



Measure JJ Frequently Asked Questions *(Last updated October 10, 2018)*

1. What is Measure JJ?

Measure JJ is a proposed amendment to the City's General Plan related to the potential permitted land uses for the Baylands. Measure JJ is proposed by the City Council, but city voters will make the final decision by voting on whether to approve Measure JJ on the November 6, 2018 ballot. The City's General Plan defines a vision for any potential future physical development of Brisbane and establishes a set of legal requirements to ensure that land use decisions are consistent with that vision, now and in the future.

The complete proposed General Plan amendment can be found here:
<http://bit.ly/2xtm8ub>.

In summary, the General Plan Amendment would:

- Allow for a potential range of 1,800 - 2,200 residential units and up to 7 million square feet of new commercial development. Under current City regulations, at least 15% of any new residential units are required to be affordable housing units.
- Restrict housing to the northwest corner of the Baylands. See map here:
<http://bit.ly/2psHvqZ>.
- Require the preparation and city approval of a single Specific Plan for the entire site before development can occur.
- Require the following policies to be addressed in the future Specific Plan as responsibilities of the property owner:
 - Development must support ground level residential uses and comply with the associated higher-level remediation standard;
 - An adequate water supply must be secured;
 - Future development must be revenue-positive for the City;
 - Sustainability principles must be incorporated;
 - Key habitat areas must be protected; and
 - Flood protection and sea level rise must be addressed.

2. What happens next if the voters approve Measure JJ?

If Measure JJ is approved, the Baylands property owner (Universal Paragon Corporation) will have the opportunity to prepare a Specific Plan and development agreement for its property that must be consistent with the amended General Plan and submit the Specific Plan and development agreement to the City for consideration. The Specific Plan and development agreement would be subject to extensive review, public disclosure and public hearings before the Brisbane Planning Commission and then the City Council. The City would prepare an environmental impact report (EIR) to analyze



and disclose the potential environmental impacts of the proposed Specific Plan. Under Measure JJ, the City retains the right to approve, deny or modify any proposed Specific Plan and development agreement. There is no timeline or deadline for a Specific Plan or development agreement to be submitted for City review.

3. What happens next if the voters do not approve Measure JJ?

If Measure JJ is not approved, the City Council will need to consider further whether to approve, deny or ask for modifications in the property owner's current application for development of the Baylands. In addition, because the Baylands has been the focus of a great deal of attention not only in the Bay Area, but also in the State Legislature – primarily due to the statewide housing shortage, which is particularly acute in the Bay Area – if Measure JJ is not approved by the city's voters it is likely there will be efforts beyond the City's control to permit or require residential development of the Baylands.

For the better part of two years, Bay Area State representatives, other local elected officials, and housing advocates have exerted significant pressure on Brisbane to build housing on the Baylands. In 2017, Brisbane was presented with draft State legislation that would have fast-tracked development of 4,400 units of housing on the Baylands without City direction over the development. The City argued successfully that the proposed legislation should not be pursued in order to allow the City Council to continue and complete its local review of the property owner's proposed Baylands development and present a City Council-developed alternative plan to City voters for final consideration. Measure JJ is the City Council's alternative plan and it is on the ballot for City voters to decide whether to approve it.

If Measure JJ is voted down, interested politicians and local activists have said that they will respond. Notably, in the last few years the Legislature has passed new laws that limit local control over land use decisions with the stated goal of increasing the amount and pace of housing development throughout the State. One very recent example of this type of legislation is AB 2923 (Chiu) which Governor Brown signed into law on September 30, 2018 over the strong objections of many local governments and the League of California Cities. The bill gives the Bay Area Rapid Transit Authority (BART) the ability to develop housing on BART-owned land by streamlining local review of high-density housing projects near transit.

SB 828 (Weiner) is another recent example of a State law signed into law in by the Governor in September adds additional uncertainty to the role of local government in planning decisions at the local level. SB 828 amends the State Housing Element law, which defines how cities plan to accommodate future projected housing needs. Under existing law, the City is obligated to ensure that sufficient sites are planned and zoned to accommodate enough housing to satisfy the City's 'fair share' of projected future housing demand as set forth in the Regional Housing Needs Allocation (RHNA)



determined by the State of California. While the City is obligated to identify adequate sites, it and other local governments have not been required to ensure the building of the housing, and State law did not establish numeric requirements for the production of housing. SB 828 changes the status quo by establishing that the Legislature intends that local governments take “reasonable actions to ensure that *future housing production* meets, at a minimum, the regional housing need established for planning purposes.” It is unclear exactly what steps a city could be required to take to achieve this objective in the event the private sector – which drives housing production – fails to produce the housing units called for in the RHNA.

Related changes in State law encroaching into what had been almost exclusively local land use decisions on housing development were enacted in 2017 (e.g., SB 25 (Weiner)) and are expected in 2019 (e.g., a revised form of SB 827 (Weiner)).

4. Measure JJ requires a “development agreement” that is consistent with the policies in the General Plan Amendment. What is a development agreement and how does it protect the City?

A development agreement is an enforceable contract between a city and a property owner/developer that lays out what is planned for the development and the expectations of both the city and developer. A development agreement might include details of community benefits like recreational and open space requirements, and the agreement could impose legally enforceable obligations on the developer, for example, financing requirements and the timing of infrastructure improvements.

The development agreement would also “freeze” the land use regulations that apply to a specified property to ensure the development will not be affected by changes in regulations or subsequent State laws during the term of the agreement. This provides both parties with assurance that no outside entity, such as the State Legislature, can intervene to change the terms of the agreement after the fact.

5. How can Brisbane residents be assured UPC will clean up the site and how can Brisbane residents be assured of ongoing safety of the site? Does Brisbane have any say over what constitutes “clean up”?

In California, there are multiple State agencies that are legally responsible to oversee the remediation of privately-owned contaminated sites. These include the Department of Toxic Substances Control (DTSC) and the Regional Water Quality Control Board (RWQCB). The San Mateo County Health System also has authority over the former landfill site on the Baylands. These agencies will be responsible for approval of the developer’s remediation plans and conducting ongoing testing of the site to ensure compliance.



While the City of Brisbane does not have approval authority over remediation (“clean-up”) of the Baylands, the City has included a policy in the General Plan Amendment (GP-1-18) requiring that areas proposed for residential uses must be remediated to a level which allows for ground floor residential uses and residential supportive uses such as school, daycare facilities, and parks. This policy will ensure the highest standard of clean-up for these residential areas. Additionally, the City has been instructed by the City Council to actively participate in the review of proposed landfill closure and remedial action plans by the regulatory agencies. The City has acted on this direction and has contracted with Dr. G. Fred Lee (<http://www.gfredlee.com/qflinfo.html>) to represent the City’s interests in the review of the draft remedial action plans and related technical documents. Dr. Lee has worked well with the City in the past and is widely known and respected for his expertise.

In addition to the legally required regulatory agencies’ approved Remedial Action Plan, in order for the City to approve a Specific Plan and development agreement for the site, Measure JJ also requires that the developer must submit, and the City Council must approve, (i) a specific schedule establishing the time frame by which the cleanup must be completed and (ii) the specific means by which the City may enforce the developer’s compliance with that schedule, such as imposing monetary penalties or suspending building permits if the schedule is not met. This additional requirement imposed on the developer was recommended to and adopted by the City Council during public testimony on the proposed General Plan Amendment to add an additional assurance requiring that the Baylands be cleaned up in a timely manner.

Once remediation is completed, the property owners have the responsibility to ensure that all remediation controls are maintained on an ongoing basis and required monitoring is performed. As a means to ensure these obligations will be met over time, the General Plan Amendment includes a policy requiring that the developer provide surety bonds, environmental insurance, or other means acceptable to the City, which demonstrate sufficient financial assurances that long-term obligations for environmental remediation will be met.

6. Are there health risks for the future residents and workforce on the Baylands if Measure JJ is approved? Does the City have any exposure to liability for health risks?

The General Plan Amendment requires all residential development to be designed and remediated (“cleaned up”) to accommodate ground level residential uses and supportive uses such as daycare, parks, schools, playgrounds and medical facilities. This means that those sites must be remediated so that the carcinogenic health risks to people who live, work or play there is no more than one in a million. For non-residential development, the permissible carcinogenic health risk standard is one in one hundred thousand.



The City is not the regulatory agency for approving the remedial action plan or verifying whether remediation has been achieved; State and County agencies have those responsibilities and hence they, not the City, have the potential for exposure to liability. In addition, before the site is developed, the City must approve a Specific Plan for the site, a discretionary action which under State law provides immunity to the City. As a part of that process, regulatory agencies, such as the California Department of Toxic Substance Control and the San Mateo County Environmental Health Department, must approve detailed plans for remediation of the site and landfill closure. As part of that process, the City's consultant will be reviewing, commenting on and, where appropriate, making recommendations to those agencies concerning those plans, but the final decisions on these plans will remain with regulatory agencies other than the City.

7. Does certain State legislation concerning housing, such as SB 35, apply to the Baylands?

Senate Bill 35 (SB 35) was approved in 2017 and establishes a streamlined development review process for new multi-family residential projects that meet the requirements set forth in that legislation. To be subject to the streamlined process under SB 35, a development project must satisfy a lengthy list of criteria including that the project meet objective development standards established by the local jurisdiction and, for Brisbane developments, the project must dedicate at least 50 percent of the housing will be "affordable housing units." In addition, SB 35 does not apply to sites that have been designated hazardous waste sites.

The Baylands is not zoned for residential development and as a result there are no objective development standards for the site, as required for SB 35, to apply. Moreover, the Baylands is designated by the Department of Toxic Substances Control as a hazardous waste site. Finally, there has been no proposal as to the number of affordable units to be developed within the Baylands. For at least these reasons, SB 35 does not apply to the Baylands and, unless the criteria of SB 35 were satisfied at some later date, will not apply to the Baylands regardless of whether or not voters pass Measure JJ.

8. Does the California High Speed Rail Authority's proposal concerning a proposed railyard on the Baylands affect Measure JJ if the voters approve it?

The California High Speed Rail Authority (CHSRA) has long expressed an interest in building a maintenance yard for high speed rail trains on the Baylands. However, in the many years this matter has been under consideration, CHSRA has presented no precise description of the location, operational details, or potential environmental impacts of a future maintenance yard. CHSRA cannot move forward in establishing a railyard on the Baylands until it completes an environmental review of any such proposal and funding is committed to implement the project.



According to the latest schedule proposed by CHSRA this summer, it plans to release a “preferred alternative” by the end of 2019 and a Draft EIR/EIS by the Spring of 2020 with a final decision possibly in the Spring of 2021. It should be noted that CHSRA’s schedule has changed many times before, and there is no guarantee that its current schedule will not slip again.

In the event CHSRA moves forward with a proposal for a maintenance yard on the Baylands, it will need to negotiate with the Baylands property owner to take possession of the land. The City of Brisbane will not be directly involved in that process; however the City would be actively involved in any EIR process for a maintenance yard in order to secure adequate safeguards for the City’s interests as development moves forward.

9. If the High Speed Rail Authority purchases the portion of the Baylands where Measure JJ allows residential development, is the City required to approve residential development on other portions of the Baylands?

Measure JJ limits residential development to a specific portion of the Baylands – it is permitted only in the northwest quadrant of the site bounded by Bayshore Boulevard on the west, the City and County of San Francisco on the north, the Caltrain rail line on the east, and the line of Main Street (extended) on the south. If High Speed Rail were to acquire that area to develop a maintenance yard and the current land owner still wants to pursue residential development on the Baylands, a new General Plan Amendment would be required that permits residential development on land High Speed Rail didn’t purchase.

10. What will happen to the dirt on the landfill site?

Large quantities of soil have been brought onto the east side of the site over the years. While some of this material may be used on site to cap the former landfill in accordance with State requirements, much of the material will need to be removed from this area. Some or all of this excess material may be used for remediation and regrading of the west side of the site. The developer might also attempt to sell excess material for uses outside of Brisbane. Whether the soil material is reused on site or exported off-site, there are community concerns about these materials and whether they are contaminated in some fashion. While soil brought onto the site since 2010 has been tested, the City will require that additional testing be performed to ensure the material is safe prior to it being reused on site or exported off site.

11. If the General Plan Amendment is approved, is the City legally obligated to obtain water for the development? If not, who is responsible and where will the water come from? What guarantees are there for a sufficient water supply for development of the Baylands?

The project developer must find a source of water for the project and have agreements in place to assure long-term water supply is available to the Baylands prior to project construction. If the General Plan Amendment is approved by the voters, the next step would be for the applicant to prepare a Specific Plan. Under State law, the applicant’s



Specific Plan would have to address where and how it is securing a long-term source of water under its proposal. Specifically, State law requires that a water supply assessment be prepared and approved demonstrating the availability of long-term water supply for future development. Further, City requirements set forth in the General Plan Amendment and the Baylands EIR require additional safeguards and enforceable guarantees of adequate water supply before the project is completed. For example, Measure JJ provides that prior to site development, the City must determine that a reliable water supply has been secured to support the proposed uses within the Baylands.

12. Where will the children living in this area go to school and what impact will that have on our existing schools?

Currently, the Baylands is located within the Bayshore Elementary School District and the Jefferson Union High School District. The City Council has requested a study to determine the impact of the development on the Bayshore and Brisbane Elementary School Districts, as well as the Jefferson Union High School District. As part of this study, the City will explore whether there are different district boundary configurations and if such configurations would benefit the educational opportunities of new residents in the Baylands and the School Districts.

13. If Measure JJ is approved by the voters and UPC elects not to modify its Specific Plan application to be consistent with Measure JJ, what happens next?

If that were to occur, the City Council will consider whether to deny UPC's pending applications because they would not be consistent with Measure JJ.

14. If the City approves a Specific Plan for the Baylands and UPC and the City enter into a development agreement and thereafter UPC sells the property, does that invalidate the Specific Plan and/or the development agreement? Will new property owners be able to build more housing than what's specified in Measure JJ?

Specific Plans and development agreements "run with the land" and any subsequent purchasers of the property (or portions thereof) covered by the Specific Plan and the development agreement would be subject to the terms and conditions of the Specific Plan and the development agreement. To modify the range of residential units set forth in Measure JJ would take a majority vote of Brisbane voters.

15. Will development of the Baylands vastly increase the City's Regional Housing Needs Allocation ("RHNA") since such development would have an effect on the jobs to housing balance?

That can't be answered definitively at this time. History indicates the RHNA methodology differs in each of the City's Housing Element cycles, resulting in highly variable RHNA numbers. For example, in the City's last two Housing Element cycles, the City's RHNA changed from 480 in one cycle to 83 in the next. The fact that SB 828 has now been signed into law will likely influence RHNA methodology for the next



Housing Element (2022) cycle. Although jobs/housing balance factors in determining a City's RHNA, it is not the only factor, nor should it be assumed that it will be the most heavily weighted factor in the future. In past RHNA cycles, the methodology has looked at existing jobs and housing rather than planned jobs and housing and then ABAG has made its own projections as to employment and housing. There is no reason to assume that would be different with the approval of Measure JJ.

16. **If the City were to secure a RHNA "exemption" because Measure JJ is approved by the voters, when would the exemption come into effect? For example, would it apply before housing is actually built or only after the property has been developed?**

It would seem that the purpose of any RHNA exemption would be to recognize the City has allowed the possibility of residential development that, over time, could double the population of the City and that, practically speaking, there is very limited capacity for additional residential development.

17. **Now that SB 828 has been signed into law, will it suddenly have an impact on Brisbane if Measure JJ is approved by the voters? For example, does SB 828 "override" Measure JJ?**

SB 828 alters the methodology by which the determination will be made as to a local jurisdiction's Regional Housing Needs Allocation. As such, it does not override any portion of Measure JJ. Moreover, our analysis of SB 828 concludes there will be no direct impact to the City if Measure JJ is approved. Brisbane, like all jurisdictions in California, will ultimately be affected by SB 828 because that bill influences the RHNA methodology. But until that methodology is determined, and until courts weigh in on that determination, how SB 828 will affect Brisbane cannot be known at this time.

18. **Traffic throughout the Bay Area is already in gridlock during commute hours. If Measure JJ passes and the Baylands is developed, won't this make matters worse? Will traffic generated by Baylands development be mitigated and, if so, how?**

The environmental impact report (EIR) prepared for the Baylands illustrates the difficulties in mitigating traffic impacts. One major challenge is that San Mateo County and the City of San Francisco are experiencing growth from existing residences and businesses, and additional growth is expected in the future. This cumulative growth will result in additional congestion on major roadways and highways in the vicinity which are already over capacity. The EIR demonstrates, however, that many highway segments and street intersections in the areas will be subject to increased travel times in the future even if nothing is built on the Baylands. Adding new trips from the Baylands will exacerbate a future traffic situation already expected to be more challenging than today.

While it is not possible for the Baylands development to solve what is a regional traffic problem, there are a number of steps that will be taken to reduce the project's traffic impacts. The first measure is **to limit the number of trips generated by the project. Locating housing, jobs, and transit in close proximity to each other are demonstrated to reduce single occupancy car trips.** Incorporating project design elements that **promote walkability, biking, shuttles, transit** and other alternative



modes of transportation are also important factors in getting people out of their cars. Additionally, development projects will need to prepare Transportation Demand Management (TDM) Plans outlining specific measures that will be implemented to reduce the number of car trips.

While project vehicle trips will be reduced, they will not be eliminated. The Baylands project will be required to construct roadway and intersection improvements to accommodate the traffic generated by the project, including the improvement of intersections and roadways outside the project limits. Some of these roadways and intersections are outside Brisbane's city limits, and the implementation of these improvements will require the cooperation of the affected cities. That is, as to roadway and intersection improvements that are not within the City, Brisbane has no control over if or when those improvements will be constructed. The Baylands developer, however, will have to contribute "fair share" funding to other regional transportation improvements including, but not limited to, the Geneva Avenue extension, Candlestick/Hwy 101 interchange, and Bus Rapid Transit (BRT) to the Balboa BART Station.

19. Measure JJ provides that Baylands development will be revenue positive to the City on an annual basis. How will that be accomplished and how reliable are the financial projections for the project?

The project developer must satisfy this requirement. The City intends that the development agreement between the applicant and the City will guarantee coverage of the City's costs, such as annual operating costs, maintenance and replacement of equipment, facilities, infrastructure, cultural resources and habitat protection and management. The City can track project-generated revenues to the City's General Fund and Enterprise Funds during all phases of development and upon build out. Also, the development agreement, which is negotiated between the City and the developer prior to any construction commencing, can include a mechanism for payment to the City of any uncovered costs. The City is not concerned with the applicant's currently public financial projections because they were based on a project much different than what is contemplated by Measure JJ.

20. Will Measure JJ and its limitation on the number of residential units within the Baylands be exempt from future State legislation?

Under current law, if Measure JJ is passed by the voters and implemented as intended, the City is aware of no State law or proposed State policy that would require increased residential development on the Baylands.

We encourage you to reach out with any questions or comments to:

citymanager@brisbaneca.org or (415) 508-2110