

BAYROCK OAKS, LLC

June 7, 2012

Mr. Mark Detterman
Alameda County Environmental Health
1131 Harbor Bay Parkway
Alameda, CA 94502

Alameda County

JUN 08 2012

Environmental Health

Re: Resolution – Environmental Remediation of the Oak Walk Development, 4090 San Pablo Ave., Emeryville, CA 94608

Mr. Detterman,

We are writing you in our capacity as the owner of the Oak Walk Development property located at 4090 San Pablo Ave. in Emeryville (the “**Property**”).

BayRock Oaks, LLC (“**BayRock**”) commenced development of the property in 2004 to resolve what was clearly a neighborhood environmental problem. Since development and acquisition of the Property, BayRock has worked exhaustively and cooperatively with Alameda County to develop and implement a Corrective Action Plan (“**CAP**”) for the Property. Please see the attached Environmental Engineering Time Line for the Property as well the December 31, 2006 and August 30, 2007 letters from the Alameda County Health Care Services Agency confirming approval of the CAP.

BayRock has complied with and completed all actions required under the CAP.

BayRock has spent considerable time and money over the last year positioning the Property for sale. At the same time, BayRock has continued to work with the County of Alameda to obtain the deed restrictions and reach closure on the CAP. After soliciting bids from numerous potential buyers, BayRock entered into a definitive purchase agreement for the sale of the Property several months ago. However, BayRock was recently informed by the potential buyer that it was not going to move forward with the acquisition of the Property because the buyer was unable to obtain financing. The only reason this financing was not available was because BayRock has not been able to reach closure with the County of Alameda on the environmental issues. This, despite BayRock’s efforts over the last 6+ years, at considerable expense, to develop and implement the CAP.

The County of Alameda’s failure to timely work with BayRock in resolving and finalizing the “environmental” issues associated with the Property is causing BayRock extreme financial hardship. It appears that BayRock will not be able to sell this Property until these issues are resolved. Moreover, the current loan from Comerica encumbering the Property will be due shortly and Comerica has expressed great concern that these environmental issues have not yet been resolved notwithstanding an approved CAP nearly 5 years ago and the fact that

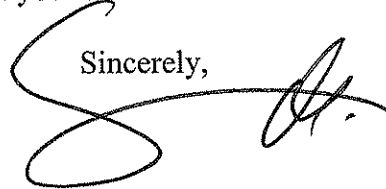
Mr. Mark Detterman
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BayRock has taken all of the steps required under the CAP. BayRock has also provided the County of Alameda, at its own expense, detailed information regarding the Property from its environmental consultant, Deitz Engineering and Construction.

BayRock has worked diligently and patiently with the County of Alameda for over six years in developing and implementing the CAP. Most recently, your office committed to reviewing the Health Risk Assessment submitted March 2012 upon receipt of the additional deposit funds. Your office has acknowledged receipt of the funds on 5/11/13, however, we continue to receive no commitment to when the review will commence. For all of the reasons set forth above, BayRock absolutely needs resolution of these environmental issues in short order.

We would like to schedule a meeting at your earliest convenience to discuss this further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stuart Gruendl', written over a large, stylized, looping flourish that starts under the word 'Sincerely' and extends to the right.

Stuart Gruendl
Manager

OAK WALK SITE EMERYVILLE CALIFORNIA

ENVIRONMENTAL ENGINEERING TIME LINE

The following elements of the site characterization and remediation program have been completed.

- *Preliminary Subsurface Investigation.* Report April 2004. ACEHCS notified August 2004.
- *Environmental Site Characterization.* Ordered by ACEHCS September 2004. Report filed with ACEHCS April 2005.
- *Corrective Action Plan.* Plan filed with ACEHCS July 2006. Addendum filed with ACEHCS November 2006. Plan Approved by ACEHCS December 2006. A follow-up approval was issued August 2007.
- *Remediation.* Remediation Complete. Remediation Report filed with ACEHCS June 2009.
- *Post-remediation Groundwater-quality monitoring.* Monitoring specified by Corrective Action Plan completed September 2010. Groundwater-quality monitoring reports filed with ACEHCS September 2009, May 2010 and November 2010.
- *Deed Restriction.* Following completion of the site remediation in 2009. Deitz Engineering and Construction (“DEC”) and the ACEHCS case officer prepared a draft deed restriction. DEC’s assistance was needed because the case officer had no experience with deed restrictions and his first draft included technical, administrative and legal errors. Signature of the deed was then delayed until Alameda County Assessor’s Office re-subdivided the site to separate the Oak Walk complex from residences constructed on 41st Street. The re-subdivision was completed by the County in October 2010. DEC redrafted the deed restriction in October 2010 to reflect new parcel boundaries and APN’s. The ACEHCS case officer stated he approved of draft and it would proceed to signing. There has been no further action by ACEHCS
- *Post-remediation Health Risk Assessment.* No health risks are present. Report submitted to ACEHCS March 2012
- *Additional Post-remediation Groundwater-quality Monitoring.* Sampling completed March 5, 2012 and a report was submitted in the same month.
- *Letter from ACEHCS on November 18, 2011.* On that date the ACEHCS case officer sent

a letter to Bay Rock Oaks, LLC requesting additional investigation of the Oak Walk Site and *inter alia* claiming that there may be more sources of contamination present within the boundaries of the site and asking for investigatory work that had already been completed. After an exhaustive environmental history study and site characterization, there is absolutely no evidence of any unknown source of contaminants on the site. Furthermore, the site remediation work included excavation of soil over the whole area of the site to depths up to 7 ft. BGS. DEC believes that the extraordinary content of the ACEHCS letter of Nov. 18 2011 can be attributed to failure of institutional memory on the part of ACEHCS which has been exacerbated by very frequent staff turnover. DEC has communicated with ACEHCS about the letter and, from recent conversations with the current case officer, we now believe that the specific work elements called for that in letter will not now be required

- Health Risk Assessment. The required health risk assessment was recently submitted to ACEHCS in March 2012. The assessment showed that there are no health risks
- Deed Restriction. There have been numerous requests by DEC over the last several years for ACEHCS to advance the Deed Restriction. Meetings have been held on an annual basis, most recently on April 15, 2010 and Aug. 14, 2010, with the ACEHCS Local Oversight Program (LOP) manager who on each occasion promised completion of that item within a “few months”. The current case officer says he will get to it when time permits.
- Additional Groundwater Quality Analysis. Although the Post Remediation Health Risk Assessment has shown that there is no environmental risk to occupants of Oak Walk, the ACEHCS case officer is concerned about elevated concentrations of benzene in groundwater in two wells (Nos. MW-16A and MW-16B) on the site. Benzene concentrations in groundwater in those wells have fluctuated around a declining trend. To address the case officers concern, DEC has agreed to perform one additional recovery and analysis of groundwater from those wells so that the current concentrations of benzene can be checked. The sampling was performed on March 5, 2012 and a report has been submitted to the ACEHCS. As has been the case since their approval of the submission of the Corrective Action Plan in December 2006 the ACEHCS has made no response to that submittal.
- Oak Walk Closure Report. Although called for by the approved Corrective Action Plan, a formal closure report for Oak Walk has not been prepared. This is due to the failure of ACEHCS to issue a deed restriction for signature. However, that agency’s case officer has informally indicated that, given the exhaustive detail in DEC’s previous reports and the Health Risk Assessment report, a closure report will not be required.
- Closure of San Francisco French Bread Company Site. Because half of the former SFFBC tank site is beneath the Oak Walk property, it will be necessary to prepare a

closure report for that site. That document is also delayed due to the ACEHCS's failure to finalize a site-wide deed restriction. However, the SFFBC site has been fully remediated by the work on the Oak Walk site and it made minimal contribution to site contamination. DEC expects that the SSFFBC site can be cleared from ACEHCS oversight without great effort. At that point all wells installed for the Oak Walk can be closed.

All reports and submissions related to the environmental condition of Oak Walk are available for review on the California State Water Resources Control Board (SWRCB) Geotracker site and ACEHCS internet site.

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



SENT
12-05-06

December 1, 2006

Mr. Peter Schellinger
Bay Rock Residential LLC
1300 Clay St., Suite 620
Oakland, CA 94612-1427

ENVIRONMENTAL HEALTH SERVICES
ENVIRONMENTAL PROTECTION
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-8577
(510) 567-6700
FAX (510) 337-9335

Dear Mr. Schellinger:

Subject: Toxics Case RO0002733, Oak Walk Development, 4090 San Pablo Ave.,
Emeryville, CA 94608

Alameda County Environmental Health (ACEH) has reviewed the case file for the subject and adjacent sites including the November 2006 Addendum to Corrective Action Plan prepared by The San Joaquin Company Inc. in response to the County's October 12, 2006 letter. The County Technical Comments have been addressed and the Corrective Action Plan is approved. However, we have the following technical comments, which must be addressed when performing the proposed work.

TECHNICAL COMMENTS

1. Grout Curtain Installation- We have reviewed your evaluation of the potential consequences of the installation of the proposed grout curtains and believe that unless the barriers include some type of chemical remediation, there appears to be little benefit to their installation. As stated in the addendum, the grout curtains will cause contaminants to move into adjacent less permeable soils, slightly alter the flow path around the barrier and slow the transport of contaminants down-gradient of the barrier. This may result in the increase of contaminant concentration up-gradient of the grout curtain. Therefore, higher contamination in soil may result up-gradient of the curtains than had they not been installed. We believe, the up-gradient areas may be "innocent" parties and should not be exposed to this potential. The other elements of your CAP are sufficiently protective to allow your proposed development.
2. Groundwater Remediation- We concur that after the proposed groundwater extraction, monitoring well sampling will be indicative of the effectiveness of this remediation. The anticipated reduction in concentration to 40% of original is your consultant's professional estimate based upon his experience. It is not a target goal and represents a "best effort" to remediate groundwater. The 20,000 gallons proposed for removal is based upon what is technically and economically feasible. We concur that the proposed groundwater removal from the extraction ponds is an acceptable remedial effort coupled with the other elements of your CAP.
3. Additional Monitoring Wells- We requested an additional monitoring well in the location of MWT-7. Your Addendum provides clarification that a replacement well in this location would be located beneath a principal building. Proposed post-remediation well, MW-14 will be located down-gradient of MWT-7, within the same

permeable channel and will serve as a suitable replacement. Providing this is the case, this alternative is acceptable.

To verify actual groundwater concentration entering the site and assess the need for remediation, we request two additional post-remediation wells be installed north of proposed well, MW-9, in a transect in the assumed down-gradient location of the Ennis boring within the stream-bed channel as verified by exploratory Trench 10. These wells will provide an estimate of the contamination entering the site through the channel and indicate the need, if any, for additional remediation. If groundwater remediation is shown necessary by groundwater monitoring, one reasonable approach is to use the stream-bed channel as a treatment area for the plume. The responsible parties could then treat the contamination within the stream-bed channel as part of their corrective action plan (CAP).

4. Vertical Delineation of Groundwater Contamination- We shall defer to your consultant's interpretation of the existing boring logs at this site and his professional judgment in determining the need for depth discrete monitoring wells. Since it is unclear if multiple water bearing zones exist and whether they are continuous beneath the site, we concur with the proposal to install a well cluster in MW-16 as a site surrogate and installing depth discrete short screen wells sufficient to delineate the vertical extent of contamination. Sampling results from this well cluster will be considered representative and will be used to determine if the other post-remediation well clusters are necessary.
5. Monitoring of Groundwater Release from former SFFBC- The Addendum points out existing and future wells down-gradient of the former SFFBC that can and will be used to monitor the plume. However, the County is concerned about the contamination from the former SFFBC tanks that may have migrated through the former stream-bed channel to the west of San Pablo Ave. This potential is seen in the results from former well, MW-2 located on 3999 San Pablo Ave. We recommend co-operation with the City of Emeryville in well placements as they have been requested to complete the evaluation of the fuel release from the former Celis Service Station located at 4000 San Pablo Ave.
6. Request for Updated Figure of Unauthorized Release Sites in Neighborhood- Our office has provided your consultant with reports for the former Boysen Paint (ONE) site, 1001 42nd St., Oakland. We request that you update the "Unauthorized Release Sites in Neighborhood" figure to include this information since this site has been indicated to be one of the sources of contamination which has impacted the Oak Walk site.

TECHNICAL REPORT REQUEST

Please provide the following technical reports according to the following schedule:

- December 29, 2006- Work Plan for monitoring well(s) down-gradient of the former SFFBC (in co-operation with the City of Emeryville)
- December 29, 2006- Updated Figure of Unauthorized Release Sites in Neighborhood

ELECTRONIC SUBMITTAL OF REPORTS

Effective **January 31, 2006**, the Alameda County Environmental Cleanup Oversight Programs (LOP and SLIC) require submission of all reports in electronic form to the county's ftp site. Paper copies of reports will no longer be accepted. The electronic copy replaces the paper copy and will be used for all public information requests, regulatory review, and compliance/enforcement activities. Please do not submit reports as attachments to electronic mail.

Submission of reports to the Alameda County ftp site is an addition to existing requirements for electronic submittal of information to the State Water Resources Control Board (SWRCB) Geotracker website. Submission of reports to the Geotracker website does not fulfill the requirement to submit documents to the Alameda County ftp site. In September 2004, the SWRCB adopted regulations that require electronic submittal of information for groundwater cleanup programs. For several years, responsible parties for cleanup of leaks from underground storage tanks (USTs) have been required to submit groundwater analytical data, surveyed locations of monitor wells, and other data to the Geotracker database over the Internet. Beginning July 1, 2005, electronic submittal of a complete copy of all necessary reports was required in Geotracker (in PDF format). Please visit the SWRCB website for more information on these requirements (http://www.swrcb.ca.gov/ust/cleanup/electronic_reporting).

In order to facilitate electronic correspondence, we request that you provide up to date electronic mail addresses for all responsible and interested parties. Please provide current electronic mail addresses and notify us of future changes to electronic mail addresses by sending an electronic mail message to me at barney.chan@acgov.org.

PERJURY STATEMENT

All work plans, technical reports, or technical documents submitted to ACEH must be accompanied by a cover letter from the responsible party that states, at a minimum, the following: "I declare, under penalty of perjury, that the information and/or recommendations contained in the attached document or report is true and correct to the best of my knowledge." This letter must be signed by an officer or legally authorized representative of your company. Please include a cover letter satisfying these requirements with all future reports and technical documents submitted for this fuel leak case.

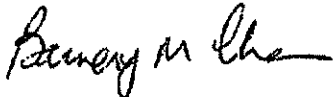
PROFESSIONAL CERTIFICATION & CONCLUSIONS/RECOMMENDATIONS

The California Business and Professions Code (Sections 6735, 6835, and 7835.1) requires that work plans and technical or implementation reports containing geologic or engineering evaluations and/or judgments be performed under the direction of an appropriately registered or certified professional. For your submittal to be considered a valid technical report, you are to present site specific data, data interpretations, and recommendations prepared by an appropriately licensed professional and include the professional registration stamp, signature, and statement of professional certification. Please ensure all that all technical reports submitted for this fuel leak case meet this requirement.

Mr. Peter Schellinger
RO 2733, Oak Walk Development
Page 4 of 4

If you have any questions, please call me at (510) 567-6765.

Sincerely,



Barney M. Chan
Hazardous Materials Specialist

cc: files, D. Drogos, A. Levi
list of interested parties (sent by e mail)
Mr. Constantino Cellis, 2319 Monte Vista Dr., Pinole, CA 94564

11_15_08 Oak Walk CAP

List of Interested Parties for Commingled Investigations:

cc:

Ms. Arni Ebricht
Green City Lofts, LLC
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4601 W. Walnut Street
Soquel, CA 95703

Mr. Jon Benjamin
Farella Braun & Martel, LLP
Russ Building
235 Montgomery St.
San Francisco, CA 94104

Mr. Terry Turner
Dunne Quality Paints

Mr. Edward Kozel
20 Oak Knoll Drive
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Ms. Deborah Castles
McGrath Properties
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Oakland, CA, 94607

Mr. Brian S. Haughton
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One Market, Steuart Tower, Ste
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Mr. Robert Kitay
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Bay Rock Residential, LLC
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Mr. Dai Watkins
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Mr. Ignacio Dayrit
City of Emeryville
1333 Park Ave.
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Mr. Thomas J. Puette, Esq.
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925 Euclid Ave., Ste. 900
Cleveland, OH 44115-1487

Ms. Catherine W. Johnson
Wendel Rosen Black & Dean LLP
1111 Broadway, 24th Floor
Oakland, CA 94111

Mr. John Cavanaugh
ERM
1777 Botelho Drive, Suite 260
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Mr. John Tibbetts
4097 San Pablo Ave.
Emeryville, CA 94608

Mr. Constantino Cellis
2319 Monte Vista Drive
Pinole, CA 94564

List of Interested Parties for Commingled Investigations:

cc: Mr. George Muehleck Mr. Xingang Tong
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 Broadway, Suite 800 Oakland, CA 94612
 Oakland, 94612

 Mr. John Wolfenden, SFRWQCB Mr. Dave Ennis
 P.O. Box 10985
 South Lake Tahoe, CA 96158-3985

 Files, D. Drogos, A. Levi

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



BAYROCK RESIDENTIAL

SEP 05 2007

RECEIVED

August 30, 2007

Mr. Noe Valenzuela
Bay Rock Residential LLC
1300 Clay St., Suite 620
Oakland, CA 94612-1427

ENVIRONMENTAL HEALTH SERVICES
ENVIRONMENTAL PROTECTION
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
(510) 567-6700
FAX (510) 337-9335

Dear Mr. Valenzuela:

Subject: Toxics Case RO0002733, Oak Walk Development, 4090 San Pablo Ave.,
Emeryville, CA 94608

This letter is to inform you that the 30-day Public Comment Period for the proposed Oak Walk Development has expired without substantial comment and therefore, the Corrective Action Plan (CAP) for this site is approved by our office.

Please contact Ms. Donna Drogos, Manager, at our office at 510-567-6721 if you have any questions.

Sincerely,

Barney M. Chan
Sr. Hazardous Materials Specialist

C: files, D. Drogos, A. Levi
List of Interested Parties (sent by e mail)
Mr. Constantino Cellis, 2319 Monte Vista Dr., Pinole, CA 94564