

# City of Brisbane Agenda Report

TO: Honorable Mayor and City Council

FROM: Director of Public Works/City Engineer via City Manager

SUBJECT: Recology Request to Reimburse Brisbane for Appraisal Costs

DATE: November 21, 2011

**City Council Goals:**

To provide for effective and efficient delivery of City services. (#1)

**Purpose:**

To allow for public consideration of Recology's reimbursement proposal; the recommended action is consistent with the community's value of integrating businesses within the community.

**Recommendation:**

1. Approve the attached Reimbursement Agreement for Appraisal and Ownership Map Costs, and authorize the Mayor to sign the document on the city's behalf.
2. Authorize the City Manager to enter into an agreement for professional appraisal services with the firm deemed to be the most qualified, in a not to exceed contract amount of \$7,000.

**Background:**

The Environmental Impact Report presently under study for the Brisbane Baylands includes consideration of a Project Alternative Variant wherein Recology's existing operations would expand south, approximately to the northern limit of a proposed Geneva Avenue extension. This variant was described in the December 2010 Notice of Preparation for the Brisbane Baylands EIR, and depicted in Figure 7 (attached) of that document.

To create the entire Recology parcel considered in this variant will require Recology to acquire numerous parcels they do not currently own, including all or most of two Brisbane city streets – Tunnel Avenue and Beatty Road.

Notwithstanding the facts that the EIR has not yet been produced for public review, and that no environmentally superior project has yet to be approved by the City Council, Recology has independently determined their strategic planning efforts will be facilitated by understanding the possible future costs associated with the purchase of these public streets. Accordingly, they have agreed to pay the costs for a city-selected appraiser and the city's contract surveyor to complete the work described in the attached Reimbursement Agreement.

**Discussion:**

There is no apparent "con" position to the recommended actions. Approving the Reimbursement Agreement and authorizing the described work to be completed does not predetermine the results of the EIR, nor does it set the Council's findings on any project, project alternative or project variant that may be discussed in that EIR.

The "pro" position to the recommended actions is that they provide a local business with information it has determined is necessary for use in its strategic planning efforts.

The proposed Reimbursement Agreement has been reviewed and approved by the City Attorney and by the Brisbane Redevelopment Agency's Counsel, Goldfarb & Lipman.

**Fiscal Impact:**

There is no direct cost to the city as a result of the recommended actions.

**Measure of Success**

Completion of the Ownership Map and Appraisal as described in the Reimbursement Agreement.

**Attachments:**

- A. Reimbursement Agreement for Appraisal and Ownership Map Costs
- B. Figure 7, Brisbane Baylands 12/10 NOP



\_\_\_\_\_  
Director of Public Works/City Engineer



\_\_\_\_\_  
City Manager

REIMBURSEMENT AGREEMENT  
(Appraisal and Ownership Map Costs)

This Reimbursement Agreement (this "Agreement") is entered into as of this November \_\_, 2011 (the "Effective Date") by and between the City of Brisbane, a municipal corporation ("City"), and Recology Inc., a California corporation ("Recology"), on the basis of the following facts:

RECITALS

A. Recology is considering possible expansion of its facilities in Brisbane. One potential expansion scenario would include the possible re-alignment of public streets and the possible acquisition of land that currently serves as public streets within the City, consisting of approximately 6.46 acres of the publicly owned portion of Tunnel Avenue and all of the publicly owned portion of Beatty Road, as generally shown in the diagram attached as Exhibit A to this Agreement ("Property").

B. Recology is willing to pay the out-of-pocket costs of the City to appraise and create a map of the Property. This Agreement describes the costs that Recology shall pay to the City related to the appraisal and creation of a map using legal descriptions from the title reports of the Property.

C. If undertaken, the sale or lease of any of the Property would be documented under separate and distinct contract documents.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

1. Work and Costs.

a. Work and Payment of Costs. The City shall contract for appraisal services from a M.A.I., state-licensed, appraiser of the City's choice and under City direction for a fair market value appraisal of the Property ("Appraisal"), and will also contract for surveyor services of the City's choice and under City direction to create an "Ownership Map" to clearly delineate those public streets under consideration for realignment or acquisition. Recology agrees to pay the costs of the Appraisal and Ownership Map ("Work") and shall deposit Twelve Dollars (\$12,000) ("Deposit") with the City for the anticipated cost of the Work. Recology agrees to pay any and all costs of the Work within ten (10) days of the receipt of invoices from the City that document that the total Work costs are greater than the Deposit. The City agrees to return any unused portion of the Deposit, with no interest thereon, within thirty (30) days after the delivery of the complete Appraisal and Ownership Map and all invoices for the Work.

b. Title Work. As a precondition to the Work being conducted by the City's consultants, Recology agrees to engage, at Recology's sole cost, a title company of Recology's choice, and have that title company provide a title report for all of the parcels within the "Study Area" shown on the attached Exhibit B. Recology shall provide the Title Report to the City within ten (10) days of receipt. The City will in turn provide the Title Report to the appraiser and surveyor retained by the City for the Work as defined in subsection a. above.

c. Records. The City agrees to provide Recology a complete copy of the Work within fifteen (15) days of its completion and delivery to the City. The City shall maintain detailed records, invoices and an accounting of the costs of the Work and provide them to Recology on a monthly basis. The City shall submit to Recology copies of all bills and invoices that are to be reimbursed under this Agreement within fifteen (15) days of receipt of such bill or invoice.

d. Review Prior to Termination. At least forty-five (45) days prior to the end of the one (1)-year term of this Agreement, City staff and Recology staff will meet and confer about any costs that have not yet been submitted for reimbursement or fully processed by Recology.

e. Dispute. If the City and Recology dispute the amount of any cost incurred for the Work, the parties shall promptly meet and confer in good faith in an effort to resolve the dispute which meeting shall be held no later than fifteen (15) days after the date the dispute arises. If the parties cannot resolve the dispute within such fifteen (15) day period, the parties shall attempt to mutually agree upon the appointment of a real estate economist or other mutually agreeable expert ("Referee") to decide the dispute. If the parties cannot agree upon a mutually acceptable Referee within fifteen (15) days of receipt of written notice of dispute, the City shall appoint a Referee and Recology shall appoint a Referee within fifteen (15) days. The two Referees appointed by the parties shall meet and mutually appoint a third Referee (the "Deciding Referee") to decide the dispute. Within fifteen (15) days of the appointment of the Deciding Referee, each Party shall submit any such supporting documentation to support its position in the dispute. Within fifteen (15) days of receipt of the documentation from the parties, the Deciding Referee shall decide the dispute and the determination of the Deciding Referee shall be binding on the parties as to the inclusion of Recology Costs involved in the dispute. Each party shall bear its own costs of the dispute resolution process.

2. Term. This Agreement shall terminate one (1) year after the Effective Date; provided, however, that the City Manager can extend the term of the Agreement by up to three (3) months, by written notice to Recology, to allow for processing and reimbursement of invoices that have not yet been received by the City the end of the one (1)-year term of this Agreement or which have not yet been fully processed by Recology by the end of the one (1)-year term of this Agreement.

3. Limitation on Effect of Agreement.

This Agreement (and any extension of this Agreement) shall not obligate the City or Recology to enter into any agreement of any kind regarding sale, lease or other disposition of the Property. By execution of this Agreement (and any extension of this Agreement), the City is not

committing itself to or agreeing to approve any land use entitlements, undertake consideration of vacation or agreeing to vacate any public streets, undertake sale, disposition or lease of the Property or any part thereof, approve expansion of the Recology facilities within the City of Brisbane or undertake any other acts or activities relating to the subsequent independent exercise of discretion by the City. Execution of this Agreement by the City is merely an agreement to conduct the Appraisal and Ownership Map and for reimbursement of the Appraisal and Ownership Map costs by Recology in accordance with the terms hereof, reserving for subsequent City action the final discretion and approval regarding any sale, lease or other disposition of the Property, consideration or possible vacation of any public street, potential expansion of the Recology facilities within the City of Brisbane and all proceedings and decisions in connection therewith including consideration of any changes to the General Plan, Redevelopment Plan or City ordinance or resolution or adoption of a specific or similar plan or overlay zoning. Any purchase and sale, lease or other disposition agreement regarding the Property and any decision to vacate any public street or approve any expansion of Recology facilities within the City of Brisbane shall become effective only if and after such action has been considered and approved by the City Council, in its sole and unfettered discretion following conduct of all legally required procedures, including, without limitation, all required environmental review processes and all other applicable governmental approvals, and any agreement is executed by duly authorized representatives of the City and Recology, as the case may be. No agreement drafts, actions, term sheets, outlines, deliverables, memoranda or other communications arising out of or in the course of performance of this Agreement shall impose any legally binding obligation on any party to enter into or support entering into any purchase and sale, lease or other disposition agreement regarding the Property, any agreement to vacate streets, approval of any expansion of Recology facilities within the City of Brisbane or be used as evidence of any oral or implied agreement or promise to enter into any purchase and sale, lease or disposition agreement or other legally binding document, any agreement or approval to vacate streets, or any approval of any expansion of Recology facilities within the City of Brisbane. As such, the City retains the absolute and unfettered discretion before action on the development of the Property by the City Council to (i) subject to the agreement of the parties, make such modifications to any purchase and sale, lease or disposition agreement or for the development of the Property as may be necessary to mitigate significant environmental impacts or as may otherwise be necessary or appropriate, (ii) select other feasible alternatives to avoid significant environmental impacts, (iii) balance the benefits against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided or (iv) determine not to proceed with the development of the Property. Recology also understands and agrees that the fact that a parcel that is or becomes subject to this Agreement that is not owned by the City does not constitute any commitment by the City to acquire such parcel or to grant any right of any sort on the part of Recology to acquire or develop such parcel.

#### 4. General Provisions.

a. Notices. Formal notices, demands and communications between the City and Recology shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express delivery or overnight courier service, to the office of the parties shown as follows, or such other address as the parties may designate in writing from time to time:

City: City of Brisbane  
50 Park Place  
Brisbane, CA 94005  
Attention: City Manager

With a copy to: City of Brisbane  
50 Park Place  
Brisbane, CA 94005  
Attention: City Attorney

Recology: Recology  
50 California Street, 24th Floor  
San Francisco, CA 9411  
Attention: Mike Sangiacomo, President & CEO

With a copy to: Peggy M. O'Laughlin  
Matteoni O'Laughlin & Hechtman  
848 The Alameda  
San Jose, CA 95126

Such notices, demands and communications shall be in writing, effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

b. Costs and Expenses. Except as otherwise expressly provided in this Agreement, each party shall be responsible for its own costs and expenses in connection with any activities undertaken in connection with this Agreement, and the performance of each party's obligations under this Agreement.

c. General Indemnity. Recology and the City shall indemnify, defend and hold one another and their respective council members, directors, officers, members, employees, agents and contractors harmless from any and all claims, liabilities, damages, losses, expenses, costs and fees (including attorneys' fees and costs) which arise out of the performance of this Agreement by the parties or their council members, directors, officers, members, employees, agents or contractors; provided, however, that this indemnification obligation shall not extend to any matters arising from the negligence or willful misconduct of any party seeking to be indemnified.

d. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

e. Entire Agreement. This Agreement constitutes the entire agreement of the parties regarding the subject matters of this Agreement.

f. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

g. No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the City and Recology and no other person shall have any right of action under or by reason of this Agreement.

h. Actions by the City. Whenever this Agreement calls for or permits the approval, consent, authorization or waiver of the City, the approval, consent, authorization, or waiver of the City Manager shall constitute the approval, consent, authorization or waiver of the City without further action of the City Council.

i. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. Attorneys' fees for in-house City Attorney staff, if awarded, shall be calculated at the market rate. The provisions of this Section shall survive the termination of this Agreement

IN WITNESS WHEREOF, this Agreement has been executed, in triplicate, by the parties on the date first above written.

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

**CITY:**

CITY OF BRISBANE, a municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**RECOLOGY:**

Recology Inc., a California corporation

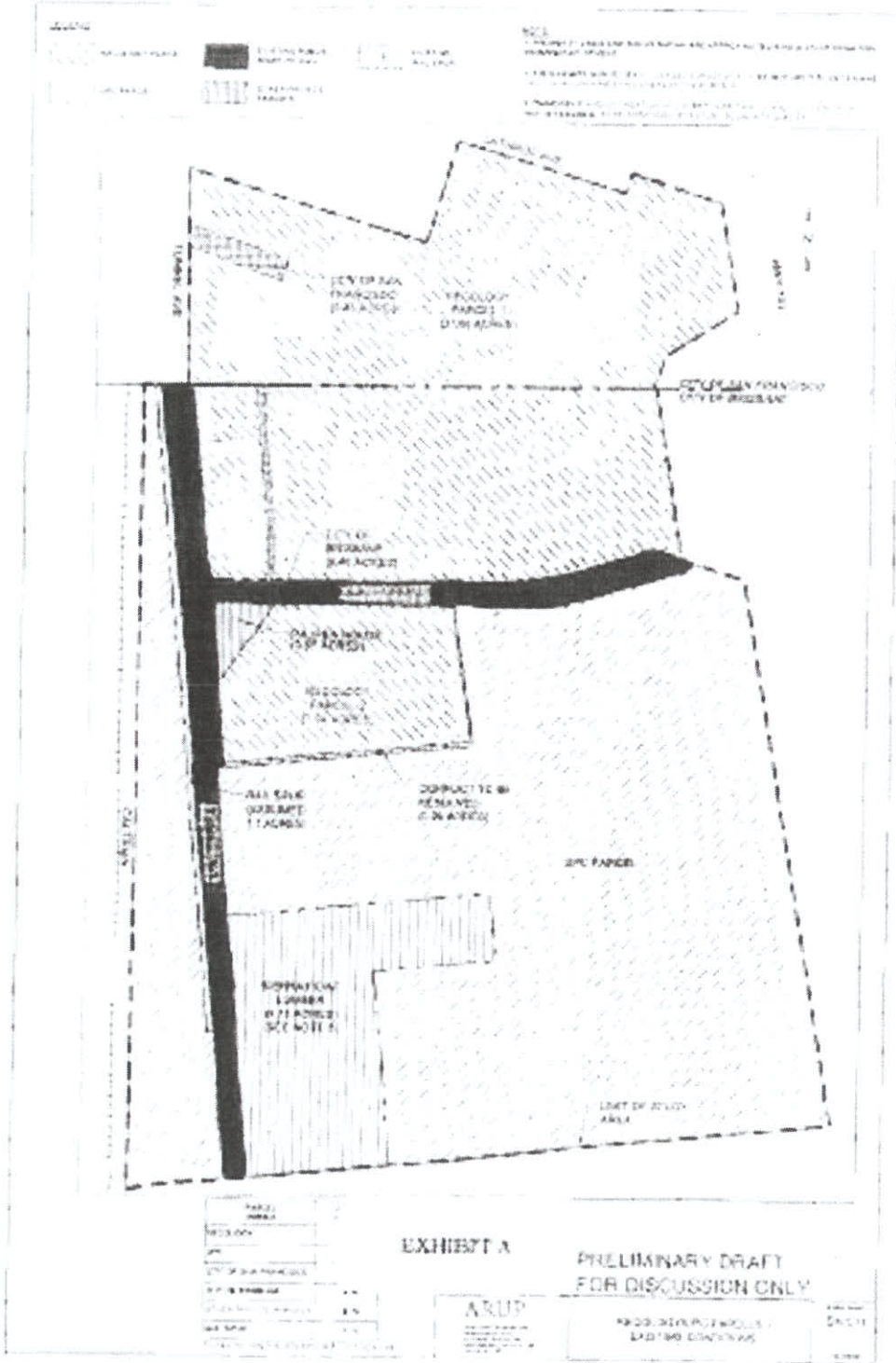
By: John A. Legnato

Name: JOHN A. LEGNATO

Its: VP - Group Manager

EXHIBIT A

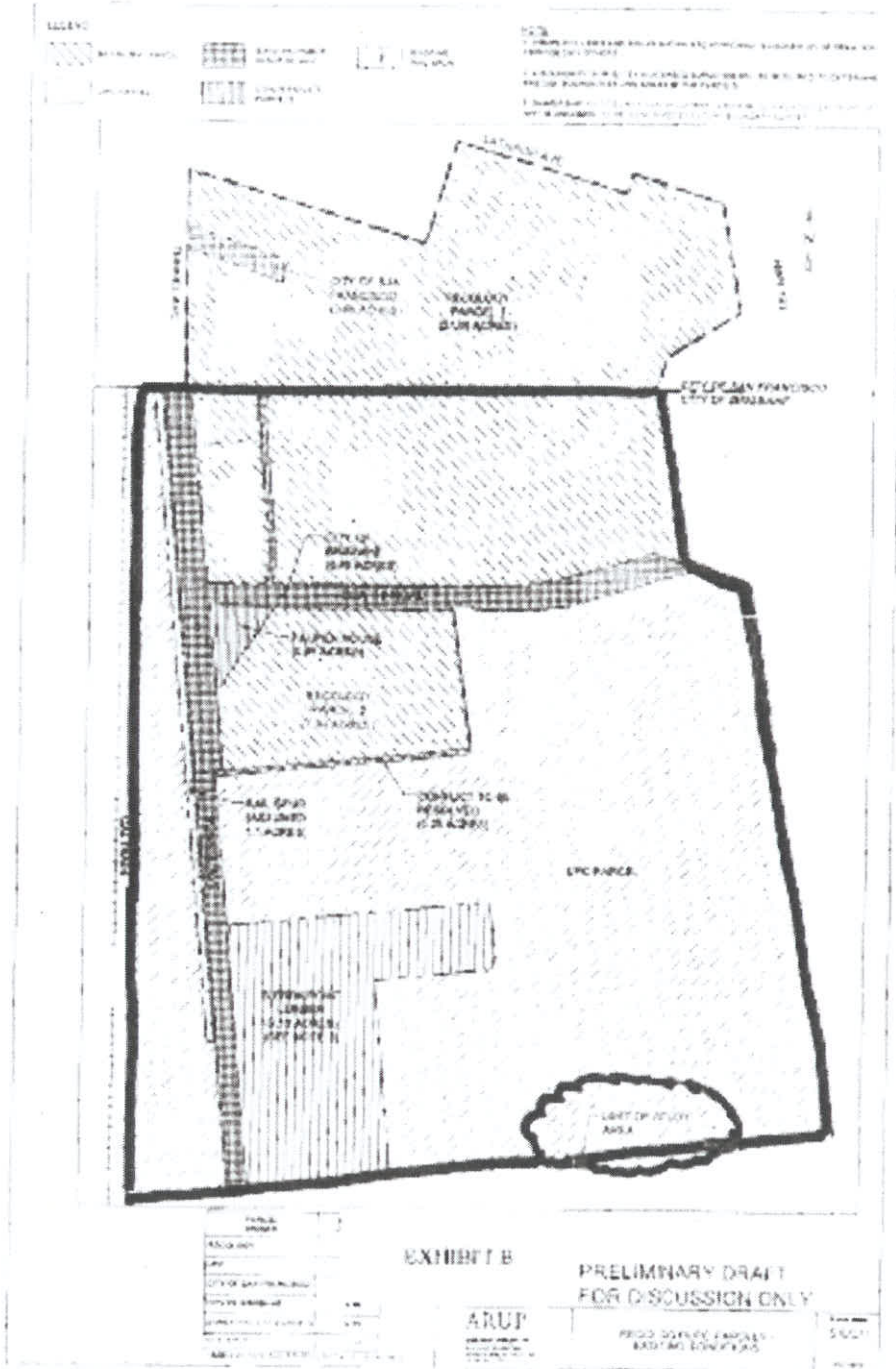
DIAGRAM OF POTENTIAL STREET PROPERTY

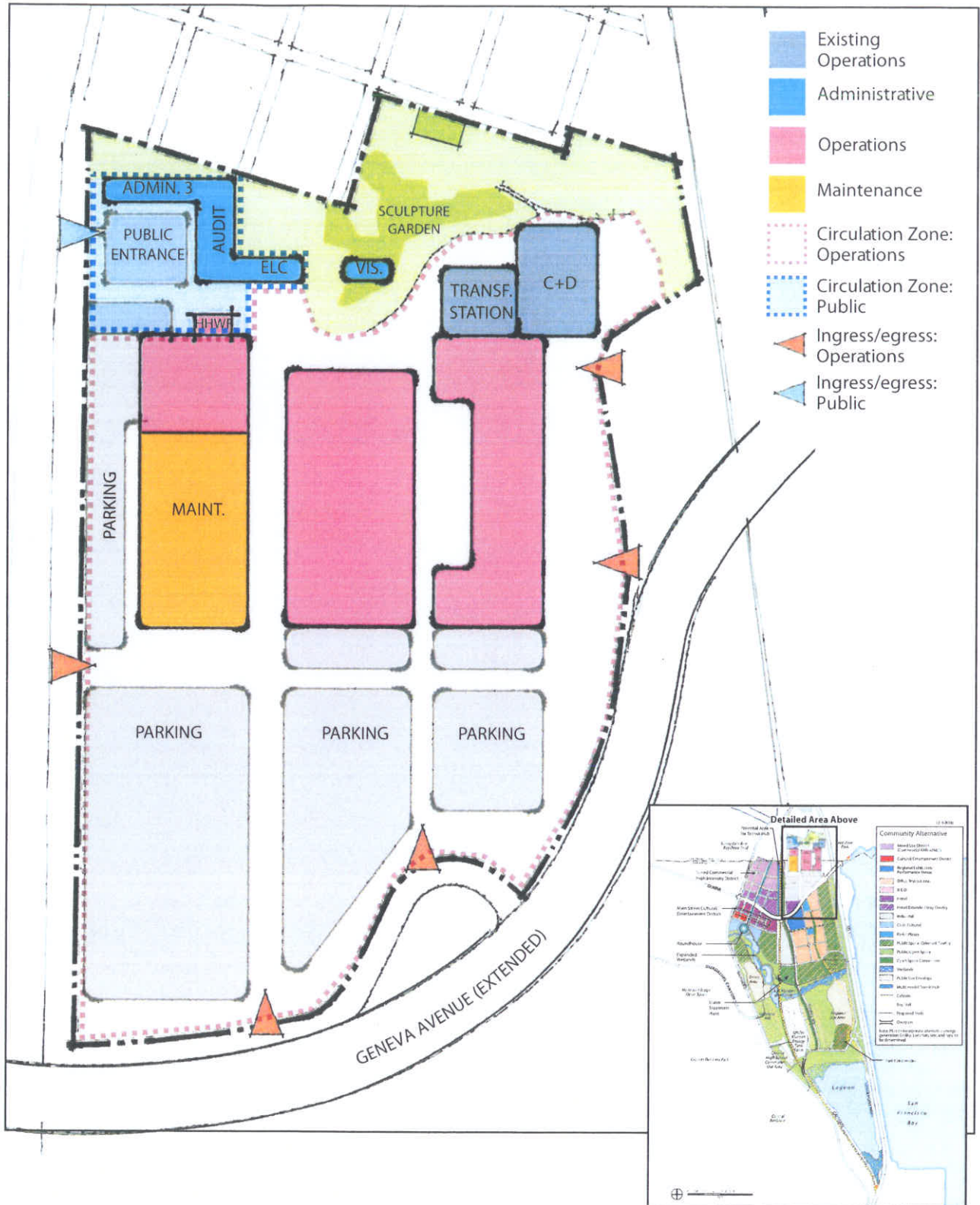




# EXHIBIT B

## MAP OF AFFECTED PARCELS FOR TITLE REPORT





SOURCE: Dyett & Bhatia

Brisbane Baylands . 2060699

**Figure 7**  
 Recology Variant  
 Community Preferred Plan