

APPENDIX C
RESPONSES TO COMMENTS

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

RESPONSE TO COMMENTS

**Marinwood Plaza, LLC
for the property located at 187 Marinwood Avenue, Marinwood, Marin County**

Adoption of Site Cleanup Requirements

This document provides Water Board cleanup staff's response to comments received on the tentative order (TO) for Site Cleanup Requirements for the subject site. On December 4, 2013, cleanup staff distributed the TO for comment. We received comments on the TO from the following parties:

Date	Commenter
01/08/14	Bridge Housing, Inc., prospective purchaser and redeveloper for the subject site
01/08/14	David W. Trotter, Esq., of Bowles & Verna LLP, attorney for Lorraine Silveira in her capacity as Trustee of the Anthony F. Silveira and Lorraine F. Silveira 2002 Trust, and doing business as Silveira Ranches ("Silveira"), a downgradient landowner
01/08/14	Jon Welner, Esq., of Jeffer Mangels Butler & Mitchell LLP, attorney for Marinwood Plaza, LLC, owner of the subject site (Discharger)

The comments are summarized below, paraphrased for brevity, followed by staff's response. For the full content and context of each comment, refer to the comment letters.

Bridge Housing, Inc., prospective purchaser and redeveloper for the subject site

1. **Comment:** The TO should take into account that we assume that post-remediation vapor mitigation will be necessary beneath structures in areas with high current soil vapor concentrations.

Response: Task 6 of the TO requires the Discharger to prepare a Remedial Action Plan (RAP), which will include a risk evaluation, recommended final remedial actions, a proposed implementation schedule, and a proposed risk management plan. We anticipate that the RAP will address post-remediation vapor mitigation measures, as necessary.

2. **Comment:** Due to uncertainties regarding the entitlements, planning approvals, financing, and potential litigation of the proposed project, the TO should be revised to extend the date for beginning remediation until June 2016.

Response: We agree that the timing of the Marin County entitlement is uncertain. We have made a different change to the TO to address both this issue and the need for timely cleanup of site contamination. Task 6 of the TO requires the Discharger to submit a RAP 180 days following approval of the proposed project by Marin County, or January 1, 2016, whichever is earlier. Task 6 also requires a schedule for implementation of the tasks described in the RAP. Task 7 of the TO requires the Discharger to implement the RAP within 120 days following Executive Officer approval of the RAP. It is inappropriate to further delay RAP submittal, since site contamination poses a threat to human health (via vapor intrusion into occupied onsite

buildings or impacts to offsite supply wells) and threatens to cause additional offsite groundwater contaminant migration. Any further delay in RAP submittal needs to be contingent on interim cleanup actions that substantially eliminate these threats. To that end, we have made two changes to the TO:

- Task 6 has been revised to place emphasis on the success of the interim remedial actions when evaluating the proposed RAP implementation schedule.
- The compliance date for Task 7 (RAP implementation) has been revised to be consistent with the Task 6 implementation schedule.

These changes address the commenter's concern while still assuring that necessary cleanup work proceeds promptly. The task schedule in the TO allows nearly two years for the Discharger to implement interim remedial actions, which is a reasonable schedule given the threats the site poses.

3. **Comment:** We are unclear how to protect our company from environmental liability once we take title to the property.

Response: Responsibility for managing a new landowner's environmental liability rests with the prospective purchaser (Bridge Housing) and not with the Water Board. One option applied at other cleanup sites is a "comfort" letter where Water Board staff indicate that they will not recommend that the Water Board require the new landowner to undertake cleanup work as long as the prior landowner is complying with existing Water Board directives and the new landowner is providing reasonable access for that work.

David W. Trotter, Esq., of Bowles & Verna LLP, attorney for Lorraine Silveira in her capacity as Trustee of the Anthony F. Silveira and Lorraine F. Silveira 2002 Trust, and doing business as Silveira Ranches ("Silveira"), a downgradient landowner

1. **Comment:** The TO indicates that the final approval of the RAP may be pushed out to January 1, 2016 – almost two years from now. This schedule does not ensure that timely remedial measures are taken to fully protect the Silveira property. The final date for approval of the RAP should be moved to July 1, 2015, at the latest. The timing of the RAP should not be tied to the development schedule set by Marin County.

Response: The timing of the RAP for the site is intended to accommodate the property redevelopment schedule by allowing the Discharger flexibility in implementing the final remedial measures. We agree that the timing of Marin County entitlement is uncertain. As noted in Bridge Housing Comment No. 2, we have made changes to the TO to address this issue, the need for timely cleanup of site contamination, and the implementation of offsite remedial actions, as necessary and appropriate. Tasks 6 and 7 of the TO have been revised to place emphasis on the success of interim remedial actions when evaluating the proposed RAP implementation schedule. Tasks 2 and 3 have been revised to require the Discharger to submit a workplan to delineate the lateral and vertical extent of groundwater pollution offsite and assess the potential for contaminants to impact offsite domestic or agricultural wells. The workplan is due by April 25, 2014, and is specifically intended to determine the potential for contamination originating at Marinwood Plaza to impact wells on the Silveira property. Task 4 has been revised to indicate that the Executive Officer will require implementation of interim remedial measures if there is a threat to the Silveira wells. If interim measures are required,

they would be likely be implemented during the first quarter of 2015, prior to submittal of the RAP (Task 6).

2. **Comment:** The Water Board should require the responsible party to undertake and complete an analysis of the potential contaminant migration pathways between the contaminant plume and the Silveira water wells.

Response: We anticipate that the scope of work required by the revised language in tasks 2 and 3 of the TO will provide this information.

3. **Comment:** The Water Board should require the installation of monitoring wells east of Hwy 101 to delineate the contaminant plume and serve as sentry wells to protect the Silveira drinking water wells.

Response: We agree. We anticipate that the scope of work required in tasks 2 and 3 of the TO will include installation and routine monitoring of strategically-located wells east of Hwy 101. Data derived from these wells and other aspects of the investigation will allow assessment of a potential threat to the Silveira wells from the contamination originating at the site.

4. **Comment:** An analysis of Miller Creek as a potential contaminant pathway or barrier should be conducted as part of the site investigation. 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.

Response: We agree. Laboratory analytical reports for water samples collected from Miller Creek by the Discharger's consultant indicate that the creek is not serving as a contaminant pathway. However, the hydrostratigraphy east of Hwy 101 is not currently well understood, and groundwater recharge through the bed of this stream (i.e., a "losing stream" scenario) may serve as an intermittent barrier to contaminant migration. We anticipate that the scope of work included in revised tasks 2 and 3 of the TO will provide a better understanding of the interaction between surface water and groundwater flow east of Hwy 101.

5. **Comment:** The statement in the TO indicating that additional interim measures may need to be implemented should be strengthened. Implementation of additional interim measures should be required in the order adopted by the Water Board.

Response: The language in the TO is conditional because the Discharger's consultant is currently evaluating the effectiveness of the earlier onsite interim remedial measures. Tasks 2, 3, and 4 of the TO have been revised to emphasize assessment of a potential threat to groundwater resources and, if necessary, implementation of additional interim remedial measures to protect offsite wells.

6. **Comment:** The RAP approved by the Water Board should include measures to protect the drinking water in the Silveira wells from contamination. Bioremediation and abiotic treatment regimens should be considered to eliminate chlorinated solvents from groundwater.

Response: The RAP is required to include proposed remedial actions and cleanup levels that eliminate threats to human health and restore beneficial uses of water. Among the objectives of these remedial actions will be protection of the Silveira wells. We anticipate that the feasibility study in the RAP will consider a number of potentially applicable remedial approaches, including bioremediation and abiotic treatment regimens.

7. **Comment:** 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 the Silveira wells.

Response: Recent sampling of the Silveira well closest to Marinwood Plaza by the well owner indicates that groundwater pumped from the well does not contain PCE or related contaminants released at the former Prosperity Cleaners site. Tasks 2, 3, 4, and 5 are intended to delineate the extent of the contamination in groundwater east of Hwy 101 and prevent contamination of water produced by the Silveira wells. Tasks 4 and 5 have been revised to require mitigation of impacts to any offsite domestic or agricultural well.

Jon Welner, Esq., of Jeffer Mangels Butler & Mitchell LLP, attorney for Marinwood Plaza, LLC, owner of the subject site

1. **Comment:** In all respects, Marinwood Plaza, LLC (Marinwood) has acted responsibly and cooperatively with regard to the subject site. Given this impressive track record, we do not understand staff's decision to propose an order at this time.

Response: Adoption of the TO would provide a clear path forward toward site cleanup and offsite groundwater investigation and mitigation. Given that the property is in the process of being sold and redeveloped for high density housing, our intent is to provide all parties involved in this process a blueprint for site cleanup and case closure. Given high contaminant concentrations in soil gas, vapor intrusion into an occupied business at the site, and the threat to downgradient domestic wells, a Water Board order is appropriate to compel and guide cleanup in an orderly and reasonably expeditious manner.

2. **Comment:** Sampling conducted on the property and east of Hwy 101 indicates that the site poses no imminent risk to human health and the environment. Impacted groundwater is not being used for any purpose. Offsite groundwater contaminant concentrations have been found to be on the order of, or below, drinking water standards, and the nearest downgradient well has been sampled and found to be free of contamination. There is no evidence of offsite soil vapor migration, and indoor air concerns have been addressed by vapor intrusion mitigation measures.

Response: We disagree. The environmental consultant for the property owner has documented that PCE-related contaminants in soil vapor within the occupied business adjacent to the former Prosperity Cleaners location exceed commercial Environmental Screening Levels (ESLs). Interim remedial measures have reduced the concentrations of these contaminants to levels approaching the commercial ESLs, but the source of the contamination has not been remediated. Additionally, PCE is present in groundwater at two separate locations approximately 450 feet downgradient of the site at concentrations about two times PCE's maximum contaminant level. An active domestic well is located approximately 1,000 feet downgradient of the site. There is no evidence suggesting that these two locations are not in hydrogeologic communication; in fact, available geologic data suggest that they may be in communication. Based on information currently available, Water Board staff concludes that there is a potential threat to this well from the contaminant release at the site. Counsel representing the owner of this active well has expressed the same concern.

3. **Comment:** Marinwood Plaza, LLC, and Bridge Housing anticipate remediating the impacted area at the site by excavating contaminated soil following demolition of some of the buildings

in conjunction with redevelopment. It makes sense to combine these efforts to minimize cost and disruption to the adjacent community.

Response: See our response to Bridge Housing Comment No. 2. We agree that if the feasibility study required in Task 6 of the TO determines that excavation is the preferred remedial alternative, excavation at the site in conjunction with redevelopment would be preferable. However, the final remedy has not been selected, and a RAP implementation schedule has not been proposed. In-situ remediation of contaminated soil beneath the existing buildings may be found to be the preferred alternative because it is typically less expensive than excavation, particularly if groundwater is encountered during excavation. Based on currently available information, significant concentrations of contaminants are present below the first encountered groundwater at the site. The applicability of excavation as a final remedial measure is also limited because it will not address groundwater contamination at the site. Nonetheless, Task 7 has been revised to provide additional flexibility in implementing the RAP, dependent upon the relative success of the interim cleanup measures.

4. **Comment:** The TO requires that the RAP be submitted no later than 180 days following approval of entitlement to develop the Site or by January 1, 2016, whichever is earlier. It is wholly unrealistic to believe that construction of the project will begin by January 1, 2016; therefore this deadline would require Marinwood Plaza to demolish the existing commercial space and excavate the soil beneath it before the project could begin construction. Bridge Housing or another developer would then be required to re-excavate the same area to construct new structures. This makes no sense.

Response: We disagree with these conclusions. As noted in our response to Comment No. 3, excavation has not been selected as the preferred remedial alternative and may not be the best means to remediate the site. The Discharger will select and propose a final remedial approach and cleanup schedule based on the feasibility study required by Task 6 of the TO. The Executive Officer will evaluate the proposed cleanup schedule based on the relative success of the interim remedial actions. It is also unclear to us why engineered fill placed in a deep excavation would need to be re-excavated to accommodate the slab-on-grade construction currently proposed for the site.

The January 1, 2016, submittal date for the RAP was selected following consultation with both the Discharger and Bridge Housing and is based upon their estimates of the time required to obtain approval for the site's redevelopment. The TO requires that the RAP be submitted on January 1, 2016, not that implementation of the selected remedial alternative begin on that date. Task 6 has been revised to indicate that the Executive Officer will consider the effectiveness of the interim remedial actions when evaluating the RAP implementation schedule proposed in Task 6. Task 7 has been revised to require implementation of the final remedial actions consistent with the schedule approved by the Executive Officer. See also our response to Bridge Housing Comment No. 2.

5. **Comment:** The January 1, 2016, deadline to submit the RAP would force an existing retail business on the site to close prematurely. Except for this artificial deadline, the liquor store could operate until Bridge Housing receives approval to construct the project.

Response: We disagree. This comment presumes that the final remedial action will require closure of the liquor store. As noted in our responses to comments No. 3 and 4, above, this will

be determined by the Discharger based on the final remedial actions it selects and proposes. In the event that the Discharger elects to displace the liquor store by demolishing a portion of the structure to facilitate soil excavation, there are several vacant tenant spaces at Marinwood Plaza that could be occupied by this business.

6. **Comment:** The January 1, 2016, deadline for submittal of the RAP proposed in the TO will result in substantial additional and unnecessary cost, substantial additional disruption to the community, and loss of an ongoing business – all for no discernible reason. At a minimum the TO should be modified to require submission of the RAP 180 days following approval of the project by Marin County or January 1, 2018, whichever is earlier.

Response: We disagree. As noted in our response to Comment No. 4, the submittal date for the RAP was selected based on information provided to us by the Discharger and Bridge Housing and is intended to accommodate redevelopment at the site. Neither the Discharger nor Bridge Housing have provided any documentation supporting the assertion that approval of the proposed redevelopment may require four years or more. As noted in our responses to comments No. 3, 4, and 5, Task 6 has been revised to place emphasis on the success of interim remedial actions when evaluating the RAP implementation schedule proposed by the Discharger. Task 7 has been revised to ensure that the submittal date for the RAP Completion Report is consistent with the implementation schedule approved by the Executive Officer. The assertions of substantial additional and unnecessary costs, additional disruption of the community, and loss of an ongoing business are unsupported by evidence. We have addressed these assertions in our responses to comments No. 3, 4, and 5.

7. **Comment:** Issuance of a cleanup order for this type of site is unusual and largely unprecedented, particularly where the potentially responsible party has been proactive in conducting work and responsive to Water Board concerns. Based on our Geotracker review of dry cleaner cases in Marin and Alameda counties the decision to impose an order for the Prosperity Cleaners site appears to be highly unusual. We do not understand why this site is being treated differently than other sites.

Response: The Water Board is not treating this site differently than other dry cleaner spill sites it oversees. While many dry cleaner spill sites have not received cleanup orders, Water Board staff's decision to recommend that the Water Board adopt a cleanup order is based on the specifics of each case. We generally recommend cleanup orders when the site presents a threat to human health or water quality, as is the case with this site, regardless of a discharger's compliance status. The Prosperity Cleaners site has documented vapor intrusion of contaminants into an occupied business, along with a threat to downgradient domestic wells. As evidenced by its recent adoption of numerous cleanup orders, the Water Board expects to adopt cleanup orders more frequently for dry cleaner spill sites,

8. **Comment:** Marinwood previously submitted detailed comments on the administrative draft TO, and many of these were rejected without explanation. We hereby incorporate those comments by reference.

Response: Comment noted. The comments that the Discharger has recently submitted on the TO essentially reiterate its earlier comments on the administrative draft TO. The Discharger's previous comments have either been addressed by changes to the administrative draft TO or are reflected in its comments on the public TO. Water Board staff provided a copy of the

administrative draft TO to the Discharger via email on November 6, 2013. In our transmittal email, we requested that it review the document, identify factual errors, and submit the correct information to us by November 8, 2013. This email also stated that all parties would be afforded the opportunity to fully comment on the TO during the public review period.

Shortly following receipt of the administrative draft TO on November 6, the Discharger requested an extension until November 12 to submit comments, which we granted. The Discharger submitted extensive comments on the concept, content, and structure of the administrative draft TO on November 14 and then met with Water Board staff on November 18 to discuss its comments. We carefully considered its comments, made substantial revisions to the document (particularly to sections B and C), and transmitted it to the Discharger to verify that we had revised the document to address many of its substantive comments. The Discharger submitted additional comments on the revised administrative draft TO on November 26, and we have considered these comments during subsequent revisions of the TO.