

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Community Development Director via City Manager

SUBJECT: **City Council Deliberations on Brisbane Baylands Planning Applications (Concept Plans, Specific Plan Case SP-01-06, General Plan Amendment Cases GP-01-06/GP-01-10) and related Final Environmental Impact Report (SCH #2006022136)-**

DATE: Meeting of June 19, 2017

Introduction:

With the completion of public hearings, the City Council is now moving into the deliberations phase regarding the Baylands planning applications. As has been noted throughout the process to date, the City Council is considering applications by Universal Paragon Corporation (UPC) for a general plan amendment and specific plan, and must render a decision on these pending applications. However, the City Council has a range of options that extend well beyond approving or denying these applications. The EIR and planning process undertaken to date have been intended to maximize the City Council's flexibility in making a final decision.

The purpose of this report is to outline potential decision options and a suggested deliberative process for the City Council's consideration. This report further discusses the issue of data requests made and questions asked during the public hearings, and how these matters should be addressed in the deliberative process. Options regarding a future public vote regarding Baylands development are also discussed for the City Council's consideration. The issue of City Council deliberations was the subject of a Baylands City Council subcommittee meeting and this report reflects the subcommittee's input.

Discussion:

Decision Options

As discussed with the City Council during the Baylands planning process, the City Council has a wide range of options regarding proposed Baylands development. A "decision tree" illustrating these options is provided as Attachment 1. A more detailed description of potential options is included as Attachment 2.

- **Approving the Applicant’s Proposal.** This action would approve the applicant’s proposed General Plan Amendment and Specific Plan “as-is” or with any revisions specified by the City Council. Should the City Council request substantial modifications to the applicant’s proposal, it would be up to the applicant if it chooses to modify its plan pursuant to City Council direction. Approval of the applicant’s proposal (as-is or modified) would require certification of the EIR.
- **Approving the Planning Commission’s recommendation.** The City Council has the option to approve the Planning Commission’s recommendation. This action would involve denial of the applicant’s proposed General Plan Amendment and Specific Plan, along with adoption of the Planning Commission’s recommended General Plan land use plan and policies for the Baylands. Such an action would also require certification of the EIR.
- **Modifying the Planning Commission’s recommendation.** The City Council also has the option of modifying the Planning Commission’s recommendation. Such modifications could take the form of a different mix, intensity, or distribution of land uses, or different General Plan policies for Baylands development. This action would also involve denial of the applicant’s proposed General Plan Amendment and Specific Plan. Such an action would likewise require certification of the EIR.
- **Leave the General Plan as is.** This action would involve denying the applicant’s proposed General Plan Amendment and Specific Plan, and making no changes to existing General Plan policies and land use designations for the Baylands. No other development scenario or alternative for Baylands development would be approved at this time, nor would the General Plan be updated to provide revised or more detailed land use guidance for the Baylands. Determination of the appropriate mix and intensity of Baylands development would be deferred to submittal of another proposed General Plan amendment and/or specific plan in the future. Such an action would not require certification of the EIR.
- **Develop a New Plan for the Baylands in lieu of Approving or Modifying the Applicant’s Proposal or the Planning Commission’s Recommendation.** Under this scenario, the City Council would deny the applicant’s planning applications and not approve the Planning Commission’s recommendation. The scenario presumes that the City Council wishes to initiate a new planning process/program for the Baylands that is not substantially based on the Planning Commission’s recommendation or the developer’s plan. This new plan or program could be a “hybrid” plan incorporating elements from the Planning Commission recommendation, the developer’s plan, and/or one or more of the alternatives evaluated in the EIR. Or this new plan could be completely outside the range of options identified and studied to date. Approval of any such plan or program would require certification of an EIR. Whether or not the current Baylands EIR is adequate for this purpose would likely depend on the content of the new plan, and whether the current EIR adequately addresses its impacts.

Deliberations Approach/Options

In conducting its deliberations, the City Council will be considering the applicant’s proposal, the Planning Commission’s recommendation, the record as a whole (i.e., all the information that has

been presented during the time in which the City has considered Baylands development), including the public testimony and staff reports presented to both the Planning Commission and City Council.

While the City Council must consider all of the above- noted materials in its deliberations, it has a great deal of latitude in how it conducts its deliberations. In working through the decision options, the City Council may wish to consider building upon the work undertaken by the Planning Commission. The Planning Commission used a very methodical and ordered approach in crafting its recommendation. The steps included: 1) defining key principles that should be incorporated into any land use program for the Baylands; 2) identifying key site features/constraints that would heavily influence shape future site development; and 3) making recommendations on land use mix, distribution, and intensity taking into account the defined general principles and site features/constraints, as well as the remainder of the information included in the record. The Planning Commission then evaluated the applicant's proposal in the context of the principles, site features/constraints and the Commission's preferred land use program.

It should be noted that the initial starting point for discussion selected by the City Council does not commit the Council to any specific action or limit the City Council's range of options regarding a land use program or plan for the Baylands.

Deliberations Considerations

As noted above, City Council must consider in its deliberations the applicant's proposal, the Planning Commission's recommendation, the record as a whole (i.e., all of the information that has been presented during the time in which the City has considered Baylands development). However, there is no prescribed formula or set process for how individual councilmembers should consider the information contained in the record or ultimately reach conclusions.

As the City Council, staff, and the public are aware, the project under consideration for the Baylands is large and complex and there are a host of expensive and challenging technical issues associated with developing the site. Complicating matters, local and regional interest in the City's land use decision is very high, and there are many (sometimes conflicting) ideas regarding what land uses are appropriate for the Baylands.

As elected representatives of the citizens of Brisbane, City Councilmembers have a great deal of latitude and discretion in considering the information in the record and making a decision regarding Baylands development. It is expected that each councilmember will consider the record in its entirety and exercise his/her individual judgment in making a decision he/she determines to be in the best interest of the City of Brisbane. If the deliberations involve matters of law or councilmembers have legal questions regarding issues under the deliberations, the City Attorney will be present and available to offer guidance as needed and requested.

Data Requests/Questions

Over the course of the City Council public hearings, scores of questions and/or requests for information have been made by the City Council and through public testimony. Staff has been tracking and has compiled a list of questions and data requests which is attached for reference (Attachment 3). Staff has already begun preparing responses, and a collection of responses are attached for the City Council's use (Attachment 4). Note that the responses to date address only a subset of the list. The scope of the questions and requests is quite broad, and includes requests for illustrative case studies, in-depth new analysis, and reiteration/reproduction of information already in the record. Responding to all of the inquiries received to date will require a substantial commitment of time and resources. Given the available detail of UPC's development proposal and the programmatic nature of the environmental analyses in the EIR, it is highly unlikely that all inquiries can be satisfactorily answered at this stage, and many would require a project-specific level of detail that is not presently available. Other inquiries are specific to particular land use components and would only be relevant if the City Council were interested in considering those particular land use components. Staff's goal is to provide relevant information that supports the City Council's decisionmaking process, and it is suggested that the City Council work with staff to help focus and direct staff's efforts in providing only that additional information that will support the City Council's process.

Public Vote/Ballot Considerations

Both previous and current City Council members have indicated generally that they believe Brisbane voters should have some say regarding a land use proposal for the Baylands. Because there is no legal requirement that any land use proposal concerning the Baylands—including maintaining the status quo as reflected in the General Plan—be submitted to the voters, it is a Council policy decision if and when to submit to the voters a proposed measure concerning any land use proposal for the Baylands. Moreover, because voter approval of a land use measure may have legal consequences (to be described more fully in a forthcoming confidential memo from the City Attorney), the implications of submitting such a measure to the voters must be considered very carefully.

Because actions to amend a General Plan or to approve a Specific Plan are legislative in nature, voters who may object to the Council's action would also have the right to circulate a referendum petition concerning a Council approval of a General Plan amendment or Specific Plan. If sufficient valid signatures were obtained within 30 days of the Council's action, and assuming the Council did not choose to set aside its previous approval upon receipt of the referendum petition, the voters would ultimately decide whether to approve or deny the General Plan amendment or Specific Plan. If no referendum petition were filed or if the referendum went to the ballot but was not successful, the City Council could in the future amend or repeal the General Plan amendment or the Specific Plan without requiring voter approval. On the other hand, if the referendum went to the ballot and the voters did not approve the measure, the same

or substantially the same land use plan could not be adopted by the City Council for one year from the date of the election.

Options if the Council decides to submit a land use measure concerning the Baylands to the voters.

Assuming the Council determines that it will seek affirmative voter involvement (rather than just acknowledging the possibility of referendum), there are three basic options for the Council to consider: (1) submittal to the voters of one or more advisory measures; (2) submittal of a Council sponsored initiative measure to the voters following Council action; and (3) submittal of a Council sponsored initiative measure to the voters without Council action. Each of these options is described in more detail below. Although generally a Council-sponsored initiative measure approved by the voters (which is the form by which the latter two options would be submitted to the voters) may only be amended or repealed by the voters, Council could in the measure retain the authority to amend or repeal whatever the voters approved without seeking further voter approval to do so.

Submittal of Advisory Measure to the Voters

As the name suggests, an advisory measure is just that. It is intended to take the voters' temperature, as it were, about, for example, a land use concept or proposal so that the Council may gauge the voters' support or lack thereof for such concept/proposal. One advantage of an advisory vote is that several measures reflecting alternative land uses for the Baylands could be presented simultaneously to the voters, for example, one with a residential component and others without residential use. Given its advisory nature, even though the outcome of such a vote would not be binding on the Council, Council members may feel compelled to give great weight to any land use concept/proposal that would be consistent with the voters' decision. An advisory vote would also provide an opportunity for the Council to consider a General Plan amendment or Specific Plan consistent with the advisory vote without feeling the necessity to resubmit the item to the voters following Council approval. On the other hand, even following an advisory vote, Council may nevertheless conclude that the voters should have a further, perhaps more binding, say on a Council approved General Plan amendment or Specific Plan, even if it were consistent with a proposal that had received majority support from the voters. If that were Council's belief, an advisory vote may be of limited benefit.

Submittal of a Council Sponsored Initiative Measure to the voters following Council action on a Land Use Proposal

A second option is for the City Council to render a decision on a General Plan amendment or Specific Plan, and then submit the amendment/Plan to the voters, via a Council sponsored initiative measure, for ratification. For example, the City Council could approve UPC's proposed General Plan amendments and Specific Plan and then ask the voters to confirm/ratify the Council's action. The advantage of this option is that, whatever decision the Council ultimately makes, it demonstrates to the voters that the Council has weighed the pros and cons of the proposal and has concluded that it should be approved subject to voter ratification. Under this

approach, the voters would know the Council's position on the merits of the proposal, but nevertheless have a veto power over the Council action.

If the voters were to ratify a Council approval, then the general rule is that whatever the voters ratified could not be amended or repealed without a further vote. As mentioned before, however, Council could retain in the measure the authority to amend or repeal whatever the voters ratified which, in the context of "ratification", would seem consistent with the intent of the voters. Moreover, because the Council would have taken action on the proposal prior to placing the matter on the ballot, Council would be required to have complied with CEQA, including certifying the Final EIR, adopting appropriate findings, and approving a mitigation and monitoring program.

Submittal of a Council-sponsored Initiative Measure to the voters without prior Council action

The third option is for the Council to submit a Council-sponsored initiative measure concerning a land use proposal for the Baylands to the voters. The measure could be framed as a concept plan for the Baylands or a more detailed land use proposal such as UPC's proposed General Plan amendment or Specific Plan. As with the second option, unless the measure submitted to the voters expressly provided that the Council retained the authority to amend or repeal the item without further voter approval, whatever was approved could only be amended or repealed by a further vote of the people. In addition, although the Council itself would not have "approved" the item before submitting it to the voters, because a Council sponsored initiative measure concerning a land use item would be before the voters, Council would also be required to comply with CEQA, as described above, before placing the matter on the ballot.

Timing of presenting a ballot measure to the voters

The timing for placement of a measure on the ballot would depend largely on what type of measure is placed on the ballot. An advisory measure could be placed on the ballot at any time. A concept plan or more detailed general plan policies that would embody a land use plan for the Baylands would need, at a minimum, Council action to certify the EIR. Voter consideration of a Specific Plan would need to be delayed until such Plan was developed and considered by the Council.

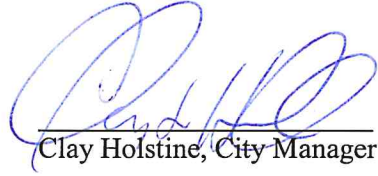
If the Council were to conclude its deliberations by the end of July, it would be technically possible to place some type of ballot measure on the November 2017 election. Perhaps more realistically, a ballot measure could be placed on the June 2018 primary or November 2018 general election.

Attachments:

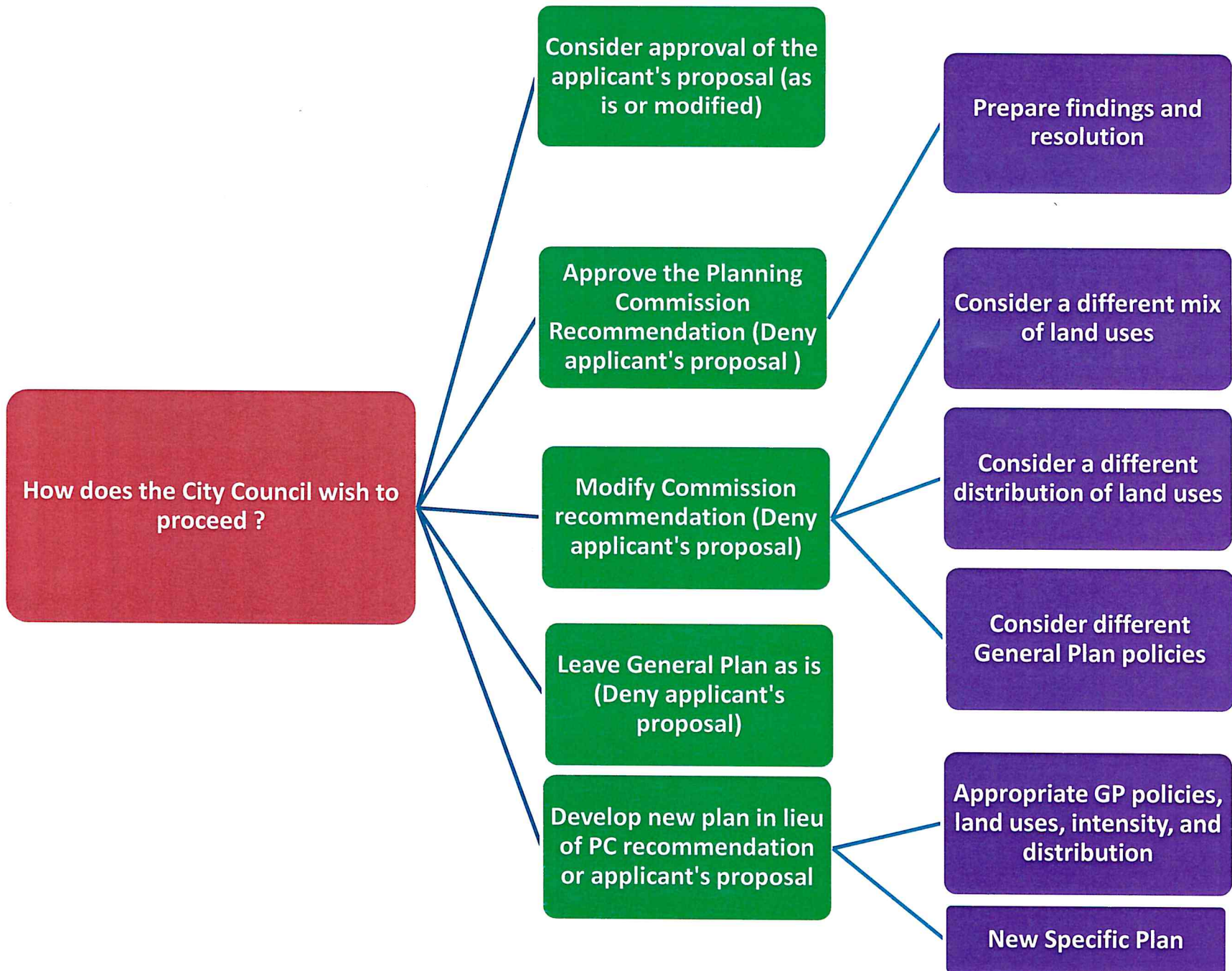
1. Decision Tree
2. Detailed Discussion of Decision Options
3. Data Requests/Questions List
4. Responses to Data Requests/Questions



John Swiecki, Community Development Director



Clay Holstine, City Manager



Attachment 1

Note: The City Council will also consider options for a public vote on Baylands land use.

ATTACHMENT 2

DETAILED DISCUSSION OF DECISION OPTIONS

Option: Approve or Modify the Applicant's Proposal

In addressing the applicant's proposal, the City has the option of approving UPC's General Plan Amendment and Specific Plan as proposed or with minor or major revisions. Revisions to the applicant's proposal could come from any source, including the Planning Commission recommendation, Brisbane Baylands EIR, comments made in public hearings, or new concepts identified by members of the City Council.

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

Should the City Council wish to consider approval or modification of the applicant's proposal, it should consider the proposal at a General Plan level before proceeding to address details of the proposed Specific Plan. Key considerations for discussion of the applicant's proposal at the General Plan level include the mix of uses being proposed (e.g., residential), intensity of development, and policy considerations (e.g., site remediation and water supply) among others. Once such key considerations have been addressed at a General Plan level, it will be easier for the City Council to consider needed modifications to the proposed Specific Plan.

Following its deliberations, under this option, the City Council could approve UPC's General Plan Amendment and Specific Plan or approve them with only minor revisions to address community concerns. These minor revisions would need to be clearly identified in the City Council's action.

The City Council also could direct that major revisions to UPC's General Plan Amendment and Specific Plan be undertaken to address community concerns prior to approval. These major revisions would need to be clearly identified in the City Council's action. A critical component of this course of action would be the applicant's willingness to accept the City Council's direction and work collaboratively with the City to modify the project as directed. If the applicant is willing to proceed in this manner, the City Council would continue the application to allow for the plan modifications to be made. If the applicant is unwilling to undertake the modifications directed by the City Council, the City would have the option of denying the applicant's proposal.

Approval of the applicant's proposal in any form (as-is or with minor or major modifications) would require certification of the Baylands Final EIR.

Option: Approve the Planning Commission Recommendation

Should the City Council, following its deliberations choose to approve the Planning Commission's recommendation, it would direct staff to prepare the necessary findings and resolutions, including denial of the applicant's proposal. Along with the necessary findings and resolutions, staff would bring back to the City Council the specific text for incorporation into the General Plan pursuant to the Planning Commission's recommendation. This action would require certification of the EIR.

Option: Approve the Planning Commission Recommendation with Modifications

Should the City Council choose to modify the Planning Commission's recommendation, it should focus first on the types of revisions it would like to make to that recommendation. Such revisions could address the types, intensity, or distribution of proposed land uses within the Baylands and/or General Plan policy revisions. Once it identifies the revisions it would like made to the Planning Commission's recommendation, the City Council should direct staff to bring back the necessary findings and resolutions, as well as the specific changes directed by the City Council. This action would require certification of the EIR.

Option: Leave the General Plan As Is/Deny Applicant's Proposal

The City Council also has the option of leaving the General Plan as it is currently written, approving neither the applicant's proposal nor the Planning Commission's recommendation. This option would also require denial of the applicant's proposed General Plan Amendment and Specific Plan. This action would not require certification of the EIR.

Option: Develop a New Plan for the Baylands in lieu of the Applicant's Proposal and the Planning Commission's Recommendation

The City Council could determine that updated General Plan policies and/or maps to incorporate a revised and/or more detailed policy direction for future development of the Baylands are needed, but that neither the applicant's proposal or the Planning Commission recommendation is an appropriate starting point. To facilitate development of such a plan, the City Council should provide guidance as to the policy direction for such a future plan. This could involve revisiting some or all of the steps the Planning Commission went through in developing its recommendation, specifically:

- What are the basic principles that any development of the Baylands would need to follow?
- What is the appropriate mix and intensity of development within the Baylands?
- What is the appropriate distribution of land uses within the Baylands?
- What is the appropriate intensity of development within the Baylands?
- What types of revisions, if any, should be made to the City's existing General Plan policies for the Baylands?

The City Council could also consider if any elements from the developer's proposal, Planning Commission-recommended plan, or any of the other alternatives identified in the EIR should be incorporated into a new plan. The City Council should further provide direction on the form of the process it wishes to be undertaken for a new program or plan for the Baylands.

Because this option would be taken in lieu of approving or modifying the applicant's proposal, the City Council would also deny the applicant's proposal. Ultimately the approval of new general plan policies and/or specific plan would require EIR certification.

ATTACHMENT 3

Baylands Data Requests/Questions

6/19/17

Bold Text- responses included in Attachment 4

Red Text- previously provided to the City Council

1. Historic Information/Information already in the record directly related to site/project
 - a. Previous Remediation related studies/reports (not implemented 2002 RAP, not implemented 2005 HVOC removal plan, Monitoring wells status, existing Lagoon studies, results of historic groundwater pump and treat system)
 - b. **Conceptual Grading Plan grading plan prepared by UPC (Provided with May 4 Staff Report)**
 - c. Conceptual landfill closure plan prepared by UPC

2. Requested Information that is either available, has already been prepared and/or provided, is already in the process of being prepared, or staff has committed to providing
 - a. Provide visual representation of a vapor barrier system
 - b. Describe statutory performance standards/ design requirements for a Title 27-compliant landfill closure
 - c. **Project and Traffic mitigation requirements for nearby San Francisco projects (Schlage, Executive Park, Candlestick/Hunters Point Shipyard) (Provided with May 4 Staff Report)**
 - d. **Applicability of Regional Welfare Doctrine as it pertains to approving housing- SEE ATTACHMENT 4A FOR RESPONSE**
 - e. **Legal obligations on the part of the City to approve housing to comply with SCS and/or SB 375 targets - SEE ATTACHMENT 4A FOR RESPONSE**
 - f. **Would we be required to implement the region's Sustainable Communities Strategy? - SEE ATTACHMENT 4A FOR RESPONSE**
 - g. **Describe legal challenges to pre 1914 Water Rights - SEE ATTACHMENT 4A FOR RESPONSE**
 - h. Are there cases of water agreement suspensions due to drought conditions?
 - i. **What is required elevation of new water tank? - SEE ATTACHMENT 4B FOR RESPONSE**
 - j. **What tools are available to the City to compel property owner to stabilize/ protect Roundhouse from further deterioration? - SEE ATTACHMENT 4A FOR RESPONSE**
 - k. **Identify metals associated with urban runoff - SEE ATTACHMENT 4B FOR RESPONSE**
 - l. **How do the commute patterns of existing Brisbane residents compare with Baylands projections? - SEE ATTACHMENT 4B FOR RESPONSE**
 - m. Provide fiscal and feasibility analyses of Planning Commission recommended land use program
 - n. **Provide data (existing and proposed acreage and building square footage) for Sierra Point (Provided at May 4 meeting- to be updated to include South San Francisco properties)**
 - o. **High Speed Rail status report update (Provided by CAHSRA at June 7 City Council Meeting)**

- p. What are impacts of Schlage Project/other San Francisco planning efforts on Bayshore Station location
- q. Clarify what constitutes a change in land use triggering Title 27 landfill closure
- r. What is the economic benefit for Brisbane if we have to maintain roads, police, fire, school and public works
- s. We need more financial analysis. Our consultants used old UPC numbers and admittedly, in the hearing stated that they did no analysis. How can we determine if Brisbane can sustain the costs of either of the UPC submitted plans?
- t. Liquefaction will result from an earthquake. Will all the leachate bubble to the top?
- u. What is the solution to traffic impacts in Brisbane from already approved development around us?
- v. Specify how leachate currently being collected is disposed of.
- w. Identify corrosive properties of underlying soils at Baylands
- x. What is depth to bedrock at Baylands?
- y. Is the presence/absence of endangered butterflies on Ice House Hill documented?
- z. Where is the water going to come from?
- aa. Is it truly safe for housing?
- bb. What is the liability for the City of Brisbane for future health problems or effects of earthquakes or sea level rise on the development?
- cc. Does our involvement in the Bi-County PDA restrict our ability to impose our own land use desires?
- dd. Do you have solid proof/documentation that all the toxins with potential long-term negative health effects can be removed or permanently covered up? If not, how can you approve housing on such toxic soil?
- ee. What is city process if site cannot be remediated to support approved land use program?

3. Requested EIR Clarifications

- a. Discuss VMT information used in EIR GHG and Air Quality Analyses
- b. Describe modelling methodology for defining project noise contours
- c. Clarify if EIR considered noise impacts to both existing adjacent uses and future but not yet built adjacent projects?
- d. Does the need to transport high quantities of stockpiled soils represent an unusual condition that constitutes wasteful energy usage?
- e. Respond to request for consideration of an alternative significance threshold for windsurfing impacts and consideration of new computer model for wind impact evaluation
- f. How does the mode shift associated using transit reduce traffic congestion in the Baylands and from SF development?
- g. How are we going to deal with the traffic and what is the impact of all this development on our ability to get in and out of Brisbane?
- h. How will 20 years of pile driving affect those already leaking pipelines?
- i. **Respond to public comment assertion that EIR water supply analysis is inadequate based on *Vineyard* case. - SEE ATTACHMENT 4A FOR RESPONSE**
- j. **CEQA requirements require specific water allocation and delivery agreements at the concept phase to guarantee that there is enough water for the specific plan - so decision makers have guarantees before they agree to make changes in things such as**

zoning, general plan etc. This is spelled out in CEQA Guidelines. Based upon Modesto's response, our FEIR is inadequate since there is no guarantee that the paper water can be delivered. FEIRs that are incomplete have been overturned in court, including the CA Supreme Court. What is the staff and City Council response to this issue that was brought before you? - *SEE ATTACHMENT 4A FOR RESPONSE*

- k. Why does the EIR water supply assessment pretend that an OID exchange for Hetch Hetchy water is reliable when SF and Modesto have already said No to the concept? So how reliable is the OID exchange when both SFPUC and Modesto have already said no? - *SEE ATTACHMENT 4A FOR RESPONSE*
- l. Why are we not looking at the entire record? For example:
 - i. It was already explained to Brisbane in 2009 that, there would be no water for the Baylands.
 - ii. SFPUC has sole discretion about water deliveries to Brisbane and Modesto about exchanging Hetch Hetchy water.
 - iii. Furthermore, proposed future exchanges for Hetch Hetchy water are superseded by the 2009 CCSF Water Supply Agreement.
- m. How does the City prepared WSA (water supply assessment) meet CEQA requirements when there is no reliable water source? - *SEE ATTACHMENT 4A FOR RESPONSE*
- n. Why does the EIR say that the proposed OID agreement does not require the construction of any new facilities when SFPUC says it does? - *SEE ATTACHMENT 4A FOR RESPONSE*
- o. Provide additional detail regarding water transfer agreement and role of MID- *SEE ATTACHMENT 4A FOR RESPONSE*
- p. Reconcile EIR conclusions regarding liquefaction risk versus testimony from applicant's consultant at the 5/23 hearing
- q. What is the basis for assumptions pertaining to rooftop solar generation potential for the DSP?
- r. Can the City set the allowed time to pile drive?
- s. Can the City require that no dirt movement will occur when wind conditions meet a certain threshold?

4. Requested Clarifications of Planning Commission Recommendation

- a. Flesh out the PC's recommendation regarding infrastructure development prior to site development
- b. How would you recommend implementing the Sustainability Framework into the General Plan?

5. Policy/Plan- based questions/data requests

- a. Can we treat Brisbane's water at the Baylands? If so, how would that affect how much water would be needed at the Baylands?
- b. Can we require that vacuum tube technology be incorporated throughout the development, so that waste goes directly from buildings to waste facilities?
- c. Can we require a zero waste mandate similar to San Francisco?
- d. Can we implement restrictions on packaging?
- e. Can we require that the development be energy neutral? If so, how do you recommend we get there?

- f. Explore the possibilities of building an urban bio-mass facility, so that all green waste is turned into energy and compost. Since Recology processes San Francisco's (and possibly other cities) green waste, could we require that a certain % of this waste is processed at the urban bio-mass facility to provide energy for the Baylands development?
- g. Explore sewage treatment facilities that turn non-water elements into energy and compost
- h. Lay out an economic analysis that shows how the Baylands would be required to fund its own needs regarding public service, infrastructure (Public Works issues), park and rec, and all other pertinent General Fund financial obligations
- i. How do we retain the rural remnants near Ice House Hill? Can we expand it so that we can create an urban farm?
- j. Can we create a more natural environment for the shoreline around the Lagoon, while also protecting it from contamination from the landfill?
- k. How will Brisbane be able to maintain public lands and provide city services if housing is built? Who will pay for this?
- l. If housing is allowed, can the City dictate the type of housing it would prefer? For example, could it require a certain number of work force housing units based on the square footage of a proposed development?
- m. Instead of the housing types proposed by UPC, could the City mandate that it wants housing for seniors or artists or real live/work communal environments?

6. Procedural questions

- a. What has happened to all of those questions? Who has been recording them?
- b. Could the goals and aspirations of the Framework help shape decisions regarding land use policy? If so, how?
- c. **Can we provide a simple statement to the public regarding our relationship with MID, and their role in the process? - SEE ATTACHMENT 4A FOR RESPONSE**
- d. What is the timing for when the city should hire a remediation consultant?
- e. What is the City's ability to influence regulators to use residential standards for risk assessment/remediation plans?
- f. Explain the process for requiring/negotiating cultural benefits such as public art, museums, activities for ethnic groups and clubs, seniors and youth
- g. Explain the process for requiring/negotiating recreational opportunities such as ball fields, gyms and trails
- h. How could the City impose a higher standard of remediation if it were to allow housing?
- i. Could the City require Title 24 requirements regarding zero net energy for homes by 2020 and commercial by 2030 be implemented now?
- j. Is it possible to make the NREL Feasibility Study more complete, so that it addresses land cost, Title 27 landfill closure costs, and impacts on development for other areas of the Baylands?
- k. Could parks be designed and constructed for public use, but privately maintained? Trails and open space?
- l. Could we set up an open space assessment district that provided funding habitat restoration and propagation of native plants?

- m. How is the Baylands development being coordinated with all the Candlestick/Hunters Point/India Basin/Bayview and San Francisco development just north of Recology?
- n. Can we get insurance that covers earthquakes, sea rise, severe storms, tree roots, allowing people to live on toxic land? If yes, how much will that cost and who will pay in perpetuity?
- o. This development does not exist in a vacuum. There are 25K housing units approved by SF coming online, along with hundreds of thousands of feet of commercial and retail buildings. What is our City Council doing to demand mitigation from San Francisco?
- p. There are no transportation plans or funding sources for the Baylands projects. Again, UPC has provided studies and visions. How is the City Council ensuring that we won't have gridlock because visions without secured funding and plans don't fix traffic problems?
- q. Are you willing to pay for a second opinion on remediation issues, such as the reputable Dr. Lee, who we have hired in the past?
- r. Do you understand that the City of Brisbane has no responsibility whatsoever for the "cleanup" of the toxics in the rail yard and landfill owned by a private party and that the cost of such cleanup was part of the land acquisition price back in 1989?

7. Comparative/Example-based Information

- a. Provide examples of successfully redeveloped unregulated landfills
- b. Provide information on San Francisco Maher Requirements
- c. Compare CalEPA standards to others (states, federal, international)
- d. Compile the number of Title 27 compliant landfill closures in Bay Area, projects built on closed landfills, and approved uses within such projects
- e. Identify non-operating landfills in bay area that have not yet not undergoing Title 27 closure
- f. Have any epidemiological studies been prepared for projects built on closed landfills? If so, provide results
- g. Describe impacts of Loma Prieta earthquake on development projects constructed on closed landfills
- h. For UPC-cited brownfield redevelopment projects (Mission Bay etc.) provide a comparison of these sites to the Baylands in regard to underlying soil stability and contamination issues, proposed uses, risk based cleanup goals, etc.
- i. Provide examples of successful long term remediation monitoring
- j. Are there cases where HOAs are burdened by after the fact remediation costs on a site originally considered closed?
- k. Provide comparison of Schlage Lock (underlying contaminants, land uses, remediation strategies) to Baylands
- l. Identify brownfield projects in CA where sites could not achieve clean-up goals for approved land uses
- m. What are lessons learned from other jurisdictions with projects built on remediated brownfields
- n. Provide information on other jurisdictions using VMT as the basis of traffic analysis
- o. What are SF guidelines for traffic analysis and parking requirements?
- p. Provide examples of projects with established parking maximums or parking prohibitions to promote transit/public transportation/private shuttle usage
- q. What are implications of multi- modal station access on reducing vehicle trips?

- r. Provide examples of successful bike commuter cities
- s. Provide examples of best walkable cities
- t. Provide examples of multi modal transit hubs with private sector retail/hospitality/entertainment
- u. Provide examples of multi-story buildings which are ZNE or energy positive
- v. Can we achieve a zero carbon development that includes residential and commercial uses?
- w. Show examples of Zero-carbon mixed use developments
- x. Provide examples of small biomass, greenwaste to CNG, composting
- y. Show examples of small wastewater facilities which reclaim water and convert biosolids into fuel and compost
- z. Provide examples of school districts receiving additional negotiated benefits and possible amounts
- aa. Show examples of insurance policies or funding structures that address issues such as natural disasters and potential contamination exposure
- bb. Provide examples of former rail yards that have been remediated and turned into developments that include housing
- cc. Show examples of how open space is embedded throughout the development, so that it is easily accessible to all and creates a “greener” landscape. Areas of the Presidio/Crissy Field are models that balance development and nature.
- dd. What can we learn from the affordable housing toxic debacle at Midway Village?

8. Questions/ Information related to project implementation

- a. Provide analysis regarding possibility of contaminants/constituents of concern to be transported into environment via methane collection system
- b. Is the existing groundwater monitoring well system adequate to serve as the basis for risk assessment/remedial action plan?
- c. Have potential new site contaminants been introduced since 2010?
- d. When should a Human Health Risk Assessment (HHRA) be prepared?
- e. Since the sides and bottom of the landfill are not sealed against bay water intrusion, what impact will sea level rise have?
- f. How will the cap be repaired in the eventually it fails?
- g. Review state approved Title 27 closure plan including schedule for review and completion
- h. Provide further discussion of potential remediation measures which might be implemented for the project
- i. What soil testing will be required to move soils from east side to west side of site?
- j. How will soil removal/redistribution be staged?
- k. Describe financial responsibilities/administration of environmental management association
- l. Need better understanding of implications of sea level rise on contaminants within Baylands as well as potential measures to alleviate these potential impacts
- m. Timing/duration of CEQA process for preparation of RAPs for OU-1 and OU-2
- n. What is proposed grading solution for constructing HSR Maintenance yard on closed landfill?
- o. What are recommended funding tools for land use program?

- p. What are required steps to relocate multi modal station to Geneva Ave extension?
- q. What steps are needed to implement a free shuttle service throughout the Baylands and the rest of Brisbane?
- r. Could wind play a role with some aspects of energy generation?
- s. What are actual plans for remediation of the toxins?
- t. Is there going to be truly affordable housing? What are the plans for size and price? What income levels will be able to afford them?
- u. What financing tools are available to fund sustainability improvements/programs?

9. Other requested information not directly related to the Baylands development application

- a. Prepare additional lagoon water quality/sedimentation studies
- b. What is PCE business model for owning renewable energy generation facilities
- c. What are available funding mechanisms to ensure basic health and wellness services for Brisbane residents/workers?
- d. Review manifests for BSP soils intake since 2010
- e. Provide breakdown of truck haul fees between BSP and Brisbane Recycling
- f. What are changes in soil quantities/elevations at BSP since 2010?
- g. Status of Caltrans study regarding Highway 101 vulnerability to sea level rise
- h. Describe current funding streams for education
- i. What should we expect regarding the next regional housing needs allocation (RHNA)?
- j. What about the Tank Farm? Is there an evacuation plan in the event of earthquake or fire?
- k. What is in the dirt that is being “recycled” and piled higher on a daily basis?
- l. Was a request made for the truck manifest for the UPC owned soils processing business? Is there any soil from Bayview/Hunters Point?
- m. Is the soils manifest available to the public? Has the soil been tested by an independent company, not affiliated with UPC?
- n. Will we see each council member's 2016 Form 700 (public disclosure of revenues/gifts) before the council votes on how to proceed? The forms were due early 2017 and filed with the FPPC. They are public record.
- o. How will the fuel leaking from the tank farm effect the health of the site and people working there?
- p. Describe Title 24 Zero Net Emissions requirements for residential and commercial

10. Other questions related to the City Council’s decisionmaking

- a. Would we be willing to raise our children in housing on that land?
- b. How are we going to deal with the noise from the endless pile driving that will go on for year after year?
- c. Why are we rushing this?
- d. Are you (the City Council) willing to accept the liability for people living on toxic land (with many known carcinogens) that has a cap that can be ruptured or penetrated by a medium sized earthquake (because it is a liquefaction zone), by sea rise or severe storms that surface the toxins that are in the water table, or by tree roots?
- e. Why does this have to be decided by the summer?

- f. Are you willing to pass these important zoning decisions on to uninformed citizens in a public vote when we know the developer has deep pockets to pay for marketing messages that may focus on alternative facts to further their financial interests?
- g. If you are willing to pass these important zoning decisions off to uninformed citizens, are you willing to pay for and provide workshops and literature that provides a fair and balanced facts?
- h. How many hazards are too many?
- i. Why are we moving so quickly through these hearings? It feels like a race since there hasn't been time to address the questions that the public has raised in the subsequent meetings.
- j. Why is Brisbane responsible for the developer making money? They bought the land in 1989 and part of the purchase agreement included the remediation.
- k. How can our lives in existing Brisbane be sustained?
- l. Who do you represent, land speculators, or regional housing developers, or your voters?
- m. How can you consider placing people in homes that are assaulted on three sides by noise levels in excess of 65 dBA (from Bayshore Blvd, from the CalTrain, and from Hwy 101?) They will also be shaken by the vibration of the CalTrain.

ATTACHMENT 4A

MEMORANDUM

To: Mayor Liu and Members of the Brisbane City Council

From: Michael H. Roush, City Attorney
Alison Krumbain, Sohagi Law Firm

Date: June 14, 2017

Responses to Council Questions re Baylands - LEGAL

Question 2d. Applicability of Regional Welfare Doctrine as it pertains to approving housing

The regional welfare doctrine does not require the City to approve housing on the Baylands to address the jobs-housing imbalance or the regional housing shortage. Instead, it sets forth a standard for assessing the constitutionality of zoning enactments and other land use restrictions. In cases where the effect of the restriction will be felt beyond the borders of the municipality or the territory of the enacting government, the doctrine holds that the general welfare to be considered by the enacting agency is that of the entire affected area, and not just that of the local jurisdiction. (See, e.g., *Associated Home Builders of Greater Eastbay v. City of Livermore* (1976) 18 Cal.3d 582 [California Supreme Court held that a local zoning ordinance prohibiting the issuance of further residential building permits in the city until local educational, sewage disposal, and water supply facilities complied with specified standards had the effect of shifting the burden of providing new housing to other communities in the Bay Area since it precluded new residential construction within the city]; see also *City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 401 [proper constitutional test is one which inquires whether the ordinance reasonably relates to the welfare of those whom it significantly affects].) The *City of Del Mar* case involved approval of the first phase of a large planned community (anticipated to house 40,000 people at completion). While the court found that construction of the community would affect the larger region, it concluded that San Diego “has adequately researched and considered the numerous competing interests in the region, and in view of the demonstrated need for new housing, the North City West approvals at this stage constitute a reasonable accommodation of these interests.” (*Id.* at 415.) Based on this finding, specifically that the City had considered the regional welfare prior to approving the project, the court upheld the City’s approval.

Question 2e. Legal requirements on the part of the City to approve housing to comply with Sustainable Communities Strategy and/or SB 375 targets

SB 375 does not require local jurisdictions to approve housing. It also does not supersede a local agency's general plan, other planning policies, or land use authority. SB 375 (Chapter 728, Statutes of 2008) directs the California Air Resources Board to set regional targets for reducing greenhouse gas emissions. The new law establishes a "bottom up" approach to ensure that cities and counties are involved in the development of regional plans to achieve those targets. SB 375 builds on the existing framework of regional planning to tie together the regional allocation of housing needs and regional transportation planning in an effort to reduce greenhouse gas (GHG) emissions from motor vehicle trips.

SB 375 has three major components: (1) using the regional transportation planning process to achieve reductions in GHG emissions from passenger vehicles consistent with AB 32's goals; (2) offering incentives under CEQA to encourage projects that are consistent with a regional plan that achieves GHG emission reductions; and (3) coordinating the regional housing need allocation process with the regional transportation planning process while maintaining local authority over land use decisions.

SB 375 sets up a collaborative process between metropolitan planning organizations (MPOs) and the ARB to establish greenhouse gas emissions targets for each region in the state. SB 375 requires each MPO to include a "Sustainable Communities Strategy" (SCS) in the regional transportation plan that demonstrates how the region will meet the greenhouse gas emission targets, typically by promoting compact, mixed-use commercial and residential development. If the SCS falls short of meeting the targets, the region must prepare an "alternative planning strategy" that, if implemented, would meet the targets.

Local officials are the key decision-makers in how the provisions of SB 375 are ultimately implemented. While the ARB is responsible for setting region-wide greenhouse gas emission targets for each MPO in the state, each MPO will be responsible for developing its own SCS (and alternative planning strategy if necessary). MPOs are governed by local elected officials.

Neither the "sustainable communities strategy" nor the "alternative planning strategy" supersede a city's or county's general plan or other planning policies or authorities. Nor must a local agency's planning policies be consistent with either strategy. Rather, these strategies provide a basis for determining eligibility of residential development or transportation projects for SB 375's CEQA streamlining incentives, if cities or counties choose to offer them. These

include transit priority projects and residential/mixed-use projects. (See Pub. Resources Code §§ 21155, 21155.1, 21155.2, 21159.28.)

Question 2f. Would we be required to implement the region’s SCS?

Local governments are not forced to make land use decisions dictated by the regional agencies that prepare the SCS (ABAG and the Metropolitan Transportation Commission for the Bay Area). Furthermore, regional agencies have no authority to actually implement the SCS; only local governments can do so, meaning that the City would not be legally required to amend its general plan to provide for any housing identified in the SCS.

Question 2g. Legal challenges to pre-1914 Water Rights

A water right is a legal entitlement authorizing water to be diverted from a specified source for public or private use. Water rights are property rights, but their holders do not own the water itself. Rather, they possess the right to use it. The exercise of some water rights requires a permit or license from the State Water Resources Control Board (SWRCB), whose objective is to ensure that the State’s waters are put to the best possible use, and that the public interest is served.

Water rights are constrained by the rule of reasonableness, which has been preserved in the state Constitution since 1928. The California Constitution states, in relevant part: “The right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water...” (Cal. Const., Art. X, § 2.)

Beneficial uses include the use of water for farming, industrial activities, municipal and domestic supply, and recreation, as well as for the support and preservation of ecosystems, habitats, fish and other wildlife species. California courts have never defined precisely what constitutes an “unreasonable” use of water. What they have said, is that the reasonableness of water use is highly situational and fact-driven, i.e., “[w]hat may be a reasonable beneficial use, where water is present in excess of all needs, would not be a reasonable beneficial use in an area of great scarcity and great need. What is a beneficial use at one time may, because of changed conditions, become a waste of water at a later time.” (*Tulare Dist. v. Lindsay-Strathmore Dist.* (1935) 3 Cal.2d 489, 567.)

Up to the early 1900’s appropriators – most of them miners and nonriparian farmers – simply took control of and used what water they wanted. Sometimes notice was filed with the

county recorder, but no formal permission was required from any administrative or judicial body. The Water Commission Act of 1914 established today's permit process. The Act created the agency that later evolved into the SWRCB and granted it the authority to administer permits and licenses for California's surface water. The Act was the predecessor to today's Water Code provisions governing appropriation.

The California Supreme Court has established that riparian rights holders have priority for diverting water over most if not all appropriative water rights holders.¹ Appropriators may only divert water that is "surplus" to that diverted by riparian right holders from any given stream. Further, there is a seniority system in place for appropriative water rights holders. Those with rights resulting from pre-1914 filing claims have priority over all other appropriative rights holders for diverting and using water. Until recently, their rights have not been subject to review or action by the SWRCB.²

Water is allocated in California based on how long ago it was claimed, with the earliest rights going back to the Gold Rush. After passage of the 1914 Water Commission Act, the state began issuing permits for water claims. Claims that pre-date passage of the Act, commonly referred to as "pre-1914 rights," do not have permits from the state.

Pre-1914 rights do not require a water right permit unless the use of water has increased since 1914. If there has been an increase in use since 1914, a water right permit is required for the new amount, unless there is proof that a plan was in place before 1914 to use the additional water after 1914. Pre-1914 water rights can only be confirmed by issuance of a court decree that the right exists.

¹ California maintains a "dual system" of water rights, which distinguishes between the rights of "riparian" users, those who possess water rights by virtue of owning the land by or through which flowing water passes, and "appropriators," those who hold the right to divert such water for use on noncontiguous lands. Pre-1914 water rights are "appropriative rights," which means that the water is taken for use on non-riparian land, e.g., land that does not touch a lake, river, stream or creek. Riparian users and pre-1914 appropriators need neither a permit nor other governmental authorization to exercise their water rights. Appropriative rights are junior in priority to riparian rights.

² On February 4, 2015, the SWRCB ordered all persons claiming senior water rights in the Sacramento-San Joaquin Delta watershed to provide detailed information on the water rights they claim and diversions associated with those rights. (See ORDER WR 2015-0002-DWR: ORDER FOR ADDITIONAL INFORMATION IN THE MATTER OF DIVERSION OF WATER FROM THE SACRAMENTO AND SAN JOAQUIN RIVER WATERSHEDS, available at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/2015sacsjinfoorder.pdf.)

While the SWRCB does not have permitting authority over pre-1914 water rights, it does have the authority to prevent illegal diversions and to prevent waste or unreasonable use of water, regardless of the basis under which the right is held. (*California Farm Bureau Federation v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421, 429.) Consistent with this authority, the SWRCB may issue a cease and desist order for an illegal diversion of water even when the diverter claims pre-1914 water rights. To do so, courts have held, the SWRCB necessarily must have jurisdiction to determine whether a claim under a pre-1914 right of appropriation is valid. (*Young v. State Water Resources Control Board* (2013) 219 Cal.App.4th 397; see also *Millview County Water District v. State Water Resources Control Bd.* (2014) 229 Cal.App.4th 879, 893 [interpreting Water Code § 1831 and holding that “[a]ny other rule would permit a diverter to place his or her diversion beyond Board regulation merely by claiming to possess, as opposed to validly possessing, a pre-1914 water right.”])

OID was formed in 1909, and is a senior water right holder on the Stanislaus River. OID co-owns (with the South San Joaquin Irrigation District) pre-1914 water rights to divert up to 257,074 acre-feet per year from the Stanislaus River at Goodwin Dam. (Draft EIR at p. 4.O-6.) These pre-1914 water rights were adjudicated and confirmed by court judgment in 1929.³

Senior water rights have largely been considered untouchable in California, and for years have represented a guarantee of unlimited water in California’s “first-come, first-served” water distribution system. They’ve only been curtailed once before (during the 1976-77 drought) when the state ordered senior water rights holders to stop pumping from many rivers and streams. While it is clear under California’s priority system that the most recent, or “junior,” water right holder must be the first to discontinue use, pre-1914 water rights are generally considered protected. There has been no definitive decision from the courts as to whether the SWRCB has the authority to curtail pre-1914 water rights, even in times of severe drought, when available supply may not be sufficient to service those rights.

Signaling that the drought may have changed the conventional rules, after ordering senior water rights holders to provide detailed information about their claimed rights, in June 2015 the SWRCB issued curtailment notices to pre-1914 water right holders within various state watersheds, including the Sacramento-San Joaquin River watershed and Delta, indicating that

³ In 1917, OID and SSJID petitioned the State Water Commission (the predecessor to the SWRCB) for a determination of the rights of the various parties claiming appropriative rights to use the waters of the Stanislaus River. The water commission entered its order on September 21, 1922, and the order was confirmed by the San Joaquin Superior Court on November 14, 1929.

there was insufficient water in the system to service their claims of right.⁴ In response to the curtailment notice, OID, SSJID and the San Joaquin Tributaries Authority⁵ filed a lawsuit against the SWRCB in Stanislaus County Superior Court, alleging the state had denied the districts' due process rights by failing to officially notify them of its intention to curtail water rights and affording them an opportunity to speak at a hearing. The districts also claimed that the state lacked jurisdiction to curtail their pre-1914 water rights. The case was placed on hold in August 2015.

Also in June 2015, in response to an action filed by various irrigation districts and water agencies to stay enforcement of SWRCB's curtailment notices, the Sacramento County Superior Court directed the SWRCB to halt its enforcement of these notices on similar grounds to those asserted by OID and the other petitioners; specifically, that they did not afford water users adequate due process.⁶ The court affirmed the SWRCB's enforcement powers,⁷ but warned that it could not use the prior curtailment notices as a basis for such enforcement actions. In response, the SWRCB issued a revised notice clarifying the previously issued curtailment notices, stating that the "curtailment" portions of the notices had been rescinded; specifically,

⁴ See NOTICE OF UNAVAILABILITY OF WATER AND NEED FOR IMMEDIATE CURTAILMENT FOR THOSE DIVERTING WATER IN THE SACRAMENTO-SAN JOAQUIN WATERSHEDS AND DELTA WITH A PRE-1914 APPROPRIATIVE CLAIM COMMENCING DURING OR AFTER 1903, available at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/pre14curtailmentjun2015.pdf

⁵ The Tributaries Authority consists of the Oakdale, South San Joaquin, Merced, Modesto, and Turlock irrigation districts, as well as the City and County of San Francisco, which owns and operates the Hetch Hetchy Reservoir and has water rights on the Tuolumne.

⁶ Order After Hearing on Ex Parte Application for Temporary Stay, available at: http://www.waterboards.ca.gov/press_room/press_releases/2015/west_side_irr%20v_cswrc_b.pdf. The court found that the notices were not solely informational but were coercive in nature, because their language resulted in a command by the government to stop water diverting activities.

⁷ Unauthorized diversion and use are subject to penalties of up to \$1,000 per day of violation and \$2,500 for each acre-foot diverted or used in excess of water available to the water right priority must be assessed. Unauthorized diversion and use includes diversion when there is not available water under the priority of right. (See Question and Answers on Notices of Unavailability of Water Issued In the Sacramento River Watershed, San Joaquin River Watershed and Delta and Scott River, available at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/water_availability/july15_factsheet.pdf.)

any language in the notice that could have been construed as an order requiring the water right holder to immediately stop diverting water.⁸

The lawsuits filed as a result of the SWRCB's 2015 curtailment notices have not proceeded, possibly because the notices were quickly rescinded and revised by the SWRCB, and the pre-1914 water rights at issue were not ultimately curtailed. This issue may not re-emerge in the immediate future, i.e., in the next year or so, given the heavy rains recently experienced in California and the current status of the Sierra snowpack. Ultimately, however, given California's propensity for drought, future litigation is likely to arise on this issue, and the question of whether senior water rights may be limited by the SWRCB in times of water scarcity may be answered.

Question 3i. Respond to public comment assertion that EIR water supply analysis is inadequate based on *Vineyard* case.

CEQA requires an EIR to identify and analyze the impacts of supplying water to a project. In *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, the leading case setting forth CEQA's requirements for assessment of impacts on water supplies, the California Supreme Court identified a series of general principles for an adequate analysis of water supply in an EIR.

Vineyard Area Citizens involved the County of Sacramento's approval of a community plan for a large mixed-use development project as well as a specific plan for the first portion of that development. A citizens group sued to overturn the approval based in part on the claim that the EIR prepared for the community and specific plans had failed to adequately identify and evaluate future water sources for the development. The Court agreed, finding that while the EIR had adequately identified analyzed near-term water supplies, it failed to identify long-term water supplies or to adequately analyze the impacts of providing long-term supplies.

In its decision, the Court articulated the following principles for an adequate analysis of future water supplies:

⁸ PARTIAL RESCISSION OF APRIL, MAY AND JUNE 2015 CURTAILMENT NOTICES AND CLARIFICATION OF STATE WATER BOARD POSITION RE: NOTICES OF UNAVAILABILITY OF WATER FOR THOSE DIVERTING WATER IN THE SACRAMENTO RIVER WATERSHED, SAN JOAQUIN RIVER WATERSHED AND DELTA, AND SCOTT RIVER, available at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/water_availability/july15_clarif_ltr.pdf

1. CEQA's informational purposes are not satisfied by an EIR that simply ignores or assumes a solution to the problem of supplying water to a proposed land use project. Decision makers must be presented with sufficient facts to evaluate the pros and cons of supplying the amount of water that the project will need.
2. An adequate impact analysis for a large project, to be built and occupied over a number of years, cannot be limited to the water supply for the first stage or the first few years. While an agency may defer detailed analysis of later phases of a project until those phases are up for approval, it may not defer identification and analysis of future water sources. An EIR evaluating a planned land use project must assume that all phases of the project will eventually be built and will need water, and must analyze, to the extent reasonably possible, the impacts of providing that water.
3. The future water supplies identified and analyzed in an EIR must bear a likelihood of actually proving available. Speculative sources and unrealistic allocations are insufficient bases for decision making under CEQA. An EIR for a land use project must address the impacts of likely future water sources, and the EIR's discussion must include a reasonable analysis of the circumstances affecting the likelihood of the water's availability.
4. Where it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental impacts of those sources. It is not sufficient to provide that future development will not proceed if the anticipated water supply fails to materialize. But, when an EIR provides analysis of the water sources that the project is likely to use (and acknowledges the remaining uncertainty), it may also impose a measure for curtailing development if the intended sources fail to materialize.
5. The burden of identifying likely water sources for a project varies with the stage of project approval involved. The necessary degree of confidence for approval of a conceptual plan is much lower than for the issuance of building permits.
6. The ultimate question under CEQA is not whether an EIR establishes a likely source of water or whether sufficient water supplies are available, but whether it adequately addresses the reasonably foreseeable impacts of supplying water to the project.

(*Vineyard Area Citizens* at pp. 430-434.)

Significantly, the Court stressed that an EIR for a land use plan *does not* need to demonstrate an assured water supply through signed, enforceable agreements with a provider and already built or approved treatment and delivery facilities. The Court acknowledged that requiring this level of certainty for a long-term large-scale development when it was initially approved “would likely be unworkable, as it would require water planning to far outpace land use planning.” (*Id.* at 432.)

In its decision, the Court also examined two state statutes addressing the coordination of land use and water planning, SB 610 and SB 221, and concluded that neither statute conflicted with its conclusion that CEQA does not require assured water supply at an early phase of planning for large development projects. The Court noted that SB 610 (Water Code §§ 10910-10915), which requires projections about water availability to be developed before certain large development projects may be approved (and preparation of a water supply assessment to be included in the EIR for those projects), does not require assurances for future supplies needed to serve the project. (*Id.* at 433.) Similarly, while SB 221 (Government Code Section 66473.7) requires a written verification that adequate water supplies will be available for the project, this verification is not required until approval of a large residential subdivision (more than 500 dwelling units). (*Id.*)

Other courts have relied on the principles articulated in *Vineyard Area Citizens* when evaluating an EIR’s analysis of water supply for a land use plan. (See, e.g., *Watsonville Pilots Association v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1092 [it is not necessary for an EIR on a general plan to establish a likely source of water because general plan EIRs are conceptual]; *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 23 [EIR not required to determine the total effect on water demand that might result from implementation of the zoning ordinance].)

The water supply analysis in the Baylands EIR⁹ meets the requirements set forth in the *Vineyard Area Citizens* case, which identifies specific requirements for an adequate analysis of water supply issues in an EIR. As required by CEQA, the EIR analyzes the physical impacts of supplying water to proposed Baylands development (the DSP, DSP-V, CPP and CPP-V scenarios),

⁹ Issues related to water supply are discussed in detail in the Project Description chapter (Draft EIR Section 3.10), in the Utilities, Service Systems, and Water Supply chapter (Draft EIR Section 4.0), and in Master Response 29 (Final EIR Section 2.4). The Draft EIR also includes a Water Supply Assessment prepared pursuant to the requirements of SB 610 (Cal Water Code §§ 10910-10915) in Appendix L.

including a discussion of existing water supply and demand in the City of Brisbane and identification and analysis of the additional water supply that would be needed for development of the Baylands.

As discussed in detail in the EIR, water supply for the proposed development of the Baylands would come from the Oakdale Irrigation District (OID). To this end, the City negotiated a term sheet for a proposed water transfer agreement with OID which would guarantee the transfer of up to 2,400 acre feet per year (AFY), including up to 2,000 AFY for development of the Baylands, depending on the development scenario and/or other land uses ultimately approved by the City, and 400 AFY for the buildout of the City's existing General Plan. The EIR describes the general pathway of the water transfer between OID and the City and analyzes the physical impacts of transferring the water between the two agencies.

Consistent with the requirements set forth in the *Vineyard Area Citizens* case, the EIR identifies and analyzes the total water supply – 2,000 AFY – that would be needed for full buildout of proposed Baylands development.¹⁰ Because the EIR is evaluating a planning-level decision – a proposed General Plan amendment and Specific Plan – it does not (and cannot) undertake a detailed analysis of the operational and engineering details of the water transfer because these details are entirely dependent on the amount of water that would be needed, which, in turn, is entirely dependent on the land uses, type and amount of development the City ultimately approves. At such time as the City Council approves the types and intensities of development it believes to be appropriate for the Baylands and certifies the EIR, the next step in the planning process for Baylands water supply would be to work with OID, Modesto Irrigation District (MID), and the San Francisco Public Utilities Commission (SFPUC) to develop a detailed operational plan for transfer of water to Brisbane. This plan would inform the City's negotiation of a water transfer agreement with OID and "wheeling agreements" with MID and the SFPUC, which would be subject to environmental review under CEQA. The wheeling agreements would be developed in accordance with provisions of the California Water Code, which requires a public agency to allow others to use its available conveyance capacity to implement a water transfer in exchange for fair compensation, but does not require that agency to change or adversely affect its operations or customer deliveries.¹¹

¹⁰ As noted previously, the EIR evaluates the transfer of 2,400 AFY, which includes 400 AFY for buildout of the City's General Plan. Because the 400 AFY would not be for Baylands development it is not discussed further.

¹¹ Water Code Section 1810 provides "neither the State, nor any regional or local public agency may deny a bona fide transferor of water the use of a water conveyance facility which has

As the Council is aware, MID provided comments on the Draft EIR in which it asserted that the City had failed to provide a project-level review of the water transfer agreement, i.e., a detailed analysis of the direct and indirect impacts of transferring the water, including analysis of the manner of conveyance, operations, etc. It also asserted that the City had failed to work with MID to develop specific details of the water transfer agreement.¹² The City addressed MID's comments in the Final EIR. (See Section 2.7.2.) As discussed above, given the planning level nature of the decision pending before the City, the details requested by MID are simply not available at this stage in the approval process because the water transfer agreement has not yet been negotiated. At such time as the City Council approves a plan for Baylands development, the City would enter into discussions with OID, MID and the SFPUC regarding the amount of water needed, and the manner in which the water would be delivered and conveyed. It is at that point, after negotiation of transfer and conveyance agreements, that the City would undertake project-level CEQA analysis.¹³ Nothing in the *Vineyard* case requires a different approach. In fact, the California Supreme Court specifically acknowledged in *Vineyard* that an EIR for a land use plan is not required to demonstrate the existence of an assured water supply through signed, enforceable agreements with a provider and already built or approved treatment and delivery facilities. "Requiring certainty when a long-term, large-scale development project is initially approved would likely be unworkable, as it would require water planning to far outpace land use planning." (*Vineyard Area Citizens* at p. 432.) The Court went on to emphasize that "the burden of identifying likely water sources for a project varies with

unused capacity, for the period of time for which that capacity is available, if fair compensation is paid for that use."

¹² Counsel for MID reiterated these comments at the City Council's February 24, 2017 public hearing on Baylands water supply, at which time responses were provided by City staff and outside legal counsel. MID has not expressed its opposition to a future water supply agreement; it has simply raised issues with the analysis provided to date. As discussed at the 2/24 hearing and in this memo, given its comments about project-level analysis, it would appear that MID may have misunderstood the planning-level nature of the decisions currently before the City Council.

¹³ SFPUC has not indicated that it is opposed to a future water supply agreement between the City and OID. Instead, SFPUC's comments on the Draft EIR indicate that prior to approving a water supply agreement a project-level EIR should be prepared to fully evaluate the impacts of providing water supply to the Baylands, including evaluation of any new facilities or infrastructure. (See Final EIR at pp. 5-77.) SFPUC's comments go on to detail the specific analyses that it would like to see in a future EIR evaluating the water supply agreement. As discussed above, because the EIR evaluating Baylands development is a program EIR, additional CEQA review and analysis would be undertaken prior to approval of any water supply agreement by the City, and any related agreements by other parties, including MID and SFPUC. This analysis would include evaluation of any proposed new facilities and infrastructure.

the stage of project approval involved; the necessary degree of confidence involved for approval of a conceptual plan is much lower than for issuance of building permits.” (*Id.* at p. 434.)

Consistent with *Vineyard*, the EIR identifies a reasonably likely source of water that would be sufficient to supply full buildout of the Baylands, and analyzes, at a planning level, the physical impacts of transferring the water from OID to Brisbane, including impacts to the MID and SFPUC systems. As required by SB 610, should the City Council wish to approve UPC’s proposed specific plan, the EIR includes a water supply assessment which determines that water supplies are projected to be adequate. As noted in the February 24, 2017 City Council staff report, while policies could be incorporated into the General Plan to require that an assured water source be identified and necessary agreements and environmental analysis completed prior to the City’s approval of a specific plan or any site-specific development,¹⁴ there is no legal requirement for such assurances at this point in the planning process.

Question 3j. CEQA requirements require specific water allocation and delivery agreements at the concept phase to guarantee that there is enough water for the specific plan - so decision makers have guarantees before they agree to make changes in things such as zoning, general plan etc. This is spelled out in CEQA Guidelines. Based upon Modesto's response, our FEIR is inadequate since there is no guarantee that the paper water can be delivered. FEIRs that are incomplete have been overturned in court, including the CA Supreme Court. What is the staff and City Council response to this issue that was brought before you?

See previous response discussing CEQA’s requirements for identification of water supply at the conceptual planning level, the consistency of the Baylands EIR’s analysis with these requirements, and MID’s comments on the Draft EIR and proposed water supply agreement.

Question 3k. Why does the EIR water supply assessment pretend that an OID exchange for Hetch Hetchy water is reliable when SF and Modesto have already said No to the concept? So how reliable is the OID exchange when both SFPUC and Modesto have already said no?

As discussed above, neither agency has said no to the proposed water supply agreement. In its comments on the Draft EIR, the SFPUC commented that project-level CEQA analysis should be conducted prior to approval of a water supply agreement, and

¹⁴ The *Vineyard* opinion stressed that it would *not* be sufficient to provide that future development will not proceed if the anticipated water source fails to materialize. However, as long as the EIR provides analysis of the water sources that the project is likely to use, it may also impose a measure for curtailing development if the intended sources fail to materialize. (*Vineyard Area Citizens* at p. 432.)

recommended various analyses to be included in a future CEQA document. This recommendation is consistent with the Baylands EIR, which notes that additional CEQA review would be required prior to approval of a water supply agreement for the Baylands. (Final EIR, p. 2.4-79, 80.) MID has also raised issues with the EIR's analysis, but it would appear that its comments are based on a misunderstanding regarding the type of CEQA analysis prepared to date. Specifically, MID seems to believe that the Baylands EIR is intended to provide a project-level analysis of the water transfer agreement, when in fact it is a program level analysis. Until the City determines what land uses it wishes to approve for the Baylands, it is not possible to determine how much water will be needed to support those uses. At such time as the City approves a land use plan for the Baylands, a water supply agreement would be negotiated that would provide sufficient water for that plan, and accompanying project-level CEQA review would be performed. In the absence of specific approved land uses, it is not possible to know how much water would be needed, or the engineering and operational details of how the water would be conveyed.

Question 3l. Why are we not looking at the entire record? For example:

- **It was already explained to Brisbane in 2009 that, there would be no water for the Baylands.**
- **And, that SFPUC has sole discretion about water deliveries to Brisbane and Modesto about exchanging Hetch Hetchy water.**
- **Furthermore, proposed future exchanges for Hetch Hetchy water are superseded by the 2009 CCSF Water Supply Agreement.**

As discussed in other responses, water for Baylands development would be provided by OID via a proposed water supply agreement. SFPUC is a key component of the proposed agreement, as it would be credited with the OID water by MID, at which point it would move Tuolumne River water into its system and convey that water to Brisbane. As discussed at length in the EIR, Brisbane would need to enter in a wheeling/conveyance agreement with the SFPUC. SFPUC's comments on the Draft EIR were limited to recommendations about the types of analyses to be included in future project-level CEQA review of the water supply agreement.

Question 3m. How does the City prepared WSA (water supply assessment) meet CEQA requirements when there is no reliable water source?

Regarding the water supply assessment ("WSA"), by statute (see Water Code §§ 10910-10915), EIRs for certain large projects must include an assessment of water supply information. Under Public Resources Code §21151.9, when a city or county determines that a "project," as defined

by Water Code § 10912,¹⁵ is subject to CEQA, the lead agency must request that the public water system identified as the water provider for the project (the City of Brisbane, in the case of the Baylands), prepare a water supply assessment. (CEQA Guidelines § 15155(b)(1).) The water supply assessment must discuss whether projected water supplies will meet projected water demands for the project and other planned growth, and describe its plans for acquiring additional water supplies if it concludes that its existing water supplies are not sufficient to serve the project. (Water Code §§ 10910(b), 10911(a).) The water supply assessment must be included in the EIR prepared for the project. (Water Code § 10911(b).)

Consistent with CEQA and Water Code requirements, the WSA prepared for the Baylands (Draft EIR, Appendix L), presents information on water demand and water supply availability for the four concept plans and the specific plan prepared for the DSP and DSP-V scenarios, including information on plans to acquire additional water supplies. Regarding requirements for water supply reliability at various stages of development, see discussion of the *Vineyard Area Citizens* case, above.

Question 3n. Why does the EIR say that the proposed OID agreement does not require the construction of any new facilities when SFPUC says it does?

As discussed above, the SFPUC's comments on the Draft EIR recommended that various analyses be included in future project-level CEQA review of the water supply agreement. This includes analysis of potential construction of new facilities. At this time, the proposed water transfer agreement does not contemplate the construction of new facilities; only existing diversion rights and existing facilities would be used. (Final EIR at p. 2.4-78.) However, to the

¹⁵ Water Code § 10912 defines a "project" as follows:

- A proposed residential development of more than 500 dwelling units;
- A proposed shopping center or business establishment employing more than 1000 persons or having more than 500,000 square feet of floor space;
- A proposed commercial office building employing more than 1000 persons or having more than 250,000 square feet of floor space;
- A proposed hotel or motel, or both, having more than 500 rooms;
- A proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area;
- A mixed-use project that includes one or more of the projects specified in this subdivision; or
- A project that would demand an amount of water equivalent to or greater than the amount of water required by a project of 500 dwelling units.

extent that new facilities were needed, their construction and operation would be evaluated in a project-level CEQA document.

Question 3o. Additional detail regarding water transfer agreement and role of MID.

While the amount of water needed will ultimately depend on the land uses approved by the City for the Baylands, the proposed water supply agreement contemplates the delivery of up to 2,400 AFY of water (2,000 for the Baylands, if necessary, and 400 for build out of the City's general plan). As described in the EIR (see Draft EIR, p. 4.O-33 and Final EIR, Master Response 29, starting at p. 2.4-77), the proposed water transfer would be implemented by OID physically delivering up to 2,400 AFY of water into the MID system, via existing facilities (i.e., released from OID's Claribel canal system generally located near Claribel Road south of the City of Riverbank into MID's South Main Canal). MID would make use of the 2,400 AFY and, in turn, would hold an equivalent amount in storage in New Don Pedro Reservoir, located downstream from the SFPUC's Hetch Hetchy Reservoir on the Tuolumne River and northeast La Grange. By a similar exchange, MID would forego delivery of 2,400 AFY from the SFPUC's Hetch Hetchy system. Thus, the SFPUC would reduce its water bypass or releases from Hetch Hetchy Reservoir to the Tuolumne River by up to 2,400 AFY. The SFPUC has a water bank account in New Don Pedro Reservoir, and MID would credit the SFPUC with the annual amount provided by OID to the City, up to the maximum 2,400 AFY. The SFPUC would, in turn, deliver up to 2,400 AFY from its regional water supply system to Brisbane using existing water supply infrastructure and operational plans. The City is responsible for establishing the necessary exchange and wheeling agreements to accomplish the transfer of water from OID to MID and from MID to the SFPUC.

If the City Council approves land uses for the Baylands and certifies the program-level EIR, then the next step in the planning process for Baylands water supply would be to work with OID, MID, and the SFPUC to develop a detailed water transfer operational plan based on detailed modeling of conveyance through the OID, MID, and SFPUC systems, recognizing the conveyance capacity of each agency to move the transfer water from OID to Brisbane. This plan would provide the detailed information necessary to establish specific terms and requirements for transfer operations and responsibilities for MID and SFPUC participation in the water transfer, thereby facilitating preparation of project-level environmental evaluation and documentation for the proposed water transfer.

It is expected that neither MID nor the SFPUC would allow conveyance of the OID water transfer to Brisbane to result in adverse effects on their operations or customers and that they would develop agreement terms with Brisbane for participation in the water transfer that protect their respective operations and customer deliveries. In the interest of supporting water

transfers to help meet water supply needs within the state, state law provides that public agencies with unused water conveyance capacity shall make that capacity available for others to use to transfer water through their systems; however, the law does not require that agencies change or affect their operations or customer service and does allow them to charge an appropriate fee for use of their system.

Question 6c. Can we provide a simple statement to the public regarding our relationship with MID, and their role in the process?

As described in other responses, the proposed water supply agreement contemplates the following regarding MID: upon delivery of water from OID, MID would credit the transfer water amount to SFPUC in the Don Pedro Reservoir, which would allow SFPUC to retain an amount equivalent to the water transfer in the Hetch Hetchy Reservoir. (See Final EIR at p. 2.4-79.) In accordance with the term sheet between OID and Brisbane, Brisbane would be responsible for securing a transfer agreement with MID. The transfer agreement, along with the water supply agreement and other agreements necessary to effectuate the transfer, would be evaluated in a project level CEQA document, upon which all parties would have the opportunity to review and comment.

Question 2j. Tools available to City to compel property owner to stabilize/ protect Roundhouse from further deterioration.

The City's primary tools to compel UPC to take action to stabilize or protect the Roundhouse would be in the form of EIR mitigation measures, Project conditions of approval, Specific Plan policies, and/or negotiated terms in a development agreement. There are no existing maintenance requirements in either federal or state law that would apply to the Roundhouse, and the City does not have specific requirements in its Municipal Code to this effect.

The Municipal Code does contain procedures for nuisance abatement, though these would not necessarily accomplish the objective of protecting the Roundhouse. "Public nuisance" is defined in Section 8.36.010 and includes buildings or structures in a dilapidated or dangerous condition or in a state of disrepair. If the City determined that a public nuisance existed with respect to the Roundhouse, it would be able commence abatement proceedings. Typically, however, "abatement" consists of actions to eliminate the imminent threat of serious injury or harm posed by the nuisance. These types of actions would not be likely to include actions to stabilize or protect the building, but rather would be focused on abating harm to the public by, for example, prohibiting access.

Question 2bb. What is the liability for the City of Brisbane for future problems or effects of earthquakes or sea level rise on the development?

Concerning seismic hazards, state regulations (California Code of Regulations, Title 14, Section 3724) set forth specific criteria for projects within seismic hazard zones and are to be applied by local agencies when approving such projects. For example, a site specific project shall be approved only when the nature and severity of the seismic hazards of the site have been evaluated in a geotechnical report and appropriate mitigation measures have been adopted. The geotechnical report must be prepared by a registered civil engineer or certified engineering geologist who has competence in the field of seismic hazard evaluation and mitigation. The report must have site specific evaluations of seismic hazards affecting the project and shall identify portions of the project site containing seismic hazards. The report shall also identify any known off site seismic hazards that could adversely affect the site in the case of an earthquake. Prior to approving a site specific project, the City shall independently (through a third party reviewer) review the geotechnical report to determine the adequacy of the hazard evaluation and proposed mitigations to determine that the requirements of the regulations as set forth above have been satisfied. This independent review shall likewise be conducted by a certified engineering geologist or registered civil engineer who has competency in the field of seismic evaluation and mitigation.

Concerning sea level rise, the City operates its floodplain management as set forth in requirements imposed by the Federal Management Agency, codified in Chapter 15.56 of the Brisbane Municipal Code. That Chapter requires a floodplain administrator to review proposed developments in the floodplain to ensure they do not increase the water elevations above the "base flood" elevation and to review new construction of all structures to ensure the elevation of the lowest floor is elevated above the base flood elevation. In addition, the City's storm drain master plan has design criteria to evaluate the adequacy of the existing storm drain system and to develop recommended capital improvements for the system to function properly in the future. These design criteria include calculating the 100 year peak flow rates to limit the potential for discharges to damage private property and providing street and pipe capacity to convey the calculated 10 year peak discharge.

As a general principle, a public employee is immune, i.e., not liable, for an injury resulting from an act or omission that was the result of the exercise of discretion vested in the employee. Government Code, section 820.2. A public entity is not liable when the employee is immune from liability. Government Code, section 815.2 (b). The discretionary immunity established by Section 820.2 extends to any public employee who, in the course of performing his/her official

duties, exercises discretionary authority, i.e., decisions that require judgment based on an analysis of competing risks and advantages.

Accordingly, in evaluating a site specific project for potential earthquake and/or sea level rise hazards, the City, either through its own employees or through contracts with professionals who have the requisite expertise, will exercise discretion in determining what mitigations are appropriate to address those hazards. Under such circumstances, the immunities under the Government Code would apply and the City will not be liable should there be damage to property as a result of an earthquake or sea level rise.

Responses to Baylands Questions- ATTACHMENT 4B
6/19/17

Question 2i. What is required elevation of new water tank?

The elevation required for the bottom of the new tank is 260-270 MSL. For reference, that elevation is found adjacent to Guadalupe Canyon Parkway, halfway between Bayshore Boulevard and Carter Street.

Question 2k. Identify heavy metals associated with urban runoff.

Water running off impervious surfaces in urban areas tends to pick up gasoline, motor oils, heavy metals, trash, and other pollutants from roadways and parking lots, as well as fertilizers and pesticides from lawns. Roads and parking lots are major sources of the heavy metals, which including nickel, copper, zinc, cadmium, and lead. Roof runoff also contributes zinc (from galvanized gutters).

Question 2l. How do the commute patterns of Brisbane residents compare with Baylands projections?

Characteristics of Brisbane Residents' Home to Work Commute

The 2015 American Community Survey indicates the following travel patterns for existing Brisbane residents.

Number of workers age 16+ living in Brisbane:	2,382
Means of Travel to Work	
Drove alone:	61.8%
Carpooled:	13.4%
Public transit:	11.5%
Walk to work:	5.5%
Bicycle:	0.9%
Taxi, motorcycle:	2.3%
Work at home:	4.7%
Place of Work	
Brisbane:	16.4%
San Mateo County not Brisbane	26.2%
Outside San Mateo County:	57.4%

Source: 2011-2015 American Community Survey

Home to Work Commute, Brisbane Baylands EIR

Based on the mode share data in the 2010 Census, American Community Survey, and *Travel Characteristics of Transit Oriented Development (TOD) in California*¹ mode splits for work trips and non-work trips generated by Fehr & Peers for the proposed development scenarios analyzed in the Baylands EIR.

¹ This report by Hollie Lund, Robert Cervero, and Richard Wilson provides a measurement of travel behavior in California TODs. Surveys were conducted around stations for a variety of transit types. Of particular interest to this analysis is the survey data of residents living near three Caltrain stations: Broadway, Mountain View, and Palo Alto.

Means of Travel to Work, Brisbane Baylands

Car, truck, van:	80.0%
Public transit:	15.0%
Walk, Bicycle, Other	4.5%