

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: David Kahn, City Attorney via City Manager

SUBJECT: Memorandum of Agreement Between City of Brisbane and Sunquest Properties, Inc. for Continued Operations Under Use Permit UP-8-03

DATE: April 21, 2014

City Council Goals:

To preserve and enhance livability and diversity of neighborhoods. (#14)
To preserve the unique character of Brisbane. (#16)
To promote economic development that stabilizes and diversifies the tax base. (#4)

Purpose:

To consider and approve a Memorandum of Agreement (“MOA”) for continued soil processing operations by Sunquest Properties Inc. at the Baylands site as a “bridge” between the former Use Permit UP-8-03 and review and action by the Planning Commission on the pending application for a new Use Permit for the soil processing site. The MOA will establish maximum height limits and incorporate air and dust management plans, and enforcement procedures, for the soil processing site.

Recommendation:

Approve the attached Memorandum of Agreement between City of Brisbane and Sunquest Properties, Inc, for Continued Operations Under Interim Use Permit UP-8-03 and authorize City Manager to sign Memorandum of Agreement.

Background:

The City approved Interim Use Permit 8-03 in 2004 allowing clean soil processing and stockpiling on the Baylands property. A copy of UP-8-03 is attached. The Interim Use Permit set certain limits on stockpile heights and quantities and provided for dust and air quality control measures. The permit anticipated a future grading permit that would establish final elevation at the site.

Prior to the expiration of UP-8-03 in 2007, the owner made timely application to extend the use permit for an additional five years. The replacement of the 2004 operator with a new operator, focus on the Baylands EIR process, and City requests for additional soil testing and other information resulted in the permit extension not being ready for Planning Commission review until recently. The operator has continued to be allowed to operate under UP-8-03, subject to its agreement to site management and remediation measures that are not required by UP-8-03.

As the result of several major construction projects in the Bay Area over the last several years, the amount of clean dirt processed and stockpiled has substantially increased the heights of the dirt storage and processing areas. In July and August 2013, a number of residents brought concerns to the Council about dust releases from the site, and about the increasing heights of the dirt piles.

Although the new Interim Use Permit will address control, mitigation, and height issues at the Baylands dirt processing site when it is reviewed by the Planning Commission, the Council requested that a “bridge” agreement be prepared to address resident and Council concerns prior to the review of the new Interim Use Permit application. The City Manager, Director of Public Works, Community Development Director, and City Attorney developed the Memorandum of Agreement and have been discussing it with the Council Sub-Committee and the property owner.

The Memorandum of Agreement for the Baylands soils processing site is now ready for Council review and approval.

It is important to note that this MOA addresses only the Baylands soils processing site and there will be separate review of the Brisbane Recycling site and operations.

Discussion:

The Memorandum of Agreement is a “bridge” agreement between the present UP-8-03 and the application and Planning Commission review of the pending application for a new Interim Use Permit for the Baylands soil processing site. The new Interim Use Permit will review and establish the heights for the duration of the Interim Use Permit. It is important to understand that the new Interim Use Permit will not set the final heights of the Baylands site and if and when there is any development on the site, will require a further grading plan with final elevations prior to any development. It is also anticipated that future soil export either to other locations in the Baylands to address remediation requirements, or off-site for major construction projects, will significantly reduce the future heights on the soil processing site.

The Memorandum of Agreement establishes multiple standards and requirements to allow the City to monitor and control the Baylands soil processing site. It incorporates the October 14, 2013 Air and Dust Management Plan previously adopted pursuant to Bay

Area Air Quality Management District regulations. It prohibits operations at the site after 10:00 p.m. It requires ongoing soil testing to insure that only clean fill is accepted for processing.

A challenging issue under the current UP-8-03 interim use permit is the appropriate determination and regulation of the heights of the multiple soils processing and stockpiles on the site. The absence of objective elevation measurements or measurement protocols resulted in uncertainty in the measurement and regulation of increasing heights of the soils at the site. The goal for both this bridge Memorandum of Agreement and for any future interim use permit is to establish objective elevation benchmarks that can be used to monitor and regulate future increases or decreases in height. As a condition of continued operation, the City required the operator to perform a current aerial survey of the site to establish the baseline for the current heights as a standard for future monitoring and regulation.

Based on the aerial survey, 4 soils processing/stockpile areas are identified as Piles A,B,C and D on the aerial survey map attached to the Memorandum of Agreement. The current heights, and proposed maximum heights with supporting information on the quantity of soil that the height changes will permit are as follows:

Pile A Existing Max Elev 51 -- Year End 2014 Max 58	approx 200,000 yds
Pile B Existing Max Elev 50 -- Year End 2014 Max 50	(leave as is)
Pile C Existing Max Elev 59 -- Year End 2014 Max 75	approx 325,600 yds
Pile D Existing Max Elev 72 -- Year End 2014 Max 75	approx 85,250 yds

These proposed heights would permit continued operations consistent with the projects that the operator is currently working on, and allows time for the Planning Commission to review the application for the Interim Use permit.

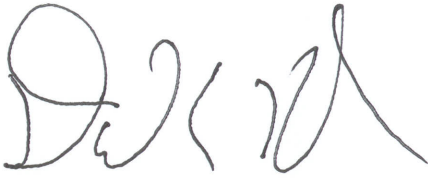
The City will require an engineer's report every two months to verify that the elevations do not exceed the limits in the MOA. In the event that there is no approved Interim Use Permit in place and operations continue under this MOA, updated aerial topographical surveys will be required at annual intervals, in addition to the engineer's reports.

Fiscal Impact:

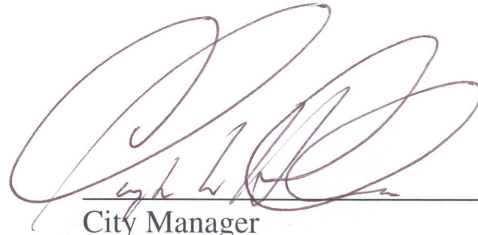
The annual truck haul fees from the Baylands soil processing business were \$202,049 in 2011; \$299,272 in 2012; and \$379,599 in 2013. If operations are not allowed to proceed, or the heights permitted do not allow for continued operations until the Planning Commission review of the interim use permit application, there will be a corresponding loss of all or part of this revenue to the City.

Measure of Success

Resident concerns related to dust emissions and monitoring and regulation of soils heights are addressed by the Memorandum of Agreement and the City continues to receive the substantial revenues from the Baylands soil processing operation.



City Attorney



City Manager

A copy of supporting materials provided to the City Manager and Council Persons in connection with this agenda item is available for public inspection and copying at 50 Park Place, City of Brisbane Department of Public Works, Brisbane, CA, 94005, Telephone: (415) 508-2130.

Attachments:

- Memorandum of Agreement Between City of Brisbane and Sunquest Properties, Inc. for Continued Operations Under UP-8-03
- Resolution UP-8-03
- August 29, 2013, Brisbane Soil Processing Interim Use Permit Update

**MEMORANDUM OF AGREEMENT BETWEEN CITY OF
BRISBANE AND SUNQUEST PROPERTIES, INC. FOR
CONTINUED OPERATIONS UNDER USE PERMIT UP-8-03**

This Memorandum of Agreement ("MOA") for Continued Operations Under Use Permit UP-8-03, dated April ___, 2014 for reference purposes only, is entered into by the City of Brisbane ("CITY") and Sunquest Properties, Inc. ("PROPERTY OWNER"), with reference to the following facts:

- A. The CITY approved Use Permit UP-8-03 ("PERMIT") in January, 2004. The PERMIT allowed the PROPERTY OWNER to receive, screen, stockpile and sell inert materials, including clean sand, topsoil, clay and loam, on the portion of the Baylands landfill located between Beatty Avenue, Tunnel Avenue, Lagoon Way and the Bayshore Freeway shown on Exhibit A ("SOIL PROCESSING SITE").
- B. The initial term of the PERMIT was three years. Prior to expiration of the PERMIT, the PROPERTY OWNER made timely application to CITY to extend the PERMIT to allow continuing operations.
- C. Upon receiving the PROPERTY OWNER'S application to extend the PERMIT, the CITY identified multiple issues regarding which it required information prior to making a determination on the PROPERTY OWNER'S application. The CITY asserts that the PROPERTY OWNER'S site operator in 2007 did not timely provide the information requested by the CITY. In 2009, the PROPERTY OWNER terminated the existing operator, Ryan Engineering, Inc., and retained a new operator, Proven Management, Inc., now Baylands Soil Processing, LLC ("BSP").
- D. In November 2009, the PROPERTY OWNER submitted a further application to the CITY to extend the PERMIT. In March 2010, BSP submitted a draft site operations plan to the CITY. The PROPERTY OWNER and BSP have either complied or are in the process of complying with all CITY requests for additional information.
- E. Based on the PROPERTY OWNER'S timely requests for extension of the PERMIT, during the continuing review by the CITY of the application, the CITY has permitted continuing operation of the SOIL PROCESSING SITE under the PERMIT. As a condition of continued operation, the PROPERTY OWNER agreed to a Compliance Audit that was not required by the PERMIT. The Compliance Audit, performed by a contractor to the CITY at the PROPERTY OWNER'S expense, evaluated the SOIL PROCESSING SITE intake and soils testing procedures to insure that all materials transported to the SOIL PROCESSING SITE are free from contamination.
- F. As a result of continuing operations at the SOIL PROCESSING SITE beyond the initial term of the PERMIT, the stockpile heights and total material at the SOIL

PROCESSING SITE may exceed or be inconsistent with the limits identified in the PERMIT. The CITY will be reviewing the PROPERTY OWNER'S request for extension of the PERMIT in 2014 and, if a formal extension is approved, the CITY will establish the appropriate conditions of approval for the continued use.

- G. A number of Brisbane citizens have stated that the continuing operations at the SOIL PROCESSING SITE have resulted in multiple violations of the dust control requirements, and that the massing and height of the dirt stockpiles have resulted in visual blight in the CITY. The PERMIT provides that it is subject to revocation pursuant to the Brisbane Municipal Code if the SOIL PROCESSING SITE results in a nuisance, or is injurious or detrimental to property in the neighborhood, or injurious to the general welfare of the CITY. The CITY acknowledges the economic and other community benefits of continued operations at the SOIL PROCESSING SITE, has reviewed the ongoing operations at the SOIL PROCESSING SITE and is willing to permit continued operations at the SOIL PROCESSING SITE until such time as the CITY formally acts on the PROPERTY OWNER'S application for extension of the PERMIT. However, such continued operations are contingent on the PROPERTY OWNER'S agreement to certain terms and conditions of continued operations that address the CITY'S operational, health and public welfare concerns at the SOIL PROCESSING SITE.

THEREFORE, THE PROPERTY OWNER AGREES TO THE FOLLOWING TERMS AND CONDITIONS AS A PREREQUISITE TO CONTINUED OPERATIONS OF THE SOIL PROCESSING SITE PRIOR TO FORMAL ACTION BY THE CITY ON THE PROPERTY OWNER'S APPLICATION:

1. The October 14, 2013, Air and Dust Management Plan ("ADMP"), Brisbane Baylands, Brisbane, California, prepared and adopted pursuant to CITY Ordinances and Bay Area Air Quality Management District regulations is attached to this MOA as Exhibit B and incorporated into this MOA by reference. The PROPERTY OWNER agrees that it will implement and comply with all of the Best Management Practices for air and dust control in the ADMP, including listed management and mitigation measures in the event that visible dust from soil disturbance activities is observed.
2. The PROPERTY OWNER acknowledges and agrees that pursuant to Section 3.8 of the ADMP, in the event that visible dust from soil disturbance activities is observed crossing the SOIL PROCESSING SITE boundary, the specific source of dust emissions will be immediately shut down, and a more aggressive application of the BMP Best Management Practices in the ADMP will be implemented.
3. PROPERTY OWNER acknowledges and agrees that pursuant to Section 3.9 of the ADMP, in the event that visible dust from soil disturbance activities is observed within the SOIL PROCESSING SITE boundary, a more aggressive

application of the Best Management Practices in the ADMP will be implemented. If visible dust emissions continue after application of the Best Management Practices, the specific source of the dust emissions will be shut down until the implemented dust control mitigation is effective or, due to changed conditions, is no longer necessary.

4. PROPERTY OWNER acknowledges and agrees that pursuant to Section 3.10 of the ADMP, if windblown visible dust plumes originate from the site during weekends, holidays, or other times when there are no active soil-disturbing operations at the SOIL PROCESSING SITE, Best Management Practices to mitigate the visible dust will be implemented as soon as feasible, which determination is subject to review by the Public Works Director, and maintained until the visible dust plumes originating from the SOIL PROCESSING SITE are minimized or eliminated.
5. The PROPERTY OWNER acknowledges and agrees that no operations are permitted at the SOIL PROCESSING SITE after 10:00 p.m.
6. The CITY and the PROPERTY OWNER agree that the environmental health and safety of the SOIL PROCESSING SITE is important for the health and safety of both employees at the SOIL PROCESSING SITE, Brisbane residents, and surrounding communities. The PROPERTY OWNER agrees that as a condition of the CITY permitting continued operations at the SOIL PROCESSING SITE under the PERMIT, the PROPERTY OWNER will comply with the Soil Management and Quality Assurance Plan dated September 2013 on file with the City of Brisbane Community Development Department to insure that the SOIL PROCESSING SITE does not accept or process contaminated material. Additionally the CITY retains the right to perform an audit of site operations to ensure compliance with the above-referenced Soil Management and Quality Assurance Plan at the PROPERTY OWNER'S reasonable expense. The PROPERTY OWNER shall be responsible to correct operational deficiencies or otherwise work with the CITY to promptly address any recommendations identified by the audit.
7. Finding 2 of the PERMIT provides that the interim use on the SOIL PROCESSING SITE will not be detrimental to the public health, safety or welfare of the CITY. Condition of Approval C provides that materials should be stockpiled no higher than 25 feet above the surrounding grade. Due to the length of time between the initial end date of PERMIT and the current date of April 21, 2014, and the increase in demand for the SOIL PROCESSING SITE based on major construction and excavation projects in the City of San Francisco and other cities, the overall height of the stockpiles and adjacent grades has increased as shown on Exhibit A.

On the other hand, The CITY acknowledges the economic value of operations at the SOIL PROCESSING SITE to the CITY, and desires to allow continued

operations pending completion of the CITY's review of the PROPERTY OWNER'S application for extension of the PERMIT, subject to the PROPERTY OWNER agreeing to set reasonable maximum elevations for the SOIL PROCESSING SITE that are acceptable to the CITY and that will not be exceeded pending the review of the PROPERTY OWNER'S application. The PROPERTY OWNER provided the CITY with a current topographical map of the SOIL PROCESSING SITE on February 21, 2014. Maximum elevations of the dirt stockpiles and processing sites prior to the issuance of an Interim use Permit will be established by reference to the elevations on the topographical map submitted on February 21, 2014. Maximum elevations shall not exceed those shown on Exhibit A, hereby incorporated by reference into the Agreement, except by a mutually agreed Amendment in writing and approved by the City Council.

The maximum elevation heights are:

Pile A	58 feet
Pile B	50 feet
Pile C	75 feet
Pile D	75 feet

8. To allow the CITY to monitor compliance with this condition, PROPERTY OWNER shall provide an engineer's report every two (2) months, commencing on the effective date of this Agreement, verifying that the maximum elevations on site do not exceed the maximum allowed. PROPERTY OWNER shall submit updated topographical surveys for the SOIL PROCESSING SITE commencing twelve (12) months from the Agreement effective date, and continuing every twelve (12) months until an Interim Use Permit is issued that incorporates a grading plan.

All other Findings and Conditions of Approval of the PERMIT remain in effect, including Condition of Approval BB providing for revocation of the PERMIT pursuant to Brisbane Municipal Code Chapter 17.48 if the continued use does not comply with the conditions of approval, or is a nuisance, injurious or detrimental to property or improvements in the neighborhood or the general welfare of the CITY, or for any reason that the City Council deems in its sole discretion to make continuation of the use not satisfactory to the CITY. The City may also, at its sole discretion, enforce any violation of the Agreement pursuant to Brisbane Municipal Code Chapter 17.58, Enforcement and Penalties.

[SIGNATURE PAGE ON NEXT PAGE]

Date _____

City of Brisbane

Date _____

Sunquest Properties, Inc.

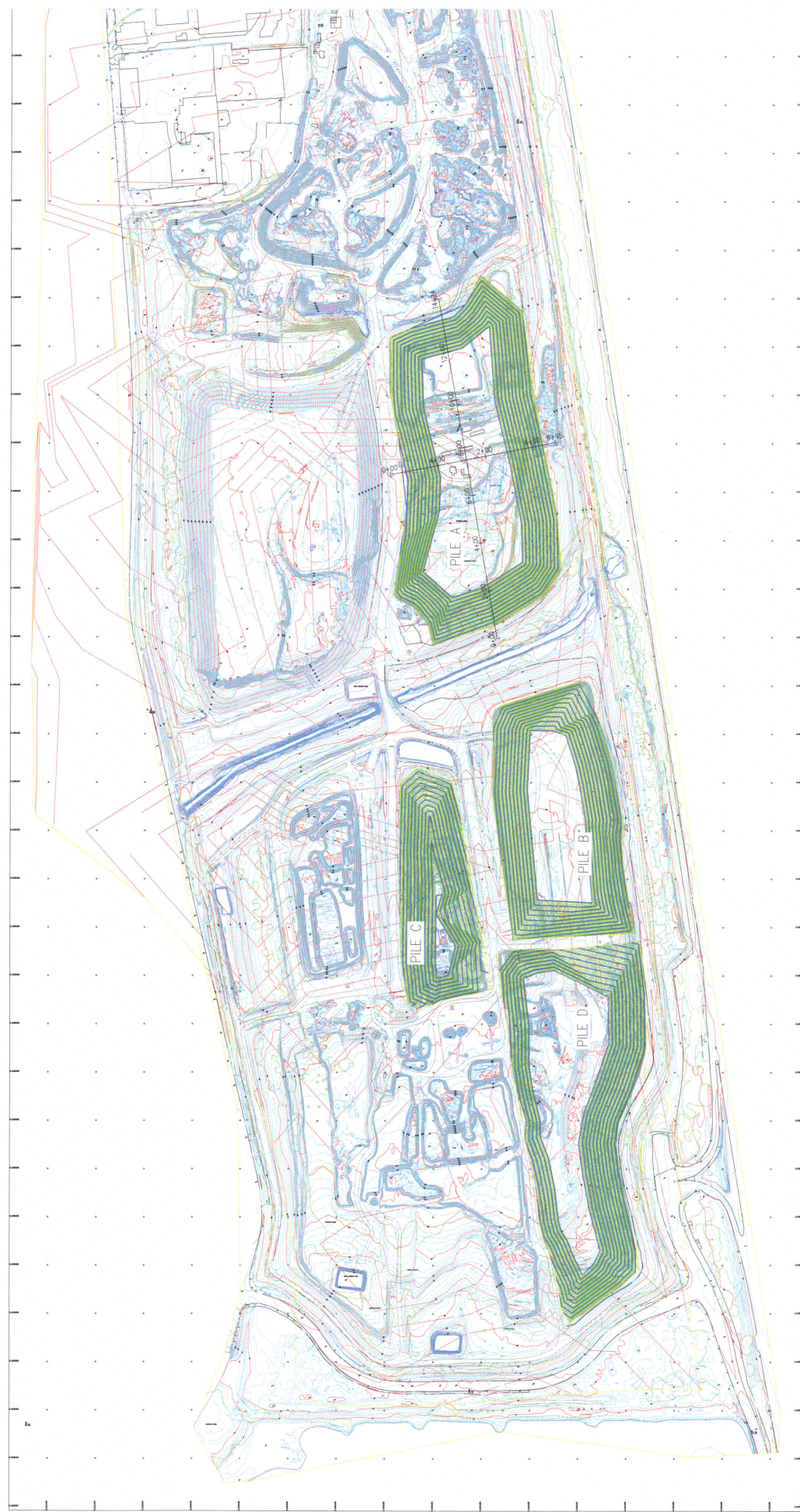


EXHIBIT A INTERIM GRADING PLAN

<p>DESIGNED: _____ DRAWN: JKD APPROVED: JCM</p>		<p>PREPARED FOR: BRISBANE BAYLANDS BRISBANE, CA. 94005</p>	<p>TITLE: INTERIM GRADING PLAN</p>	<p>SHEET 1 of 1</p>
<p>JOB#: 2014-3002 DATE: 04/04/14 100% SUBMITTAL</p>		<p>BRISBANE BAYLANDS BRISBANE, CA. 94005</p>		
<p>Professional Land Services LAND DEVELOPMENT SPECIALISTS</p>		<p>BRISBANE BAYLANDS BRISBANE, CA. 94005</p>		
<p>NO. _____ REVISIONS _____</p>		<p>DATE: 04/04/14 @ 09:03:10 PM</p>		



MEMORANDUM

DATE: August 19, 2013

TO: Honorable Mayor and City Council

FROM: Community Development Director via City Manager

SUBJECT: Baylands Dirt Stockpiling and Soil Recycling Operations- Status Report

The subject of the soil stockpiling and recycling operations on the Baylands has been a recurring issue before the City Council in recent months, with specific concerns pertaining to stockpile heights and dust. This memorandum provides a status report on site operations, including historical background information.

Regulatory History

A Use Permit (UP-4-77) was approved for the landfill portion of the site in June 1977 to allow for "reclamation and surcharge" of the closed landfill. The stated intent of the activities was to "accelerate expected settlement and introduce new surface materials under engineering control and supervision to develop soil conditions capable of supporting light commercial and industrial projects." The conditions of approval required "adequate dust control measures...as requested by the City Engineer." There were no conditions of approval related to the amount or height of material on site, nor was there any reference to stockpiles. This permit was approved on an interim basis and extended annually for several years.

UP-4-83 was subsequently approved in 1983 superseding permit UP-4-77. The activity was characterized as "continued reclamation of landfill property" and clearly specified "stockpiling incidental to reclamation" as a permitted activity. The use permit further included Site Earthwork Specifications prepared by the applicant to serve as the operational standards for the site activities. These specifications included a 25-foot stockpile limit for "loose material cleared from the site...for use as compacted structural fill." These specifications did not include a stockpile height limit for imported fill. Subsequently proceedings to revoke UP-4-83 were initiated by the City. The grounds for revocation were identified as dust generation, lack of compliance with operational conditions, and visual concerns, among others. Specifically, excessive stockpile height was alleged as a cause of dust generation, as excessive pile height precluded the application of water sufficient to prevent dust. While UP-4-83 was ultimately not revoked, an additional condition of approval was added specifying that "unprocessed

material may be stockpiled no higher than 25-feet above ground level. Processed material may be stockpiled no higher than 25-feet above ground level.”

UP-8-97 was approved for the site in 1997 and was the first use permit to identify “the stockpiling of soil and sand for resale” as a permitted use while still recognizing the function of preparing the site for “long-range development.” The condition pertaining to stockpile height states that “Materials may be stockpiled no higher than 25 feet above ground level.” There was no evidence in the record that stockpile height was a major consideration in the evaluation of this permit. Rather the height limit was characterized as reflective of ongoing operations and based on dust control requirements.

UP-8-03 was approved in 2004. This permit retained the stockpile height language approved under UP-8-97. This use permit also added conditions related to the total quantities of stockpiled material and limitations on the amount of material imported/exported on a monthly basis. These conditions were added to validate the conclusion that ongoing facility operations would not create new environmental impacts, particularly related to truck trips. UP-8-03 had limited discussion of the site reclamation/surcharge aspect on ongoing site operations. The permit made reference to a grading permit application that had been filed with the City that would address site grading. No such grading permit application was ever processed.

Before UP-8-03 expired in 2007, the applicant made a timely application to extend the use another 5 years. In evaluating this extension application, City staff expressed concerns about the ongoing operations of the facility. Instead of processing the application on a “business as usual” basis the City requested extensive information from the applicant regarding the business operations and site management, proposed site changes, grading, and stockpiling anticipated to occur over the life of the permit. Extended discussions with the operator and property owner failed to produce the information needed to process the application. Ultimately the property owner terminated the agreement with the operator, and entered into an agreement with a new operator.

In support of the application, the new operator submitted a draft site operations plan in response to staff’s informational request. This draft operations plan as submitted raised a number of additional questions including but not limited to soil testing and quality control procedures, stormwater management, and the regulatory authority over the site by other agencies including the RWQCB and County Health Department. Some of these issues are still being resolved, but staff anticipates that a revised operations plan will be submitted shortly, allowing for the application to be scheduled for Planning Commission review later this fall.

While the application extension has been in process, the applicant has been allowed to continue operations on an interim basis consistent with the terms of UP-8-03. Additionally the applicant has voluntarily taken a number of site management measures not required under the conditions of approval for UP-8-03. These included paying for the City to have a Compliance Audit performed by an independent environmental consultant to evaluate the facility’s soils testing and intake procedures to ensure that the material brought on to the site for processing constitutes clean fill. As a result of the City’s audit,

quality control procedures for soil acceptance, testing and on site management have been improved. Specifically, all material entering the site is pre-tested, (as opposed to historic practices where material was self certified by the generators and visually inspected before entering the site) and testing documentation is retained for review and inspection. Additionally at the direction of the Public Works Department two water trucks are stationed at the facility for dust control purposes. A number of stormwater management Best Management Practices (BMPs) have been implemented including but not limited to sediment basin improvements, hydroseeding of portions of the site for stabilization purposes, and siltation fences and check dams to reduce the amount of sediment leaving the site. The results of the City's audit, including recommendations for screening/testing protocols, ongoing monitoring, auditing and recordkeeping will be incorporated into the upcoming use permit extension conditions of approval.

Physical Site Changes Over Time

As requested by the City Council, staff has evaluated changes to site topography over time in order to verify either compliance or noncompliance with the 25-foot stockpile height limit.

Maps dated July 1977 showed spot elevations on the site ranging from 20-29 feet north of the channel and 14-18 south of the channel. By 1986 the base elevations north of the channel generally ranged from 22-30 but with some points reaching up to elevation 50 in spots. South of the channel elevations were predominantly in the 16-20 range, with piles up to elevation 35-40.

By 1992 the base elevation both south and north of the channel approximated 25 feet, reaching up to 50' north of the channel. By 2005 base elevations north and south of the channel were generally in the 30-40' range, with elevations exceeding 60. Maps from 2010 show similar conditions north of the channel, but with larger level areas in the 55-60 range. Data from 2013 shows similar changes, where higher, flat areas are being created with stockpiles on top, exceeding elevation 70 in spots.

This information clearly demonstrates the extensive site alteration and increase in height that has occurred over time. City permit records indicate that more than 5 million cubic yards of material (net import) have been introduced to the site since 2002. Operations since 2011 have generated truck haul fees to the City exceeding \$660,000. (In 2004 the City increased the Truck Haul fees by 300% as we knew at that time activity was going to increase significantly).

Discussion

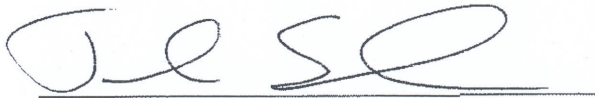
While the information above could stimulate extensive discussions regarding the City's past decisions and practices in regulating this operation over the past nearly 40 years, that is not the purpose of the memo. Rather the purpose is to determine if operations violate the existing 25-foot stockpile height limit and provide guidance as to what issues the City Council wants to see addressed in regulating this site through pending and future permits.

It is clear that site grades over much of the site have been raised more than 25 feet since 1977. Notwithstanding this fact, staff cannot conclude that the 25-foot stockpile height limit has been violated. First of all, site elevations have been increasing over the entire time this site has been in operation. However, none of previous use permits establish maximum site elevations from initial grades, nor do these previous permits identify increased site elevation over time as a regulatory issue. Rather, the previous conditions focus on stockpile height. The approved historical condition specified a 25-foot height limit from *surrounding* grade. It does not reference 'existing' grade or provide a reference that can be tied to a fixed elevation benchmark. While it has been implied that the stockpile height limit was intended to serve aesthetic purposes, as noted above the regulatory record reflects that the stockpile height limit was introduced as a specific condition to allow for sufficient dust control. This requires that stockpile height be measured from the adjacent ground surface in order for a water truck to reach the stockpile. Measuring stockpile height from an abstract or historical benchmark elevation would not accomplish this. The topographic maps of the site dated February 2013 indicate that the actual stockpiles of dirt comply with the 25-foot height limit from surrounding grade.

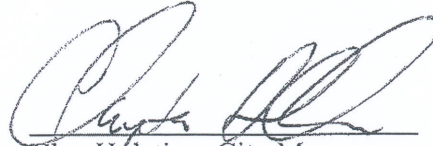
Since the existing 25-foot stockpile height limit is not a meaningful tool to address the current and future aesthetic implications of the facility's ongoing operations, staff concludes that **the upcoming permit extension provides the opportunity to better control site operations on an ongoing basis to limit aesthetic impacts.** Before developing definitive, measurable and enforceable standards, it would be appropriate to determine which aesthetic aspects of the operations are of greatest concern to the City. The visibility of the working stockpiles? The elevation of the benches or pads that have been created to date? Possible future changes to elevations? The extent of the site that is disturbed on an ongoing basis or might be active in the future? While all of these issues may generate aesthetic concerns, they require different conditions of approval and management solutions. While these aesthetic issues will be extensively addressed under the upcoming application, it would be appropriate for the City Council to offer any preliminary thoughts or concerns it has regarding this matter. Another ongoing issue of concern is dust control. While this represents a challenge due to the nature of the activity and number of variables which influence dust generation, staff is exploring a range of operational, management and regulatory strategies to be incorporated into the upcoming permit to provide for better dust control. As noted above the upcoming permit will also contain detailed protocols and procedures for ensuring the safety and quality of soils brought onto the site for processing.

The concern has also been raised that the grades that have been established through interim activities over the years on the former landfill create an elevation "baseline" for future development. This is not the case, as the City maintains approval authority over the final grading plan for the project. The material placed on the site to date is not engineered fill, and would need to be tested, recompacted and regraded in any case to support final land uses and/or future construction. As a matter of information the applicant's proposed grading plan for the landfill portion of the site establishes base elevations in the 20-25-foot range north of the channel. Base elevations south of the

channel are generally in the 30-foot range, with high points up to 40. In both cases the final proposed grade is substantially lower than the existing conditions.



John Swiecki, Community Development Director



Clay Holstine, City Manager

c: Randy Breault, City Engineer
David Kahn, City Attorney

RESOLUTION UP-8-03

A RESOLUTION OF THE PLANNING COMMISSION OF BRISBANE
CONDITIONALLY APPROVING USE PERMIT UP-8-03
FOR AN INTERIM USE PERMIT TO CONTINUE STOCKPILING SOIL AND SAND
AT THE NORTHEAST OF THE TUNNEL AVENUE AND LAGOON WAY

WHEREAS, Martin Ryan, Ryan Engineering, Inc., the applicant, applied to the City of Brisbane for Interim Use Permit approval to continue stockpiling soil and sand at the northeast of the Tunnel Avenue and Lagoon Way, such application being identified as UP-8-03; and

WHEREAS, on January 22, 2004, the Planning Commission conducted a hearing of the application, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, the Planning Commission reviewed and considered the staff memorandum relating to said application, the plans and photographs, the written and oral evidence presented to the Planning Commission in support of and in opposition to the application; and

WHEREAS, the Planning Commission finds that the proposed project is categorically exempt from the provisions of the California Environmental Quality Act; and

WHEREAS, the Planning Commission of the City of Brisbane hereby makes the findings attached herein as Exhibit A in connection with the Interim Use Permit.

NOW THEREFORE, based upon the findings set forth hereinabove, the Planning Commission of the City of Brisbane, at its meeting of January 22, 2004, did resolve as follows:

Interim Use Permit UP-8-03 is approved per the conditions of approval attached herein as Exhibit A.

ADOPTED this twenty-second day of January, 2004, by the following vote:

AYES: Hunter, Jameel, Kerwin, Lentz, Johnson
NOES: None
ABSENT: None

PAUL O. JOHNSON
Chairman

ATTEST:

WILLIAM PRINCE, Community Development Director

EXHIBIT A

Action Taken: Conditionally approved Interim Use Permit UP-8-03 per the staff memorandum with attachments, via adoption of Resolution UP-8-03.

Findings:

1. Approval of the use permit is consistent with the general plan and any applicable specific plan adopted by the city council, specifically 1994 General Plan Policy 332, in that uses which recycle and conserve natural resources are to be encouraged per General Plan Policies 122, 130, 131, 143 and 265 and Program 138b, subject to conditions of approval regarding drainage improvements, fire safety, air quality, noise and landfill development per General Plan Policies 133, 134, 157, 175, 190, 203, 365, 367 and 373.1;
2. The proposed interim use and the conditions under which it would be operated will not be detrimental to the public health, safety or welfare, or injurious to properties or improvements in the vicinity, given the conditions of approval as detailed in the staff memorandum;
3. The proposed interim use will not create any significant unmitigated adverse environmental impacts, as determined by an environmental analysis pursuant to the California Environmental Quality Act, given the conditions of approval, as detailed in the staff memorandum;
4. The proposed interim use will not obstruct, interfere with, or delay the intended redevelopment of the property in accordance with the uses anticipated in the General Plan or any adopted specific plan applicable to the site, in that no new significant structures are proposed, and in that the Interim Use Permit is approved only for three years;
5. All public utilities and other infrastructure improvements required in order for the interim use to be conducted in a safe, sanitary, and lawful manner are either available at the site or shall be installed by the applicant, prior to occupancy, in a manner approved by the City Engineer, given the conditions of approval, as detailed in the staff memorandum;
6. The use will provide either or both of the following benefits: (a) A benefit to the property, including, but not limited to, the elimination of blight or unsightly or hazardous conditions, or the installation of improvements that will facilitate redevelopment of the property; (b) A benefit to the public, such as the creation of jobs or revenues or the provision of needed goods or services; in that stockpiling surcharges the underlying municipal landfill in preparation for future redevelopment; Tunnel Avenue and Lagoon Way will continue to be maintained free of illegally dumped trash and debris; the use generates sales tax revenue, business license fees and truck haul impact fees for the City; the use supplies clean topsoil and fill materials and aiding in recycling efforts;

7. The use will establish a program, to the extent that it is reasonably possible to do so, to encourage employment of Brisbane residents in the construction and operation of the use, in that it currently employs 3 Brisbane residents.

Conditions of Approval:

- A. This Interim Use Permit is limited to the stockpiling of clean soil and sand for resale by Ryan Engineering, Inc., and its successors, on the portion of the Baylands landfill located between Beatty Avenue, Tunnel Avenue, Lagoon Way and the Bayshore Freeway owned by Sunquest Properties (Oyster Point Properties, Inc.), identified as Assessor's Parcel Numbers 005-162-300, -340-050, -350-020 & -050, excluding the portions leased to Brisbane Recycling Co., Inc., at 5 Beatty Avenue, and to McNamara & Smallman Construction, Inc., behind 601 Tunnel Avenue.
- B. Any construction debris not identified and rejected during the initial visual inspection of any imported soil or sand shall be sorted out into debris boxes and promptly removed from the site to the satisfaction of the San Mateo County Environmental Health Services Division and the California Waste Management Board. The amounts of such materials stored on the site shall be limited so as not to require any permit under the California Fire Code. No recycling of concrete or construction materials by Ryan Engineering, Inc., or its successors is approved as part of this permit.
- C. Materials shall be stockpiled no higher than 25 feet above the surrounding grade. The property owner's supervising engineer shall submit bimonthly reports to the Community Development Director on compliance with this and other applicable conditions of approval.
- D. Stockpiles of unprocessed material (excluding the existing concrete pile) shall not exceed 50,000 cubic yards. Stockpiles of processed material (including top soil, sand, etc.) shall not exceed 100,000 cubic yards. All stockpiles shall be removed within 60 days of the cessation of the use.
- E. Stockpiles shall be maintained sufficiently distant from the drainage channel that bisects the site so as to comply with any applicable requirements of the U.S. Army Corps of Engineers and the San Francisco Bay Development and Conservation Commission, in addition to the requirements of the Stormwater Pollution Prevention Plan prepared for the Brisbane landfill. No fill within the waters of the United States is permitted without authorization of the U.S. Army Corps of Engineers.

- F. The subject use shall comply with the Regional Water Quality Control Board's Cleanup and Abatement Order.
- G. The subject use shall comply with the requirements of the National Pollution Discharge Elimination System. Proper drainage shall be maintained to prevent erosion and ponding of stormwater.
- H. The use shall operate so as to protect and avoid damage to all existing environmental controls (methane gas collection system, monitoring well heads, etc.) on the site.
- I. The subject use shall comply with the requirements of the Integrated Waste Management Board and the San Mateo County Environmental Health Services Division for operations atop a former municipal landfill. No excavation into the landfill is included under this permit.
- J. The subject use shall comply with the requirements of the Bay Area Air Quality Management District, including regulations regarding dust control and equipment operations. The following requirements shall specifically apply:
 - 1. Lower emission diesel fuels shall be used for all of the applicant's diesel equipment on the site.
 - 2. Diesel engines shall not be left idling when not in use.
 - 3. All trucks hauling loose materials shall be covered or loaded per Caltrans and California Highway Patrol standards
 - 4. All unpaved access roads and parking areas shall be watered three times daily, without resulting in any standing water in violation of the order of the Regional Water Quality Control Board.
 - 5. Private traffic signs limiting speeds on unpaved roads to 15 miles per hour shall continue to be posted on site.
 - 6. Exposed stockpiles shall be watered at least twice daily, without resulting in any standing water in violation of the order of the Regional Water Quality Control Board.
 - 7. Retention of natural vegetation shall be retained in areas not being actively worked, specifically including those areas along the central drainage channel and the perimeter of the property.

8. Silt fencing, straw bales and wattles, detention basins, hydroseeding and/or any other erosion control measures required to prevent silt runoff to public roadways shall be installed and maintained to the satisfaction of the Public Works Department.
9. During windy periods, the screening operations shall stop and on-site vehicle traffic shall be limited to one roadway so dust control measures can be appropriately focused.
- K. In the event of significant dust generation by the subject use, the Public Works Inspector shall be authorized to require immediate dust control action or to shut down the use until it is in compliance.
- L. A portable toilet shall be maintained and a drinking water source shall be provided in compliance with the requirements of the San Mateo County Environmental Health Services Division.
- M. Storage of flammable liquids, combustible liquids and compressed gas shall be limited so as not to require any permit under the California Fire Code.
- N. A fire apparatus access road shall be maintained on site per 2001 California Fire Code Section 902, as amended by Brisbane Municipal Code Sections 12.24.010 and 15.44.100-120.
- O. The subject use shall not import and export more than a total of 120,000 cubic yards of material within any month, so as to assure that peak period trips will not result in 101 Freeway mainline segments serving the site operating at less than Level of Service E during A.M. and P.M. peak hours, in compliance with the standards adopted in the San Mateo County Congestion Management Program. In addition, the subject use shall not generate 100 or more peak hour trips during the peak periods of 6:00 a.m. to 10:00 a.m. and 3:00 p.m. to 7:00 p.m.
- P. Trucks using the facility shall be restricted to using Beatty Avenue and other connected roads leading directly to the Candlestick freeway interchange, except as approved otherwise by the City Engineer.
- Q. Measures as deemed necessary by the City Engineer, including street sweeping and repaving of the access roads, shall be taken daily to assure that visible dirt, mud or debris are tracked by traffic to and from the site onto adjacent public streets.
- R. The perimeter landscaping shall be maintained in compliance with applicable requirements.

- S. The permittee shall be responsible for the removal and disposal of any and all debris on the right-of-way and both sides of Tunnel Avenue along the frontage of the subject site and for the continued clean and orderly condition of same.
- T. The permittee shall maintain a \$50,000 cash deposit with the Public Works Department as guarantee for truck haul permit fees.
- U. The permittee shall submit certified copies of total cubic yards of import and export material to the Public Works Department quarterly, no later than 15 days after the last day of the period reported on.
- V. The permittee shall assume maintenance responsibilities for Lagoon Way until such time as repairs necessitated by the improperly operating drainage collection system on the south side of the property are completed to the satisfaction of the Public Works Department. The applicant shall maintain a \$20,000 cash deposit with the Public Works Department to guarantee the ongoing maintenance of the street to the satisfaction of the Public Works Department.
- W. The permittee shall design and construct repairs to the improperly operating drainage collection system on the south side of the property and shall design and construct repairs to portions of Lagoon Way damaged by the improperly operating drainage collection system. Design and construction shall be performed to the satisfaction of the Public Works Department. The permittee shall maintain a \$50,000 bond with the Public Works Department to guarantee the design and construction of the required improvements.
- X. The permittee shall maintain the private portion of Tunnel Avenue to a level of drivability consistent with modern municipal maintenance standards and shall continue to allow public use of this private road. The permittee shall maintain a \$50,000 cash deposit with the Public Works Department to guarantee ongoing maintenance.
- Y. The property owner's agreement with the operator of the interim use shall continue to state that: (i) the operator's right to possession of the premises for the purpose of conducting the interim use is dependent upon the interim use permit having been granted and maintained in full force and effect; and (ii) the operator's right to possession of the premises for the purpose of conducting the interim use will terminate upon any expiration or revocation of the interim use permit; and (iii) it shall be the responsibility of the owner to terminate the operator's possession of the premises upon any expiration or revocation of the interim use permit if the operator continues to utilize the premises for the conduct of such interim use.

- Z. The permittee shall be jointly and severally liable for all costs and expenses, including attorney's fee, the City may incur to enforce the conditions of the interim use permit upon any breach thereof by the permittee, or to abate and remove the interim use upon any failure by the permittee to discontinue such use, or to evict the operator of such use, upon the expiration or revocation of the interim use permit.
- AA. The permittee agrees to indemnify, defend and hold the City and its officers, officials, boards, commissions, employees and volunteers harmless from and against any claim, action or proceeding brought by any third party to attack, set aside, modify, or annul the approval, permit or other entitlement given to the applicant, or any of the proceedings, acts or determinations taken, done or made prior to the granting of such approval, permit or entitlement.
- BB. This Use Permit is subject to the revocation procedures established in Brisbane Municipal Code Chapter 17.48 should the use not comply with its conditions of approval, or in any way prove to be a nuisance, injurious or detrimental to property or improvements in the neighborhood or to the general welfare of the City, or for any reason whatsoever that the City Council or Redevelopment Agency deems in its sole discretion that makes continuation of this use not satisfactory, or in the event of the repeal of the Interim Use Ordinance.
- CC. This Use Permit shall expire **three years** from its effective date (at the end of the appeal period).

Brisbane, California, Code of Ordinances >> Title 17 - ZONING >> Chapter 17.58 - ENFORCEMENT AND PENALTY >>

Chapter 17.58 - ENFORCEMENT AND PENALTY

Sections:

17.58.010 - Violation—Penalties.

17.58.020 - Declaration of public nuisance.

17.58.030 - Reserved.

17.58.010 - Violation—Penalties.

The violation of any of the provisions of this title shall constitute an infraction, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this code. Such fines, penalties and enforcement provisions are cumulative and shall be in addition to any other enforcement remedies specified in this title.

(Ord. 298 § 19.1, 1984).

(Ord. No. 554, § 62, 1-18-11)

17.58.020 - Declaration of public nuisance.

Any building or structure erected, constructed, altered, enlarged, converted, moved or maintained contrary to the provisions of this title and any use of land or buildings operated or maintained contrary to the provisions of this title, are declared to be public nuisances. The city attorney may commence the necessary proceedings for the abatement, removal and enjoining thereof in the manner prescribed by law in the courts which may have jurisdiction to grant such relief as will accomplish such abatement and restraint. The remedies provided for in this section shall be in addition to any other remedy or remedies or penalties provided in this title, or elsewhere in this code, or any other law or ordinance.

(Ord. 298 § 19.2, 1984).

(Ord. No. 554, § 63, 1-18-11)

17.58.030 - Reserved.***Editor's note—***

Ord. No. 554, § 64, adopted January 18, 2011, repealed § 17.58.030, which pertained to violation—penalty and derived from Ord. No. 298, 1984; Ord. No. 403, 1996 and Ord. No. 446, 2000.