

APPENDIX B
PUBLIC COMMENTS

From: [Lisa Grady](#)
To: Aue.Kent@Waterboards
Cc: [Tom Graf \(tom@grafcon.us\)](mailto:Tom.Graf@grafcon.us)
Subject: Water Board Order Regarding the Marinwood Plaza site
Date: Wednesday, January 08, 2014 4:47:12 PM

Kent:

As you know, BRIDGE intends to develop the site post-remediation and we have assumed that vapor mitigation in the form of sub-slab ventilation or ventilated flooring will be necessary for some period of time in the areas currently showing vapors exceeding allowable concentrations. We want to make sure this is taken into account with regard to the order.

Additionally, without understanding the constraints and regulations governing the Waterboard, it would be ideal if staff were able to modify the order with regard to timing. While we hope this won't be the case, the entitlements and environmental approvals may be litigated. We were anticipating that the completion of the soil removal would occur once BRIDGE has secured the necessary financing to begin construction. We anticipate that the entitlement and environmental approvals will be secured in 12 to 18 months from today. Once that occurs, and assuming there is no litigation, we would proceed with the completion of the construction documents, financing and building permitting. Typically, that takes about a year's time. So, the earliest construction start date isn't likely to be until June of 2016.

The other item I would like to discuss at some point is the Prospective Purchaser document we need to protect us from liability once we take title. You indicated that the Water Board no longer issues these but I'd like to understand how we get to an equivalent level of protection absent that document.

Please give me a call if you have questions. Thanks and Happy New Year.

Lisa

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|-----------------------|---------------------|
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| Kenneth G. Jones | Nathaniel B. Duncan |
| Bradley R. Bowles | Cheryl A. Noll |
| Kenneth B. McKenzie | Deborah P. Furth |
| David W. Trotter | Michael L. Rabb |
| Jason J. Granskog | Jeanne Yang |
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January 8, 2014

VIA E-MAIL AND U.S. MAIL

Bruce H. Wolfe
Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street
Suite 1400
Oakland, CA 94612
Attn: Kent Aue, P.G.

Re: Public Comments by Silveira Ranches on Tentative Order (Site Cleanup Requirements) for Marinwood Plaza, LLC, Former Prosperity Cleaners Site, 187 Marinwood Avenue, San Rafael, Marin County

Dear Mr. Wolfe:

We serve as legal counsel for Lorraine Silveira in her capacity as Trustee and as Successor Trustee of the Anthony F. Silveira and Lorraine F. Silveira 2002 Trust and doing business as Silveira Ranches (“Silveira”). On behalf of Silveira, we appreciate this opportunity to comment on the above-referenced Tentative Order for the former Prosperity Cleaners site located at 187 Marinwood Avenue (hereinafter, the “Site”).

General Comments

For the past several decades Silveira has owned and operated a dairy ranch on the east side of Highway 101. The ranch is located north of the City of San Rafael and across the highway from Marinwood Plaza and the dry cleaning chemical use at the Site that has resulted in significant tetrachloroethene (“PCE”) contamination of groundwater and soils under and downgradient from the Site. The Silveira property is located directly downgradient (due east and southeast) of the Site.

As the Tentative Order (at p. 2) makes clear, the closest downgradient active domestic wells are located approximately 1,000 feet east of the Site – i.e., on the Silveira property. There are two wells on the Silveira property that were installed many years ago. Water pumped from those wells is the source of drinking water used in the dairy operations and by dairy workers who reside in housing provided to them at the Silveira property.

The Tentative Order (at p. 3) documents the presence of “hot spots” with contaminated soils and a groundwater plume containing levels of PCE and its various carcinogenic breakdown

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Executive Officer
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products (TCE, cis-1,2-DCE, trans-1,2-DCE and vinyl chloride), in concentrations above the Regional Water Board's Environmental Screening Levels (ESLs). Grab groundwater samples indicate that PCE is now present in concentrations that are above Maximum Contaminant Levels (MCLs) for drinking water on the east side of Highway 101.

Thus, it appears from the available data that the PCE-contaminated groundwater plume has migrated under Highway 101 in the direction of the downgradient Silveira property and drinking water wells, and likely will continue to do so. These are matters of grave concern to Silveira Ranches.

As the acknowledged responsible party and owner of the Site, Marinwood Plaza, LLC is responsible for addressing Silveira's concerns in its site investigation and developing a remedial action plan (RAP) that fully remediates and eliminates any potential risk to the Silveira property and the drinking water sources and wells that serve the dairy.

The Tentative Order indicates (at p. 12) that final approval of the RAP may be pushed out to January 1, 2016 – almost two year from now. This scheduled is too relaxed and does not ensure that timely remedial measures are taken to fully protect the Silveira property. The outside deadline for RAP approval should be moved up by at least six months, to July 1, 2015. The timing for completion of the RAP should not be tied to the Site development schedule set by the County.

Specific Comments

The Tentative Order states (at p. 3) that as of now, “the vertical and lateral extent of contamination in groundwater has not been delineated.” To adequately protect the Silveira property and wells, it is important that this delineation get under way and hard data be obtained as soon as possible.

PCE is a dense non-aqueous phase liquid (DNAPL). Because DNAPL is heavier than water, it tends to sink to the bottom of the water table, where there is an increased risk that it will interact with groundwater sources that are further below ground. Determining how far the PCE contamination extends in the groundwater, and the groundwater connectivity or pathways between the plume and the Silveira water wells, both laterally and vertically, is critical. The Water Board should require the responsible party to undertake and complete such an analysis as part of the required remedial investigation.

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To this end, the Water Board should require the installation of several groundwater monitoring wells on the east side of Highway 101. These should be placed at appropriate locations and completed to sufficient depths to be able to fully map the lateral and vertical extent of the PCE plume. The responsible party, Marinwood Plaza LLC, should also be required to install one or more sentry wells, located between the plume and the Silveira water wells. Such sentry wells are absolutely necessary to provide early warning to the Water Board and Silveira, in the event the PCE contamination continues to move downgradient and threatens Silveira's drinking water wells.

An analysis of the role played by Miller Creek, as a potential pathway for movement of PCE-contaminated groundwater from the Site to the Silveira property, is vital and should be required as part of the site investigation. At this time it is not clear whether or to what extent Miller Creek acts as a conduit or barrier to groundwater migration from the north to the south side of the creek, where the Silveira wells are located. A full understanding of the hydrogeologic role played by Miller Creek is essential to the design of any site investigation and the development of appropriate remedial measures.

The Tentative Order describes (at p. 4) the interim remedial measures have been undertaken to promote the breakdown of contaminants to non-hazardous compounds. It includes a statement that additional interim remedial measures may need to be implemented to reduce the threat to water quality, public health and the environment. This statement should be strengthened. The Final Order issued by the Water Board should include language requiring the responsible party to continue taking interim measures at the Site to mitigate and treat the PCE contamination at its source. Such measures will have the beneficial effect of reducing the potential contamination risk to groundwater located downgradient from the Site, and on the Silveira property.

It is vital that any RAP approved by the Water Board include implementation measures that fully protect Silveira's supply of clean and healthy drinking water from its existing wells from any PCE and breakdown product contamination. Among other appropriate technologies, these should include consideration of bioremediation and abiotic treatment regimens to break down and eliminate chlorinated solvents from the groundwater plume.

Finally, the RAP needs to include concrete measures that spell out the steps the responsible party must take in the event the PCE plume reaches and contaminates the water in Silveira's wells. Such measures should include, without limitation, a requirement that the responsible party pay for wellhead treatment of the water to screen out and eliminate PCE and

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breakdown product contaminants from the water supplying the dairy, or possibly re-drilling the wells to access "clean" aquifers if indicated.

We appreciate the Water Board's consideration of these comments.

Very truly yours,



DAVID W. TROTTER

DWT:te

cc: Renee Silveira

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January 8, 2014

VIA E-MAIL

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1515 Clay Street
Oakland, CA 94612
E-mail: kaue@waterboards.ca.gov

Re: Comments on Tentative Order—Site Cleanup Requirements for
Marinwood Plaza, LLC, Former Prosperity Cleaners, 187 Marinwood
Avenue, San Rafael, Marin County ("Prosperity Cleaners Site")

Dear Mr. Wolfe:

We are submitting these comments on behalf of Marinwood Plaza, LLC ("Marinwood"), the owner of the subject property.

Thank you for the opportunity to submit comments on the Tentative Order for the Prosperity Cleaners Site. We respectfully urge the Board not to adopt the Tentative Order at this time. As explained below, the Tentative Order is unnecessary and counterproductive.

SUMMARY OF COMMENTS

Marinwood has been extremely conscientious about investigating and remediating the Site. Since the contamination was discovered in 2007, Marinwood worked closely with Regional Board staff and spent well over \$500,000 to investigate and remediate the contamination. Moreover, data provided to Regional Board staff make clear that the Site does not currently pose an imminent health threat or environmental risk. It is therefore unclear why staff are asking the Board to issue an Order at this time.

In addition, the Order establishes deadlines that will drive up the cost of cleanup unnecessarily, and will prevent Marinwood from mitigating its costs by conducting portions of the cleanup in conjunction with redevelopment of the Site. As written, the Order will also require the premature shutdown of an ongoing business on the site, for no discernible reason.

COMMENTS

I. The Site Owner Has Acted Responsibly And Energetically To Investigate And Remediate The Site.

Since the contamination was first discovered in 2007, Marinwood has done everything in its power to comply with all laws and regulations, cooperate with the Regional Board, and ensure the safety of the public and the environment.

The contamination was first discovered as part of a Phase II investigation voluntarily undertaken by Marinwood. Upon discovering the contamination, Marinwood promptly reported the condition to the Regional Board and requested the Board's oversight of the case.

Since that time, Marinwood has conducted extensive investigation and remediation, all in cooperation and coordination with the Regional Board. Using a highly regarded environmental consultant, Marinwood conducted an investigation in 2008 which included soil, groundwater, and soil vapor sampling. It conducted two additional soil investigations in 2010. In 2011, it installed six soil gas wells and has sampled them quarterly since then. It has taken and analyzed groundwater samples from onsite monitoring wells nine times from 2007 to 2013. In 2008 and 2013, it conducted additional groundwater sampling at offsite locations, at the request of Regional Board staff. It took samples and analyzed the water at a nearby creek. It contacted the owner of an adjacent property and offered to sample the water in their drinking water well, but the owner declined.¹ It has repeatedly taken and analyzed indoor air samples from inside a retail shop located on the site (a liquor store).

Marinwood has also taken a number of interim remediation measures, including bioremediation of soil contamination at a location known as the "eastern hotspot," and several measures to improve air quality in the retail store.

In all respects, Marinwood has acted responsibly and cooperatively with regard to this Site. Given this impressive track record, we do not understand staff's decision to propose an Order at this time.

II. The Site Poses No Imminent Health Or Environmental Risks.

Sampling conducted on the property and east of the property on the Highway 101 right of way indicates that the Site poses no imminent risk to human health and the environment. Impacted soil on the property is largely covered with structures or surrounded by fencing to prevent direct contact. Impacted groundwater is not being used for any purpose. Off-site

¹ The owner of the adjacent property later provided its own analysis of the drinking water well to Regional Board staff. The water was clean.

groundwater contaminant concentrations east of Highway 101 have been recently found to be on the order of, or below, the drinking water standards.

In addition, as noted above, the nearest downgradient water supply well has been sampled and found to be free of contamination. Impacted soil vapor on the property is also largely covered with structures. No evidence of off-site migration of soil vapor has been identified. Indoor air concerns have only been identified in one of the occupied tenant spaces on the property, which have been addressed by vapor intrusion mitigation measures implemented under a 13267 directive letter.

III. The Order Will Unnecessarily Drive Up Cleanup Costs And Force Shut-Down Of An Onsite Retail Business.

Since 2005, Marinwood has been working cooperatively with the nonprofit organization Bridge Housing ("Bridge") to create a plan to redevelop the site as a mixed-use, affordable housing project. In June 2013, Bridge submitted application documents to Marin County for the Marinwood Village Project ("Project"). Upon approval of the Project by the County, ownership of the Site will transfer to Bridge.

Marinwood and Bridge have worked closely with Regional Board staff in developing these plans. From the outset, it was discussed and understood by all parties that to the extent possible, the remediation would be performed in conjunction with the development in order to: (1) achieve cost savings by performing excavation for remediation and construction at the same time; and (2) minimize disruption to the community. The Project calls for the demolition of more than 18,000 square feet of commercial space; much of the contamination is located directly under that space. It makes sense to combine these efforts.

For this reason, the Tentative Order requires that the Remedial Action Plan must be submitted "180 days after final approval by Marin County of entitlement to develop the Site (e.g., development agreement)..." Unfortunately, however, the Tentative Order goes on to say "...or January 1, 2016, *whichever is earlier.*"

It is wholly unrealistic to believe that construction of the Project will begin by January 1, 2016.² Therefore, the impact of this deadline would be to require Marinwood to demolish the existing commercial space and excavate the soil beneath it *before* the Project could begin construction. Then later, once the Project is finally approved by the County, Bridge (or some other developer) would need to re-excavate the same area in order to build new commercial space and housing. This makes no sense.

² In addition to the usual hurdles of obtaining County approval, the Project has become the target of significant political opposition. See, e.g., "Marinwood, Lucas Valley residents vent housing, land use concerns to Supervisor Adams," *Marin Independent Journal*, June 26, 2013. This may result in significant delay.

In addition, the January 1, 2016 deadline would force an existing retail business on the Site—the liquor store—to shut its doors prematurely. But for this artificial deadline, the store could continue to operate until Bridge receives approval from the County to construct the Project.

In short, the proposed deadline of January 1, 2016, will result in substantial additional and unnecessary costs, substantial additional disruption to the community, and the loss of an ongoing business—all for no discernible reason.

At a minimum, the Tentative Order should be modified to require submission of the Remedial Action Plan "180 days after final approval by Marin County of entitlement to develop the Site (e.g., development agreement) or January 1, **2018**, whichever is earlier."

IV. The Proposed Order Is Inconsistent With The Treatment Of Other Sites.

Issuance of a Cleanup Order for this type of site is unusual and largely unprecedented, particularly for a site where the Potentially Responsible Party ("PRP") has been proactive in conducting work and responsive to Regional Board concerns.

We reviewed the State's GeoTracker Environmental Site Database on January 7, 2014, to compare the proceedings at other dry cleaner sites being supervised by the Regional Board in Marin and Alameda counties. We found a total of 20 sites. Of those sites, only one—Five Star Cleaner in San Pablo—appears to have a Cleanup Order in place. That's one out of 20 sites. Conversely, we found a number of dry cleaner sites under Regional Board oversight that achieved regulatory closure without an Order.

Staff's decision to propose an Order for the Prosperity Cleaners Site thus appears to be highly unusual. We do not understand why our site is being treated differently than other, similar sites.

V. We Have Submitted Prior Detailed Comments.

Marinwood has previously submitted detailed comments regarding the Tentative Order to staff, many of which were rejected without explanation. We hereby incorporate those comments by reference in their entirety.

The comments include:

- Email with attached documents from Brian Aubry to Kent Aue, sent on 11/26/13: "Marinwood draft order – redline"; and
- Email with attached documents from Brian Aubry to Kent Aue, sent on 11/14/13: "Meeting regarding Administrative Draft: Site Cleanup Requirements for former Prosperity Cleaners".

CONCLUSION

In light of the above, we respectfully ask the Board to DENY the Tentative Order.

Sincerely,

A handwritten signature in blue ink, appearing to read 'JON WELNER', with a long horizontal flourish extending to the right.

JON WELNER of
Jeffer Mangels Butler & Mitchell LLP