



Renne Sloan Holtzman Sakai  
Public Law Group™

350 Sansome Street, Suite 300  
San Francisco, CA 94104  
t: 415.678.3800  
f: 415.678.3838

## MEMORANDUM

**To:** Mayor and Council  
Clay Holstine, City Manager  
John Swiecki, Community Development Director

**From:** David Kahn, City Attorney *DEA*

**Date:** September 2, 2014

**Re:** Conceptual Brisbane Baylands EIR and Planning Review Process

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### Introduction

With the release of the Brisbane Baylands Draft EIR in June 2013, community focus has been centered on public review of the EIR. Initial presentations of the Draft EIR to the public have clearly distinguished (a) the CEQA review process, intended to evaluate the extent of changes to the environment that would occur should any of the Baylands<sup>1</sup> concept and specific plan development scenarios or EIR alternatives be approved and implemented; from (b) the City's planning review process for UPC's proposed General Plan Amendment and Specific Plan, which provides a process for evaluating alternative land uses for the Baylands site and making policy decisions as to which land uses are in the best interests of the community.

The purpose of this white paper, which was developed working with the City's CEQA consultant and the City's outside CEQA counsel, is to identify procedural options for the City to consider as it moves forward with CEQA review and City planning review for the Baylands site, including discussion of how the two processes interact. The processes described in this paper would allow for (a) the review and adoption by the City Council of updated General Plan provisions for the Baylands to define the selected mix and intensity of land uses (Concept Plan) and set general development policies for the Project Site, (b) the Council's concurrent or subsequent adoption of

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<sup>1</sup> As used in this paper, the term "Baylands" refers to the project site analyzed in the Brisbane Baylands EIR, and thus, encompasses the City's Baylands Subarea, Beatty Subarea, and portions of the Northeast Bayshore Subarea.



a Specific Plan consistent with the provisions of the updated Brisbane General Plan, and (c) certification of an EIR for development on the Baylands.

### Potential Planning Outcomes

Most of the options discussed in this paper include updating the City's General Plan to reflect the land uses and intensities determined to be appropriate by the City, and establishing a more comprehensive and specific set of General Plan policies to guide future development of the Baylands than currently exists in the 1994 General Plan. These land use standards and policies would be based on the environmental analysis contained in the Baylands EIR, economic analysis, sustainability planning, community survey results, and City Council and community discussion.

The Baylands EIR and planning review processes discussed below would support review and approval of one or more Specific Plans for future development within the Baylands.<sup>2</sup> The timing of specific plan adoption is flexible and could occur either concurrently with the process of adopting updated General Plan policies referenced above, or at a later time. A diagram of the proposed EIR and planning review processes is provided on Page 3.

Ultimately, three potential planning outcomes could result from the processes set forth in this paper:

- **No Change.** Denial of UPC's proposed Specific Plan and General Plan Amendment (GPA). No other scenario or alternative would be approved, nor would the General Plan be updated to provide revised or more detailed land use guidance for the Baylands.
- **Updated General Plan Policy Approval.** Approval of updated General Plan policies, including a land use map incorporating revised or more detailed City policy for future development of the Baylands (Concept Plan) than is currently contained in the General Plan, but without approval of a Specific Plan.

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<sup>2</sup> On June 17, 2013, Recology formally requested that the City initiate an independent planning and environmental review process for a proposed Recology modernization expansion into the Baylands area, separate from the ongoing environmental review of the Baylands, in which Recology's expansion is part of the CPP-V development scenario. The request was approved unanimously by the City Council. If desired by the City Council, a subsequent "white paper" addressing timing and other inter-relationships between the review of Baylands development and the proposed Recology modernization could be researched and written.



- **Updated General Plan Policy and Specific Plan Approval.** Approval of updated General Plan policies, including a land use map, reflecting revised or more detailed City direction for future development of the Baylands than is currently contained in the General Plan and concurrent approval of a Specific Plan for Baylands development. The approved Specific Plan could represent UPC's proposed Specific Plan as proposed or with minor or major revisions, or could represent a completely new Specific Plan based on updated City policy set forth in an update of General Plan policies.

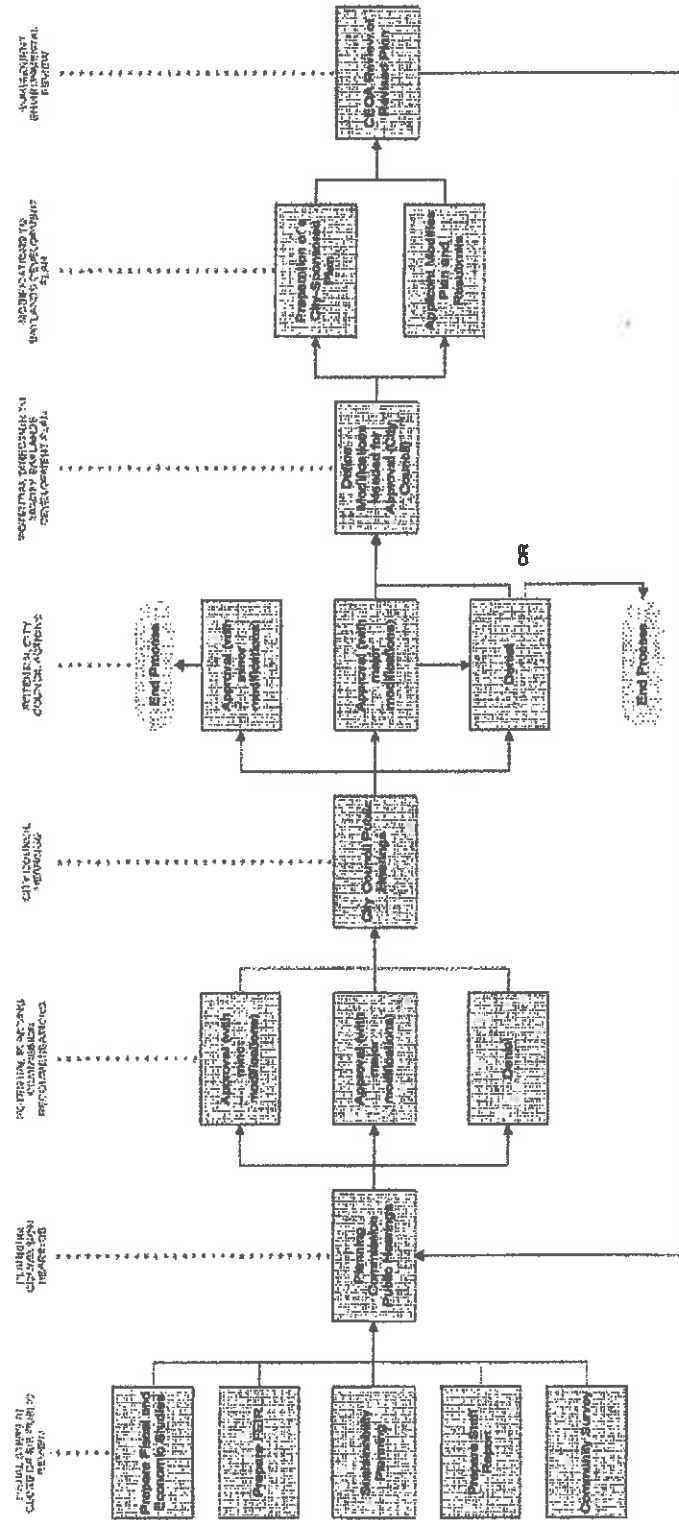
As noted above and as shown in the process diagram on the following page, the City has the option of approving UPC's Specific Plan as proposed or with minor or major revisions, in addition to the option of denial of the plan. "Minor" revisions include revisions that can be easily defined and written at the time the City Council takes action on the proposed Specific Plan, such as reconfiguring proposed land uses or development or reducing allowable development intensity in specific location(s) within the Project Site. "Major" revisions are those revisions that can be generally described by the City Council at a public hearing, but require additional work to be undertaken and the Specific Plan to be revised and brought back to the Council for review. Examples of "major" revisions include those that would require preparation of a new land use plan (e.g., increasing the amount of open space or other proposed land use, eliminating one or more development types) or require additional CEQA review to determine whether the Baylands EIR adequately addressed the impacts of the revised Specific Plan.

The City also could use any of the other scenarios or alternatives evaluated in the EIR, or a combination of components from different scenarios/alternatives, as the basis for updated General Plan policies and a Specific Plan for the Baylands. This option would require CEQA analysis to determine whether the Baylands EIR adequately addressed the impacts of the updated General Plan policies and Specific Plan.

The process diagram set forth below is conceptual in nature, and provides only general guidance as to the direction the City's EIR and planning review processes might take, and the general options the City will likely have at various points in its review process. It does not identify every option and choice the City will have. Following the process chart is a description of the City's various options.



Conceptual EIR and Planning Review Process for the Brisbane Baylands



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### **Ongoing/Future Activities Supporting the Baylands Planning Process**

While the EIR is an important informational document supporting the City's land use decisionmaking process and the subject of considerable community focus, the EIR does not provide land use entitlements, nor does it represent or dictate any specific planning decision. Furthermore, the EIR is not the only source of information that will be considered during the Baylands planning process. Summarized below is a list of ongoing and future activities which will inform and support the City's land use decisionmaking process for the Baylands, which should be completed before the City schedules and holds any public hearings before the Planning Commission regarding the Baylands.

- **Prepare Fiscal and Economic Studies.** The City is in the process of preparing a fiscal impact analysis to evaluate the long-term fiscal implications of multiple Baylands development scenarios on the City of Brisbane. This study is intended to determine if, upon buildout, development within the Baylands will generate more revenue to the City of Brisbane than the cost of providing municipal services, or if the cost of providing services to the Baylands will exceed anticipated revenue to the City.

In addition to a fiscal impact analysis addressing City costs and revenues following buildout, the City also will prepare a second economic analysis to consider the critical issues of development and infrastructure financing and construction. This analysis will consider how site development costs such as site preparation, infrastructure installation, and provision of public benefits, align with revenue projections, financing tools, and phasing, such that a development project can move forward on the Baylands site. The City has hired Keyser Marston to evaluate these larger development-related economic issues and this effort is ongoing.

- **Prepare the Final EIR.** The Draft EIR public review period began on June 8, 2013 and closed on January 24, 2014. All comments received during this period, whether in writing or via oral testimony at public meetings held to receive comments on the Draft EIR, have been collected and are being reviewed by City staff and the City's EIR consultant. Written responses to all comments will be prepared and made available to the public as part of the proposed "Final EIR" prior to the start of any public hearings.
- **Community Opinion Survey.** The City will undertake a professional opinion survey to gauge community opinion regarding potential development of the Baylands. The survey will take place after the publication of the Final EIR and completion of the economic



studies described above to facilitate the collection of well-informed public opinion on key environmental, economic and land use issues. The City has commenced the process by developing focus groups to study potential issues and questions. FM3 who is contracted to do this work will receive overviews of economic issues and trade-offs that are relevant to this type of development from Keyser Marston and other sources. City Planning staff will also provide an overview of important environmental issues. In addition, the Sustainability Plan will also be considered.

- **Sustainability Plan.** The City of Brisbane is drafting a sustainability plan for development on the Brisbane Baylands organized around the One Planet Living principles developed by Bioregional. The *Sustainability Plan* will provide information on sustainability goals, key performance indicators and implementation strategies for consideration by the Planning Commission and City Council regarding potential development of the Baylands. Also, if desired by the City, it will inform updated policies for future Baylands development. The quantification of the public and private benefits of sustainability practices for the Baylands will be prepared and analyzed by a sustainability consultant in consultation with Keyser-Marston.
- **Staff Report.** Based on the results of the proposed Final EIR, economic studies, sustainability plan, community opinion survey, and a review of the General Plan and relevant planning issues, staff will prepare an analysis of planning issues along with an analysis and recommendation for actions on UPC's proposed Specific Plan and General Plan Amendment.

### **Planning Commission Public Hearings**

The Planning Commission will hold public hearings to consider the Final EIR and UPC's proposed Specific Plan and General Plan Amendment, and to hear public comments related to the potential future development of the Baylands.

Because of the complexity of the Baylands development proposal and the EIR prepared for the Baylands, it is recommended that prior to or at the initiation of public hearings, one or more workshops be held to provide orientation for the Planning Commission and public regarding UPC's proposed Specific Plan and General Plan Amendment, the development scenarios and alternatives presented in the Baylands EIR, the analyses contained in the EIR, comments and responses to comments on the Draft EIR, and the conclusions/findings of the Final EIR. The primary outcome of the Planning Commission hearings should be recommendations to the City



Council on UPC's pending applications and the EIR, including recommendations regarding appropriate land use mix and intensity.

Should the Planning Commission conclude at the end of public hearings that more than minor changes to UPC's proposed Specific Plan and General Plan Amendment, or the crafting of a new Specific Plan, are needed, the Planning Commission should make policy recommendations as to what changes they believe are needed for the City Council's consideration, rather than attempting to independently craft major revisions.

Since the Planning Commission will (1) make a recommendation to the City Council and not a final decision on the Baylands and (2) will generally describe its recommendation, but not independently craft major revisions to UPC's proposed Specific Plan and General Plan Amendment should such revisions be recommended, it is anticipated that Planning Commission public hearings and decisions should be completed within a three month time frame.

#### **Potential Planning Commission Actions at the Close of Public Hearings**

At the close of its public hearings, the Planning Commission will make recommendations to the City Council on the EIR and UPC's proposed General Plan Amendment and Specific Plan. The Commission's three basic options are described below, along with the related EIR actions needed to support the planning recommendations.

- **Recommend approval of UPC's proposed Specific Plan and General Plan Amendment either as-is or with minor revisions.** The Planning Commission could recommend approval of UPC's General Plan Amendment and Specific Plan or approval with only minor revisions. These minor revisions would need to be clearly identified in the Planning Commission's recommendation. This recommendation would also require the Planning Commission to recommend certification of a legally adequate Baylands Final EIR.
- **Recommend major revisions to UPC's proposed Specific Plan and General Plan Amendment and continue the application to a later hearing.** The Planning Commission could recommend major revisions to UPC's General Plan Amendment and Specific Plan be undertaken prior to any approval, and that any decision on the application be continued to allow for such revisions to be made. These major revisions would need to be clearly identified in the Planning Commission's recommendation. The Planning Commission should also forward any recommendations regarding the adequacy



of the Final EIR to the City Council. The Planning Commission could recommend certification of the Final EIR or wait on recommending certification until such time as the major modifications are made and the application reconsidered.

- **Recommend denial of UPC's proposed Specific Plan and General Plan Amendment.** The Planning Commission could also recommend denial with supporting findings of UPC's General Plan Amendment and Specific Plan. A recommendation to deny UPC's General Plan Amendment and Specific Plan would not require the Planning Commission to make a recommendation regarding certification of the Baylands Final EIR. Along with a denial of the project, the Planning Commission may choose to make land use policy recommendations to the City Council regarding what should be included in future planning efforts for the Baylands.

#### **City Council Public Hearings**

Following Planning Commission public hearings, the City Council will discuss the Commission's recommendation and hold its own public hearings on development of the Baylands, including the Final EIR and UPC's proposed General Plan Amendment and Specific Plan. While the potential outcomes are generally the same as outlined above for the Planning Commission, the City Council's role as the City's policy-setting and decisionmaking body creates the important differences outlined below.

#### **Potential City Council Actions at the Close of Public Hearings**

At the close of its public hearings, the City Council will take discuss and take actions on the EIR and development of the Baylands, including UPC's proposed General Plan Amendment and Specific Plan.<sup>3</sup> The three basic options the City Council will have in taking action are described below.

- **Approve UPC's proposed Specific Plan and General Plan Amendment either as-is or with minor modifications.** The City Council could approve UPC's General Plan Amendment and Specific Plan or approve them with only minor revisions to address community concerns. These minor revisions would need to be clearly identified in the

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<sup>3</sup> It is likely that at the point the City provides specific planning direction for the proposed Baylands development, the City and developer will commence to negotiate a Development Agreement setting out the parameters and public benefit requirements of any development.





City Council's action. This action would also require the City Council to certify a legally adequate Baylands Final EIR.

- **Require major revisions to UPC's proposed Specific Plan and General Plan Amendment prior to any project approval.** The City Council could direct that major revisions to UPC's General Plan Amendment and Specific Plan be undertaken to address community concerns prior to approval. These major revisions would need to be clearly identified in the City Council's action. A critical component of this course of action would be the applicant's willingness to accept the City Council's direction and work collaboratively with the City to modify the project as directed. If the applicant is willing to proceed in this manner, the City Council would continue the application to allow for the plan modifications to be made. Options to move forward with the plan modifications are outlined below.
  - **Applicant independently modifies the plan and resubmits it for City review.** Because major revisions to the application would have occurred under this option, the project would be sent back to the Planning Commission for review and further public hearings. EIR certification by the Council would be required prior to project approval.
  - **City staff and consultant team take the lead in modifying the plan per the City Council's direction.** This option could involve a community-based planning process conducted by the City to solicit feedback and further refine the concept before it is presented to the Planning Commission and City Council and then fleshed out into a detailed specific plan. EIR certification would be required prior to project approval.
  - If the applicant is unwilling to proceed as described above in the first option, or to fund a continued planning process, City Council could deny the applications and undertake a City-sponsored planning process as outlined below.
- **Denial of UPC's proposed Specific Plan and General Plan Amendment.** Project denial would end the EIR and planning review process for the Baylands and the existing general plan policies and standards would remain in place. Pursuant to adopted General



Plan policy, the property owner could submit a new Specific Plan and General Plan Amendment to the City for processing.<sup>4</sup>

Alternately, at the direction of the City Council, the City could initiate a planning process for the Baylands to determine, at the General Plan level, what constitutes an appropriate mix of land uses and development intensities for the Baylands, along with appropriate development policies.

### City-Sponsored Planning Process

- **Preparation of City Sponsored-Plan.** Assuming the City Council wishes to initiate a City-sponsored planning process, it should answer the following questions:
  - **What is the purpose of the planning program?** Is the City Council's goal to establish general plan-level land use density and intensity standards and related policies, including a land use map, that would set the parameters for a future specific plan? Or is the desired outcome for the City to adopt a City-initiated specific plan?
  - **What land use concept or concepts should form the basis of this planning program?** The City Council could provide direction for further planning based on one of the land use scenarios or alternatives evaluated in the Baylands EIR, or a combination thereof. Alternatively, the City Council could provide direction to pursue other land use concepts not evaluated in the EIR.

Any city-sponsored planning process would be community-driven and informed by the base of information provided through the EIR, economic studies, sustainability planning, community survey, and public hearing testimony. There are numerous options for implementing a community-based planning process, and this merits a detailed discussion of its own. If the City proceeds in this direction, the City Council should thoroughly explore community engagement options to ensure that the process fits the community's needs and expectations.

- The results of this community process (whether updated general plan policies including a land use map, specific plan, or both) would be subject to formal review by the Planning Commission and City Council and would require the preparation and adoption of a

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<sup>4</sup> Unless it is a substantially different application, there is a required one-year wait period before a new application may be submitted.



CEQA document, whether it be the Baylands FEIR with addendums, a Subsequent EIR or Supplemental EIR if the Baylands FEIR is certified by the City Council, or a new Program EIR.

### **Other Planning Considerations**

#### **Funding for the Baylands Planning Process**

The applicant is responsible for all planning, environmental, and consulting costs associated with the processing of its application. If the City denies the application and initiates its own planning process, the applicant would not be obligated to fund this process. The applicant may choose to be actively engaged and financially participate in the City's effort, or it may not.

In the absence of the applicant's financial participation, there are a variety of regional and statewide grant programs for the City to explore which may fund 1) planning activities in Priority Development Areas, and 2) planning activities in proximity to transit hubs. The City also has the option of expending general fund monies for such a program. If the City were to proceed with preparation and adoption of a specific plan using city funds, state law allows it to recoup specific plan preparation costs from subsequent projects developed pursuant to the adopted specific plan.

#### **Public Vote on the Baylands Land Use Plan**

The Council has expressed its intent to place the Baylands land use plan on the ballot prior to final adoption, and California law allows a city to submit a land use measure directly to the voters.<sup>5</sup> While a general plan and specific plan both are legislative enactments that the Council could elect to place before City voters,<sup>6</sup> the general plan provides the land use blueprint that the specific plan must follow and may be the more appropriate land use measure to submit to the voters. An important consideration for the City is that a land use ordinance adopted by a vote of the electorate cannot be repealed or amended except by another vote of the electorate, thereby removing the Council's ability to respond to changing conditions and community interests in the absence of another ballot measure.

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<sup>5</sup> The City is required to complete the environmental review as required by CEQA prior to submitting the ballot proposal to the voters.

<sup>6</sup> In addition, both a general plan and specific plan are subject to a referendum proceeding within 30 days after adoption of the land use legislation.