

Appendix C

Correspondence

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July 25, 2014

VIA E-MAIL AND U.S. MAIL

John D. Wolfenden
Max Shahbazian
California Regional Water Quality Control Board,
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Comments to the Mutual Release and Covenant Not to Sue for
915 DeGuigne Drive, Sunnyvale

Dear Mr. Wolfenden and Mr. Shahbazian:

Watt Investments at Sunnyvale, LLC, the owner of 915 DeGuigne Drive and party to the proposed Mutual Release and Covenant Not To Sue, hereby provides the following four comments relating to the content of the proposed document:

1. Section III. Findings of Fact, number 5:

We request the section be revised as follows:

Buyer proposes to convert the Property to residential and commercial use and i) implement the approved soil management plan (SMP), (ii) complete a vapor intrusion investigation work plan and investigation, after building demolition, (iii) submit a vapor mitigation plan (VMP) that reflects the results of the vapor intrusion investigation, and (iv) implement the VMP, including any long-term operation and maintenance. The VMP will be consistent with Cal/EPA and U.S. EPA guidance, will use 10-6 cancer risk as the risk level, and will use the lower of the then current Water Board's environmental screening levels (ESLs) and the U.S. EPA's regional screening levels or a site-specific risk assessment to interpret the 10-6 cancer risk level.

A comparison to the current language is provided for reference:

Buyer proposes to convert the Property to residential, and commercial ~~and park use~~, and i) implement the approved soil management plan (SMP), (ii) complete a vapor intrusion

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investigation work plan and investigation, after building demolition, (iii) submit a vapor mitigation plan (VMP) that reflects the results of the vapor intrusion investigation, and (iv) implement the VMP, including any long-term operation and maintenance. The VMP will be consistent with Cal/EPA and U.S. EPA guidance, will use 10-6 cancer risk as the ~~protectiveness~~ risk level, and will use the lower of the then current Water Board's ~~2013~~ environmental screening levels (ESLs) and the U.S. EPA's regional screening levels or a site-specific risk assessment to interpret the 10-6 cancer risk level.

Please note that the last sentence of this section is repeated as the last sentence of Section IV. Agreement, subsection 3, which is referenced below. We request that updates to this sentence are reflected in that section to maintain consistency.

The basis for this request is to clarify the standards applicable to the VMP, and to allow for application of future standards implemented by the Regional Water Board.

2. Section III. Findings of Fact, Number 7

We request the section be revised as follows:

Pursuant to the Regional Water Board's Site Cleanup Requirements, a deed restriction was recorded against the Property on August 7, 1992. Because the existing deed restriction does not comply with the requirements of California Civil Code 1471, Buyer will record a new Covenant and Environmental Restriction on Property ("Deed Restriction") against the Property in accordance with the requirements of Civil Code section 1471. The Deed Restriction will prohibit extraction of groundwater for purposes other than monitoring and remediation and will require that activities that disturb the soil beneath the Property, such as grading, excavation, removal, etc., shall be undertaken in accordance with the SMP. The Deed Restriction is binding upon successors.

A comparison to the current language is provided for reference:

Pursuant to the Regional Water Board's Site Cleanup Requirements, a ~~d~~dDeed ~~r~~rRestriction was recorded against the Property on August 7, 1992. Because ~~F~~the existing deed restriction does not comply with the requirements of California Civil Code 1471, Buyer will record a new ~~"~~"Covenant and Environmental Restriction on Property ("Deed Restriction") against the Property in accordance with the requirements of Civil Code section 1471. The ~~new~~Deed Restriction will prohibit extraction of groundwater for purposes other than monitoring and remediation and will require that activities that disturb the soil beneath the Property, such as grading, excavation, removal, etc., shall be undertaken in accordance with the SMP. The Deed Restriction is binding upon successors.

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The basis for this request is to provide further clarification that a new deed restriction will be recorded against the property in the future.

3. Section III. Findings of Fact, Number 9

We request the section be revised as follows:

Buyer is arranging for the redevelopment of the Property to a productive use that will benefit the public and the community. Estimated benefits to the community include infilling, the use of existing infrastructure, providing jobs for construction workers, the addition of needed housing for the people of the Bay Area, and increased payroll, sales and income taxes accruing to the State and the City of Sunnyvale. Redevelopment of the Property will have water quality benefits, by providing access to previously inaccessible onsite areas beneath the buildings where polluted soil may remain for any necessary sampling, cleanup, and monitoring, and by reducing the pressure for urban sprawl (and associated water quality impacts).

A comparison to the current language is provided for reference:

Buyer is arranging for the redevelopment of the Property to a productive use that will benefit the public and the community. Estimated benefits to the community include infilling, the use of existing infrastructure, providing jobs for construction workers, the addition of needed housing for the people of the Bay Area, ~~the dedication of a new public park~~ and increased payroll, sales and income taxes accruing to the State and the City of Sunnyvale. Redevelopment of the Property will have water quality benefits, by providing access to previously inaccessible onsite areas beneath the buildings where polluted soil may remain for any necessary sampling, cleanup, and monitoring, and by reducing the pressure for urban sprawl (and associated water quality impacts).

The basis for this request is that the project no longer includes dedication of a public park.

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4. Section IV. Agreement, subsection 3:

We request the section be revised as follows:

i) Proposed Revision Alternative 1:

The Released Parties shall (i) exercise due care at the Property with respect to the Known Conditions, (ii) ... *[remainder is unchanged]*

A comparison to the current language is provided for reference:

The Released Parties shall (i) exercise due care at the Property with respect to the Known Conditions ~~and not act in any manner that will aggravate or contribute to the existing environmental conditions of the Property~~, (ii) ...

ii) Proposed Revision Alternative 2:

The Released Parties shall (i) exercise due care at the Property with respect to the Known Conditions and not act in any manner that will aggravate or contribute to the existing environmental conditions of the Property, provided, however, that activities (such as earth movement conducted pursuant to and in compliance with the approved SMP) undertaken with the specific approval, or at the specific direction, of the Regional Water Board and performed in compliance therewith shall not constitute aggravation of or contribution to the existing environmental conditions of the Property, (ii) ...

A comparison to the current language is provided for reference:

The Released Parties shall (i) exercise due care at the Property with respect to the Known Conditions and not act in any manner that will aggravate or contribute to the existing environmental conditions of the Property, provided, however, that activities (such as earth movement conducted pursuant to and in compliance with the approved SMP) undertaken with the specific approval, or at the specific direction, of the Regional Water Board and performed in compliance therewith shall not constitute aggravation of or contribution to the existing environmental conditions of the Property, (ii) ...

The basis for this request is to clarify that actions undertaken pursuant to the SMP, or other Regional Water Board approval, would not constitute an aggravation of the existing condition. Proposed alternative number two is language that was discussed and agreed to among Watt, Spansion and AMD in their joint discussions of the proposed new deed restriction.

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If you should have any questions or comments regarding the content of this letter,
please do not hesitate to contact me.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read 'P. Brooks', with a stylized, cursive script.

Preston W. Brooks