, has entered into an agreement with the Regional Water Board that meets all of the above criteria. As a Fortune 500 company, staff is confident that AMD will meet its obligations to complete remediation.

- 4. Active discharge of pollutants/contaminants is not occurring at the site.**

This criterion is met. Active discharge at the site ceased in 1981 when the site's acid neutralization system was removed.

- 5. The prospective purchaser is not a responsible party or affiliated with a party responsible for the present contamination/pollution.**

This criterion is met. Watt is not a responsible party or affiliated with AMD, who has been identified as the responsible party and is under a Cleanup and Abatement Order requiring remediation of the site.

- 6. A Phase I/II environmental audit has been performed identifying the contaminants/pollutants released at the site and the extent of the releases and impacts on groundwater.**

This criterion is met. The site has been characterized to staff's satisfaction.

7. The site is not the subject of any enforcement action with another agency to address remediation.

This criterion is met. The Regional Water Board issued a Cleanup and Abatement Order to AMD. Because this is a federal Superfund site, U.S. EPA issued a Record of Decision, but it is not an enforcement action.

8. A substantial benefit will be received by the public as a result of the agreement.

The Regional Water Board should consider whether this criterion is met. The public will receive substantial benefits as a result of Watt's proposed redevelopment as described in the Revised Tentative Resolution and proposed PPA. However, the Regional Water Board should consider whether entering into a PPA is necessary to realize these same benefits. In this case, Watt has already purchased the property and plans to redevelop. No part of the plan for redevelopment is contingent upon entering into a PPA with the Regional Water Board.

9. The agreement is consistent with the goals and purposes of the Porter-Cologne Act and the federal Clean Water Act.

The Regional Water Board should consider whether this criterion is met. On the whole, staff recommends adoption of the resolution authorizing the Executive Officer to sign the PPA because of the substantial public benefits that will occur as a result of development of the site. Redevelopment is likely to lead to additional investigation and remediation of the site, which are among the primary goals of the Porter-Cologne Act.

However, one effect of signing the PPA is the Regional Water Board's relinquishment of the ability under Porter-Cologne to force Watt and any successors to clean up any contamination. This would only become an issue in the unlikely event that AMD is unable to complete the cleanup tasks in the existing Cleanup and Abatement Order. If this were to occur, the effect of the PPA would be to shift the risk of paying for site cleanup to the public; therefore, the Board should scrutinize the potential risks and benefits carefully.

10. Activities at the site will not aggravate or contribute to the existing contamination or interfere with the investigation or implementation of remedial activities.

This criterion is met. The activities at the site will improve the ability of AMD to investigate and remediate the site.

11. The effect of continued operation or new development at the site will not result in health risks to those persons likely to be present at the site. Land use restrictions may be considered as part of the agreement.

This criterion is met. Watt has entered into an agreement to implement redevelopment activities in a manner that will allow for continued and improved remedial efforts. Watt will also evaluate and, if necessary, implement a vapor mitigation plan that will protect persons likely to be present at the site. The PPA requires that Watt record a Covenant and Environmental Use Restriction that will provide additional protection to future owners and site occupants.