

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

STAFF SUMMARY REPORT (Max Shahbazian)
MEETING DATE: August 13, 2014

ITEM: **5B**

SUBJECT: **Authorizing the Executive Officer to Enter into an Agreement for Mutual Release and Covenant Not to Sue with Watt Investments at Sunnyvale LLC, for the property located at 915 De Gugine Drive, Sunnyvale, Santa Clara County – Adoption of Resolution**

CHRONOLOGY: This item has not been previously considered by the Board.

DISCUSSION: The Revised Tentative Resolution (Appendix A) would authorize the Executive Officer to enter into an agreement with Watt Investments at Sunnyvale LLC (Watt) for a Mutual Release and Covenant Not to Sue, also referred to as a prospective purchaser agreement (PPA).

The property is a federal Superfund site located near the intersection of Highway 101 and the Lawrence Expressway in Sunnyvale (Appendix D). Watt purchased the 25-acre property from Spansion in January 2014. The property has been used as an electronics manufacturing and office facility since 1974 by two owner/operators, including Advanced Micro Devices (AMD) from 1974 through 2003 and Spansion from 2003 through January 2014. Groundwater beneath the property is contaminated with chlorinated solvents from various past electronic manufacturing activities. AMD has been cleaning up the groundwater for twenty-three years under a Board cleanup order and will remain responsible for groundwater cleanup. Watt proposes to demolish the existing buildings and redevelop the property for residential and commercial use. Watt's plans for redevelopment have taken into consideration AMD's cleanup requirements.

Watt seeks our assurance that it will not be held liable or responsible for known conditions of contamination on the property. Specifically, Watt has requested that the Board enter into a PPA that includes a covenant not to sue. By entering into the PPA, the Board would be releasing Watt from potential liability for cleanup of known site contamination. The PPA is conditioned on Watt recording a new environmental deed restriction, implementing the Soil Management Plan (SMP), and, if necessary, a vapor mitigation plan. The SMP includes tasks to protect human health and the environment during property redevelopment including cleanup of contaminated soil discovered during and after demolition of the existing buildings.

To date, the Board has entered into about 20 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 or be accelerated. Cleanup has not been delayed or terminated in any of these cases because the existing responsible parties went bankrupt or failed to perform. Staff concludes that a PPA for this site is beneficial and that the risk of default by AMD is minimal. Appendix B contains an evaluation of the State Water Board's PPA criteria as applied to this property.

We received minor comments on the tentative resolution from Watt (Appendix C) while it was circulated and made changes to the resolution as appropriate. We have also made minor editorial and formatting changes. We expect this item to remain uncontested.

RECOMMEN-
DATION:

Adopt the Revised Tentative Resolution.

File No.:

43S1141 (MS)

Appendices:

- A. Revised Tentative Resolution and PPA
- B. Evaluation of PPA Criteria
- C. Correspondence
- D. Site Location Map