

# *City of Brisbane Planning Commission*

**TO:** Planning Commission For the Meeting of January 28, 2016  
**FROM:** John Swiecki, Community Development Director  
**SUBJECT:** Brisbane Baylands Deliberation Meeting #1 - Basic Principles for Development of the Baylands

## **Background:**

### ***Requested Information***

A summary of information requested by Planning Commission members during public hearings was presented to the Commission at their January 14 meeting, and noted that the following information would be provided to the Commission by staff at its January 28 meeting:

- Proposed design of the Geneva Avenue extension and Candlestick interchange;
- Status of SFPUC's proposed water deal with OID;
- Relevance/importance of the Clean Energy and Pollution Reduction Act of 2015; and
- Identification of areas within the Baylands, if any, that meet state guidelines for location of a school.

Additionally the Planning Commission requested the applicant to provide:

- Side-by-side graphic(s) depicting existing aerial of site and proposed land use plan.
- Site Remediation
  - Examples of remediation projects that have performed well over a 20- to 25-year period and have withstood a major earthquake.
  - Procedures for addressing potential damage to the landfill cap following an earthquake or other catastrophe, including discussion of how the the landfill cap could be repaired after development occurs, should such repairs be necessary.
- A response as to who would be financially liable for addressing any problems that time occur following remediation and site development (e.g., death, injury, illness, property or environmental damage) related to site contamination, remediation, or landfill closure.
- A response as to who would be responsible for actually making any needed repairs following site development, remediation, and landfill closure?

Information provided by the applicant is attached for the Commission's use.

Also attached is a memo from Special Counsel addressing relevant CEQA requirements.

### ***Deliberation Process***

As discussed in the September 2, 2014 *Conceptual Brisbane Baylands EIR and Planning Review Process* memo to the City Council, ultimately, one of several potential planning recommendations could result from the Planning Commission's deliberations:

- **Recommend Approval of Applicant Proposal (Requested General Plan Amendments and Specific Plan)** This recommendation would encompass the applicant's proposal "as-is" or with major or minor revisions. Such a recommendation would require recommending certification of the EIR.
- **Recommend Denial of UPC's proposed Specific Plan and General Plan Amendment (GPA), and recommend no further action.** This recommendation would propose no changes to the existing land use designations for the Baylands, nor any updated General Plan policies. No other scenario or alternative would be recommended for approval, 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 specific plan. Such a recommendation would not require recommending certification of the EIR.
- **Recommend Approval of Updated General Plan Land Use Program/Policies.** This would involve recommendations to update the City's General Plan policies, including a land use map incorporating revised or more detailed City policy for future development of the Baylands (Concept Plan) than is currently contained in the General Plan, but would not include a recommendation of approval of a Specific Plan. The updated policies incorporated into the General Plan should identify the appropriate mix and intensity of Baylands development and provide clear direction for future submittal of a specific plan. This recommendation could be based on any of the plans/variants/alternatives analyzed in the DEIR, or a combination of elements of multiple alternatives/variants incorporated into a single concept. For the City Council to adopt an updated General Plan land use map and/or policies the EIR would ultimately need to be certified.

At its January 14 meeting, the Planning Commission accepted a suggested conceptual process for its Baylands deliberations to facilitate the Commission making recommendations in regard to: (a) the appropriate mix and intensity of land uses (Concept Plan) and General Plan development policies for the Baylands, (b) the applicant's proposed Specific Plan, and (c) certification of the Brisbane Baylands EIR, as applicable, under CEQA. The Commission's deliberations will move from the general to the specific, focusing first on the basic principles for future development within the Baylands; next to discussion of what the Commission believes to be the appropriate mix, distribution, and intensity of land use for the Baylands; and then other relevant policy issues. Once these basic policy parameters are established, the Commission would undertake a detailed review of the adequacy of the Baylands Final EIR in regard to the extent to which the EIR addresses the Commission's land use and policy preferences.

At its January 14 meeting the Planning Commission appointed Commissioners Anderson and Parker to a subcommittee to further discuss this proposed process with staff. A subcommittee meeting was held on January 20. While no changes to the overall deliberation process previously

outlined are recommended, it was agreed that discussions of relevant planning and environmental policy issues would be organized by General Plan element.

Thus, the deliberation process for the Planning Commission to frame its land use, policy, and Final EIR recommendations will involve addressing the following issues.

- 1. Basic principles for development of the Baylands**
  - a. Site values/features
  - b. Planning and environmental goals
  - c. Sustainability
- 2. Appropriate mix and intensity of development within the Baylands**
  - a. Land use types (e.g., residential; retail and office; research and development, warehousing, and industrial uses; renewable energy generation; potential for Recology expansion)
  - b. Appropriate distribution of land uses
  - c. Appropriate intensity of land use
- 3. Other policy considerations (organized based on General Plan elements)**
  - a. Land Use
  - b. Transportation
  - c. Open Space and Conservation
  - d. Safety
  - e. Housing
  - f. Other issues (Economic Development, Infrastructure, Implementation, Sustainability)

When the Planning Commission provides direction on these key policy issues, staff will assist the Commission in formulating a draft recommendation to the City Council. With that potential recommendation in mind, attention would turn to the Final EIR. Should the Planning Commission wish to make a Concept Plan/General Plan/Specific Plan recommendation that requires certification of the Final EIR, the Commission would need to specifically discuss the adequacy of the Baylands EIR in relation to the land use and policy recommendation being considered by the Planning Commission, and make a recommendation regarding EIR certification. Should the Planning Commission wish to make a recommendation that does not *require* certification of the Final EIR (e.g., denial of the applicant's proposal), the Commission would have the *option* of addressing the adequacy of the Baylands EIR during its deliberations. At a minimum, the Planning Commission needs to review and consider the information presented in the EIR as required by CEQA Guidelines Section 15025 (c), even if certification of the EIR is not required.

### ***Planning Commission Deliberations***

If time permits at tonight's meeting, the Planning Commission can begin its deliberations. Based on the process outlined above, the Planning Commission's deliberation will first focus on defining the basic planning and environmental principles that any future development of the Baylands must meet.

Based on public testimony and discussion during the public hearings, as well as EIR conclusions and mitigation measures, staff has identified several basic principles for the Planning Commission to consider as outlined below. These principles would form the basis of any future land use recommendations, and any future development plans will need to integrate/reflect these principles.

- Preserve large unbroken blocks of open space and provide for restoration of wetland areas.

- Protect key habitat areas, including Brisbane Lagoon and potential habitat areas adjacent to the lagoon, Icehouse Hill, and wetlands.
- Restore the Roundhouse and maintain compatible development adjacent to it.
- Maintain a transit orientation for new development.
- Incorporate the principles of the Brisbane Baylands Sustainability Framework into future development.
- Ensure that the site is safe for the future uses approved for development by the City.
- Provide appropriate infrastructure and site amenities for each increment of development within the Baylands.

As the Commission considers these basic principles, the focus should be on these or other statements as expression of basic goals to guide future discussions, rather than working out details. Such detailed discussions will occur in subsequent deliberations once the basic principles are established. For example, the discussion regarding how the Planning Commission will incorporate consideration of the Brisbane Baylands Sustainability Framework as part of its deliberation process need not address the details of individual provisions of the Framework. Subsequent Commission deliberations will address the details of individual provisions of the Sustainability Framework.

It is also important to remember that any preliminary Commission recommendations made throughout the deliberations process are subject to reconsideration and modification by the Planning Commission prior to the Commission making a final recommendation to the City Council.

### ***Preserve Large Unbroken Blocks of Open Space***

Each of the development scenarios and the Renewable Energy Generation alternative propose an arrangement of open space in large unbroken blocks, providing continuity throughout the site. The primary difference between the open space configuration in the DSP/DSP-V scenarios and the configuration within the CPP/ CPP-V scenarios and the Renewable Energy Generation alternative is that in the DSP/DSP-V scenarios, much of the open space consists of wide corridors within developed areas, while open space within the CPP/ CPP-V scenarios and the Renewable Energy Generation alternative tends to surround and form the boundaries of developed areas.

In setting forth basic planning and environmental principles, the Commission should focus on whether the land use plan to be recommended by the Commission should include an arrangement of open space in large unbroken blocks that provides continuity throughout the site, rather than a series of discreet open space areas surrounded by development. Subsequent meetings will address the Commission's recommendation regarding the actual design of open space within the Baylands.

For purposes of tonight's discussion, "open space" is intended to include lands used for (1) active and passive recreation and (2) protection of resources, such as habitat areas, regardless of their ownership. Subsequent policy discussions will address:

- The recommended configuration of such large unbroken blocks of open space;
- How areas intended for active and passive recreation, as well as for protection of resources can be maintained in perpetuity regardless of public or private ownership; and
- The existing General Plan's current distinction between "open space" and "open areas" based on public or private ownership.

### **Protect Key Existing Habitat Areas, including Icehouse Hill and the Brisbane Lagoon**

Much testimony during public hearings called for protection of the Brisbane Lagoon and habitat areas on Icehouse Hill, as well as for the protection and restoration of wetland habitats within the Baylands. For this evening's meeting, the Planning Commission should focus on establishing the basic principle of protecting/enhancing habitat areas on Icehouse Hill, the Brisbane lagoon, and wetland areas within the Baylands. Subsequent discussions will focus on specific policy considerations supporting these basic principles.

### **Restore the Roundhouse and Maintain Compatible Development Adjacent to it**

EIR mitigation measures currently require that the Roundhouse be restored and also require that future development be compatible in scale and design with the Roundhouse. As part of public hearing testimony, requests were also made that the restoration of the Roundhouse include not only stabilizing and preparing the building for reuse, but also providing the opportunity to integrate rail-related activities into the building's reuse.

Because EIR mitigation measures already require restoration of the Roundhouse and maintaining compatible development on adjacent lands, the Commission's discussion this evening should focus on (1) confirming its desire that the Roundhouse be restored for reuse and (2) whether the opportunity for rail-related activities at the Roundhouse should be provided.

Subsequent policy discussions will address requirements for how development adjacent to the Roundhouse will maintain compatibility with that historic structure.

### **Maintain a Transit Orientation for New Development**

As noted in the EIR and during public hearings, proposed development under any of the concept plan scenarios will generate substantial vehicular traffic on area roadways and the 101 freeway. In addition, comments were received on the Draft EIR regarding current proposals by Brisbane and San Francisco to maintain a transit orientation for new development in the vicinity of the Bayshore Caltrain station. For purposes of this evening's meeting, the Planning Commission should discuss whether maintaining a transit orientation for new development is a key principle for its review of development within the Baylands. Subsequent meetings will discuss specific policy considerations for such an orientation, such as those set forth in the Sustainability Framework. The role of mixed use development, if any, to encourage use of transit by future uses will be specifically discussed in subsequent discussions of appropriate land use mix in the Baylands.

### **Incorporate the Principles of the Brisbane Baylands Sustainability Framework into Future Development**

The City Council-appointed Baylands Sustainability Committee has completed the Baylands Sustainability Framework, following five years of effort and numerous rounds of community review and feedback. The Sustainability Framework identifies key sustainability principles for consideration by the Planning Commission and City Council in their review of proposed development within the Baylands. The principles, key performance indicators, and implementation approaches in the Framework are aspirational and not intended as mandatory requirements for the Baylands project.

Many of the concepts set forth in the Sustainability Framework are already included in the

development scenarios and Renewable Energy Development alternative, as well as in EIR mitigation measures. However, the Sustainability Framework sets forth a much broader array of sustainability indicators and performance standards than do existing development proposals and the EIR.

Since the City Council specifically intended that the Sustainability Framework be consulted in the review of development proposed for the Baylands, the Planning Commission's discussion this evening should focus on how the Sustainability Framework will be used in crafting its recommendation for the Baylands, including whether the Sustainability Framework should be:

- Used as a reference document by the Planning Commission in developing its planning and environmental policy recommendations for the Baylands; and/or
- Incorporated as appropriate into the General Plan and the Planning Commission's recommendations regarding the proposed Specific Plan for the Baylands.

### **Ensure that the site is safe for the future uses approved for development by the City.**

It is clear from the EIR, public comments, and public testimony that there is consensus that an appropriate level of safety in relation to future use of the former landfill and railyard must be provided. The purpose of including this principle is for the Planning Commission to formally affirm this underlying cornerstone of any future development.

It is also clear from the public comments on the EIR and public hearing testimony that there is a great deal of concern regarding site safety and remediation. Concerns raised to date include but are not limited to: the appropriateness of the State's regulatory standards, the range of remediation methods to be considered, and the City's role in the regulatory process for site remediation and Title 27 landfill closure. While the Planning Commission is being asked to consider this principle, the purpose of this evening's discussion is not to address these specific concerns. Once the cornerstone principle of affirming that the site must be safe for the uses determined by the City to be appropriate within the Baylands, the Planning Commission will have the opportunity in subsequent meetings for a robust discussion of what those specific uses are, along with detailed discussion of remediation issues when it considers policy-level recommendations.

### **Provide Appropriate Infrastructure and Site Amenities for Each Increment of Development**

Ensuring that the phasing of land development and provision of infrastructure and site amenities within the Baylands were tied together was the subject of much discussion by members of the Planning Commission during public hearings. The basic principles that arose from those discussions were that:

- Each increment of development within the Baylands must be provided with appropriate infrastructure, services and facilities, and site amenities; and
- The timing of proposed development needs to be predicated on the provision of environmental mitigation activities such as site remediation and landfill closure, open space dedication, habitat restoration, provision of transit, roadway improvements (including the Geneva Avenue extension and Candlestick interchange improvements), and others.

For purposes of this evening's discussion, the Planning Commission should confirm, modify, or expand on these basic principles for use in review of more specific planning and environmental

policies. Subsequent discussion will address specific methods for ensuring principles such as these will be met by future development within the Baylands.

**Next Meeting:**

Following this hearing, the Planning Commission will continue its series of deliberations meetings on **February 2, 2016**, which will focus discussion of the appropriate mix of land uses within the Baylands.

**Attachments:**

1. Memo from Special Counsel regarding CEQA requirements
2. Information requested by Planning Commission

# M E M O R A N D U M

## THE SOHAGI LAW GROUP, PLC

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**TO:** John Swiecki, Community Development Director  
Michael Roush, City Attorney  
*City of Brisbane*

**FROM:** Alison L. Krumbein  
*The Sohagi Law Group, PLC*

**SUBJECT:** Relevant CEQA Requirements for Evaluation of Proposed  
Baylands Development

**DATE:** January 22, 2016

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The following memo provides a brief discussion of relevant CEQA requirements for the Planning Commission's consideration as it begins its deliberations on proposed Baylands development.

### I. GENERAL STANDARDS FOR EIR ADEQUACY

An EIR should, when looked at as a whole, provide a reasonable, good faith disclosure and analysis of environmental impacts. (*Laurel Heights Improvement Ass'n v Regents of Univ. of Cal.* (1988) 47 Cal.3d 376.) When evaluating EIR adequacy, courts frequently consider the following principles, reflected in the CEQA Guidelines:

- EIRs should "provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences";
- The evaluation of impacts need not be exhaustive;
- The sufficiency of the EIR's analysis must be reviewed in light of what is reasonably feasible;
- A court should look for adequacy and completeness in an EIR, not for perfection;
- EIRs need not be delayed to include studies in progress that may contain additional information;
- Agencies can make reasonable forecasts in completing the impact analysis; and
- Disagreements among experts do not invalidate an EIR.

(CEQA Guidelines §§ 15144-15145, 15151.) Case law interpreting CEQA has provided additional guidance on standards for EIR preparation. As a general principle, an EIR should make a good faith effort to find out and disclose all that it reasonably can and

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sufficient information should be provided to allow decision-makers and the public to understand the environmental consequences of the project. However, CEQA gives lead agencies the discretion to design an EIR for a given project, and does not require them to conduct every recommended test or perform all requested research for an EIR to be deemed "adequate." An EIR is required to evaluate environmental impacts only to the extent that it is reasonably feasible to do so; it is not required to address all variations of the issues presented, nor to analyze every permutation of the data. CEQA does not demand what is not realistically possible, given limitations on time, energy and funds. An EIR is also not required to predict or speculate regarding future environmental consequences when future development is unspecified and uncertain. Lead agencies are not required to foresee the unforeseeable. (CEQA Guidelines § 15144.) Crystal ball inquiry as to events that may or may not occur is not required.

**II. USE OF 2010 AS THE BASELINE YEAR FOR ANALYSIS OF IMPACTS**

An EIR must describe the environmental setting for the project, which is made up of "the physical environmental conditions in the vicinity of the project" viewed from "a local and regional perspective." (CEQA Guidelines § 15125(a), (c).) Environmental conditions must be described as they exist at the time the notice of preparation is published or, if a notice of preparation has not been published, at the time the environmental analysis begins. (CEQA Guidelines § 15125(a).) These existing physical conditions "will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (CEQA Guidelines § 15125(a).)

The California Supreme Court has interpreted CEQA's provisions to give agencies significant discretion in determining the appropriate "existing conditions" baseline and has held that lead agencies have "discretion to decide, in the first instance, exactly how the existing physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence." (See, e.g., *Neighbors for Smart Rail v Exposition Metro Line Constr. Auth.* (2013) 57 Cal.4th 439, 453; *Communities for a Better Env't v South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 336.) "Substantial evidence" is defined as "enough relevant information and reasonable inferences from that information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (CEQA Guidelines § 15384(a).) Substantial evidence includes facts, reasonable assumptions predicated on facts, and expert opinions supported by facts.

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(Pub. Res. Code § 21080(e).) Reviewing courts will generally defer to an agency's determination if the determination is supported by substantial evidence.

The rule governing the date for establishing the baseline is not rigid and inflexible, and provides the opportunity for lead agencies to deviate from the environmental setting if there is good reason to do so. For example, a lead agency may determine that average historic water use in the project area over some number of years is more representative of existing conditions than water use during the actual year of NOP, if conditions vary widely over time. Such a baseline, in this situation, would provide a more representative starting point against which to evaluate a project's impacts, and ultimately, a more accurate assessment of impacts, than measuring the project against a single baseline year of water use that is either greatly over or under the average.

Similarly, CEQA does not require lead agencies to adjust the baseline for analysis if conditions change while the EIR is being prepared, as long as the lead agency can demonstrate that the change in conditions would not alter the EIR's findings regarding the project's impacts. (See, e.g., *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 318-319.) For example, while the baseline year for the EIR's traffic analysis was 2010, and traffic in the project area has increased since that time, the change in conditions between 2010 and 2015 would not affect the EIR's conclusions in relation to the project's traffic impacts with implementation of identified mitigation measures. The change in existing conditions also would not affect the EIR's analysis of the project's impacts in light of expected future conditions, i.e., the conditions that would exist when the project is fully operational. Given the anticipated 20-year buildout of the Brisbane Baylands and the programmatic nature of the Baylands EIR, all future site specific development projects would be subject to additional CEQA review, and project-specific impacts would be analyzed in light of the conditions existing at the time each individual project is proposed.

The Notice of Preparation for the Baylands EIR was originally published in 2006. A revised NOP was published in 2010 to inform agencies and the public of major changes to the proposed project, specifically to reflect changes to the draft Baylands Specific Plan as proposed by the applicant and to reflect the inclusion of the CPP and CPP-V scenarios for analysis within the EIR. A subsequent NOP was published in 2012 to reflect the addition of the proposed water transfer agreement to the Project. Consistent with the CEQA Guidelines, the EIR uses 2010 as the baseline year. In resource area analyses where the EIR references a baseline date other than 2010, considers baseline

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conditions over a range of time periods, or where existing conditions may have changed since 2010, the Draft and Final EIR explain why this information is representative of 2010 conditions or why it was appropriately relied upon as a basis against which to accurately measure the project's impacts. In all instances, consistent with CEQA's requirements, substantial evidence is provided in support of the EIR's approach.

**III. THE ROLE OF "FEASIBILITY" UNDER CEQA**

CEQA prohibits public agencies from approving projects as proposed if there are *feasible* alternatives or mitigation measures available which would substantially lessen the significant environmental effects of these projects. (Pub. Res. Code § 21002 [emphasis added].) Feasibility has a precise legal definition in CEQA. Under CEQA, "feasible" means "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (Pub. Res. Code § 21061.1.) The CEQA Guidelines generally repeat this definition verbatim, but add the term "legal" to the list of factors to take into account. (CEQA Guidelines § 15364.)

The concept of "CEQA feasibility" is key in determining which mitigation measures and/or alternatives must be adopted by an agency and which may be rejected, when approving a project. There is no bright line test for determining feasibility under CEQA. As the foregoing definitions indicate, a determination of feasibility necessarily involves a series of judgment calls by the agency concerning costs, technical realities, environmental effectiveness and environmental side effects, social policy considerations, and time constraints, to name a few.

Guidance regarding feasibility under CEQA is primarily contained in case law interpreting the statute and Guidelines. The following list includes some general rules for making determinations of infeasibility. In all instances, the record of proceedings must contain substantial evidence in support of the agency's determination.

- **Economic infeasibility**: The lead agency must find that the cost of the alternative is so great compared to the proposed project that a reasonably prudent person or property person would not proceed with the alternative. Note that evidence of increased costs or lost profitability is not sufficient for an infeasibility determination, nor are the financial resources of the applicant relevant in determining feasibility. (See *Uphold Our Heritage v. Town of Woodside (Steve Jobs)* (2007) 147 Cal.App.4th 587, 598-602.)

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- **Technical infeasibility:** The lead agency is not required to consider or adopt mitigation measures or alternatives whose scientific or technical feasibility is completely uncertain or speculative. The determination boils down to the question of whether the suggested technology is available. Note that agencies are normally not required to adopt mitigation measures based on technology still in development, given inherent uncertainties in its effectiveness. (See *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 941.)
- **Legal infeasibility:** An EIR is not required to consider, and an agency is not required to adopt, mitigation measures or alternatives that cannot be imposed because they are legally invalid, unenforceable, or beyond the approving agency's authority to impose, i.e., they would exceed its legal powers. (See *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 366.)
- **Environmental, social and "other" grounds for infeasibility:** In some cases, collateral adverse environmental effects may provide grounds for determining that a proposed alternative or mitigation measure is infeasible. An agency also may dismiss as infeasible an alternative or mitigation measure that would not allow one or more "social" benefits of the project to be achieved, i.e., needed housing, development or facilities. (See *City of Del Mar v. City of San Diego* (1982) 133 Cal.App. 3d 401, 417.) Finally, agencies may reject as infeasible alternatives that would not meet key or core project objectives. (*California Native Plant Soc'y v City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1002.)

The feasibility of alternatives to a proposed project is considered at two stages in the CEQA process. When selecting alternatives for consideration in an EIR, the lead agency's task is to identify alternatives that are *potentially feasible*, i.e., that satisfy basic project objectives while reducing or avoiding significant impacts. In contrast, at the project approval stage, it is up to the agency's decision-makers to weigh the relative advantages and disadvantages of the project and the alternatives examined in an EIR, and to approve the project or adopt one of the alternatives. A decision to reject the alternatives in favor of the project is referred to as a determination that the alternatives are found to be infeasible. (Pub. Res. Code § 21081(a); CEQA Guidelines § 15091; see *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 981.)

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**IV. APPROPRIATE TIMING TO ADDRESS DETAILED COMMENTS ON MITIGATION MEASURES AND MMRP**

The project before the Planning Commission consists of four Concept Plans, proposed amendments to the General Plan, as well as a Specific Plan, all of which involve legislative actions by the City to guide the long term development of the Baylands. Consistent with the high level nature of these planning decisions, the proposed Baylands development was evaluated in a program EIR and feasible program wide mitigation measures were imposed to minimize identified significant effects.

Given the nature and complexity of the proposed Baylands development before the Commission, and the various policy choices that it must consider prior to formulating a recommendation to the City Council, staff has recommended that deliberations begin with consideration of policy choices and appropriate land uses for the Baylands, rather than with an evaluation of the adequacy of the EIR. Once the Commission has settled on a recommendation to the Council regarding a mix of land uses and basic principles for development, it should then undertake an evaluation of the EIR to determine whether the impact analysis and proposed mitigation measures would cover this recommendation, or whether additional or revised analysis would be required, realizing that the application of specific mitigation measures or implementation of monitoring may vary depending on the recommended land uses/development and resulting impacts for which mitigation would be required. At this time, it would be appropriate and productive for the Commission to review the mitigation measures proposed in the EIR as well as the implementation and timing for these measures addressed in the MMRP, and to address detailed comments from the public.

**V. OBLIGATIONS OF THE LEAD AGENCY IN RELATION TO THE “ENVIRONMENTALLY SUPERIOR ALTERNATIVE”**

An EIR must describe and analyze a range of reasonable alternatives to the project that are potentially feasible, would feasibly attain most of the project’s basic objectives, and would avoid or substantially lessen any of the project’s significant effects. (CEQA Guidelines § 15126.6(a).) To be legally adequate, an EIR must identify the environmentally superior alternative. If the no-project alternative is the environmentally superior alternative, then the EIR must also identify an environmentally superior alternative from among the other alternatives. (CEQA Guidelines § 15126.6(e)(2).)

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As discussed in the December 10, 2015 *Planning Commission Deliberation Process for the Brisbane Baylands* memo, as part of its deliberations, the Planning Commission will need to decide whether it wishes to recommend approval or denial of the applicant's proposed General Plan Amendment and Specific Plan to the City Council. If the Commission decides to recommend denial of these proposed applications, it should then consider what recommendation it may wish to make to the Council regarding future development on the Baylands. This recommendation could be based on any of the plans, variants or alternatives presented in the Draft EIR, a combination, or something else entirely. The Commission would also need to consider whether the EIR as drafted adequately evaluates and mitigates the impacts of its recommendation to the City Council, or whether additional analysis would be required for it to recommend certification.

Prior to approving UPC's Specific Plan or any combination of updated land uses or detailed City policies for future development of the Baylands, the City Council would need to certify the EIR. If the project as approved would result in significant and unavoidable environmental effects, the City Council would also need to approve a statement of overriding considerations, setting forth the specific economic, legal, social, technological or other benefits of the project that outweigh its adverse environmental effects. The adoption of a statement of overriding considerations alone cannot justify approval of a project that will have significant environmental effects. The findings must also show that the project's effects have either been mitigated to a less than significant level, or that there are no feasible mitigation measures or alternatives available to further mitigate those impacts that remain significant. (*City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 368.) For this reason, prior to approving any development proposed for the Baylands, the Council would also be required to make findings rejecting the alternatives presented in the EIR, including the environmentally superior alternative, in favor of the project it wished to approve. These findings could be based on economic, technical, or legal infeasibility, as well as on other grounds, including failure to meet key project objectives or failure to meet adopted City policies or standards.

## **VI. CEQA'S REQUIREMENTS FOR A REASONABLE RANGE OF ALTERNATIVES**

An EIR must describe a reasonable range of alternatives to the proposed project, or to its location, but need not discuss every alternative to the project. Instead, an EIR

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should present a “reasonable range of potentially feasible alternatives.” (CEQA Guidelines § 15126.6(a).) There are four threshold tests for determining whether project alternatives meet CEQA’s requirements for a reasonable range of alternatives:

- Can substantially reduce significant environmental effects;
- Can attain most of the basic project objectives;
- Are potentially feasible; and
- Are reasonable and realistic.

Consistent with this guidance, alternatives must be able to reduce or avoid the project’s significant effects while still implementing most project objectives; an alternative that is incompatible with fundamental project objectives need not be presented in the EIR. (CEQA Guidelines § 15126.6(a); see *In re Bay-Delta Programmatic Env’tl Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1157, 1164.) An EIR also need not consider an alternative whose effect cannot reasonably be ascertained or whose implementation is remote and speculative, because unrealistic alternatives do not contribute to a useful analysis. (CEQA Guidelines § 15126.6(f)(3); *In re Bay-Delta*, 43 Cal.4th at 1163.) Challenges to an EIR’s analysis of alternatives often include a claim that the analysis is legally inadequate if it fails to study specific alternatives proposed by members of the public or others. Under the CEQA Guidelines, however, an EIR need discuss only a range of reasonable alternatives. (CEQA Guidelines § 15126.6(a), (c).) An EIR that discusses a reasonable range of alternatives is not deficient simply because it excludes other potential alternatives from its analysis. (*City of Maywood v. Los Angeles Unified Sch. Dist.* (2012) 208 Cal.App.4th 362; *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316.)

As discussed in some detail in the November 4, 2015 Planning Commission staff report, the City rejected the alternative of including a High-Speed Rail maintenance yard within the Baylands from further study in the EIR because it did not meet CEQA’s threshold tests for inclusion in an alternatives analysis. Specifically, a High-Speed Rail maintenance yard alternative would not meet the basic project objectives set forth in the EIR, nor was there adequate information available about such a maintenance yard, which has not been formally proposed by the California High Speed Rail Authority, to engage in sufficient analysis to determine whether it would avoid or substantially lessen any of the impacts of the project. This situation has not changed since the EIR was prepared.

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**THE SOHAGI LAW GROUP, PLC**

John Swiecki, Community Development Director

Michael Roush, City Attorney

*City of Brisbane*

January 22, 2016

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The Planning Commission has discretion to recommend any of the development scenarios or alternatives that were considered in the EIR, some combination of these scenarios and alternatives, or a different concept entirely. Should the Planning Commission believe that a High-Speed Rail maintenance yard is a desirable or appropriate use for the Baylands, it may make this recommendation to the City Council. The fact that a High-Speed Rail maintenance yard, or any other development concept, was not analyzed as part of the project or included in the EIR's alternatives analysis, however, does not mean that the EIR or the alternatives analysis is incomplete or legally inadequate under CEQA.

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## **Planning Commission Request for Baylands Information January 28, 2016**

As requested, information is provided regarding:

- Proposed design of the Geneva Avenue extension and Candlestick interchange;
- Status of SFPUC's proposed water deal with OID;
- Relevance/importance of Clean Energy and Pollution Reduction Act of 2015; and
- Identification of areas within the Baylands, if any, that meet state guidelines for location of a school.

### **Geneva Avenue Extension and Candlestick Interchange**

As currently proposed in the Brisbane Baylands Specific Plan, Geneva Avenue would have four travel lanes (two in each direction) with parking during non-peak travel hours, and six travel lanes (three in each direction) with no on-street parking during peak travel hours. A sidewalk, landscaped parkway, and a bicycle lane would be provided along both sides of the street. As currently proposed, a two-way bus rapid transit line would run along the middle of the Geneva Avenue extension. The ultimate design of the Geneva Avenue extension is dependent on the type and intensity of Baylands development approved by the City of Brisbane, and the location and design of bus rapid transit selected by the San Francisco Transportation Authority.

As part of the Bi-County transportation study and in conjunction with Caltrans, a Project Study Report (PSR) was prepared for the Candlestick interchange. The PSR is the first step in the design process for the interchange. The ultimate design of the Candlestick interchange is dependent on the type and intensity of Baylands development approved by Brisbane, and design of roadways, including the Geneva Avenue extension and roads in San Francisco, leading to the interchange.

### **Status of SFPUC's proposed water deal with the Oakdale Irrigation District (OID)**

The Commission requested an update regarding SFPUC's efforts to enter into a water transfer agreement with OID, separate from the proposed water transfer agreement between Brisbane and OID, for water supplies to be used by the SFPUC. As of this date, the SFPUC has tabled pursuit of such an agreement, and there are no discussions ongoing between SFPUC and OID. SFPUC has, however, said they may pursue a water transfer agreement with OID again sometime in the future.

### **Clean Energy and Pollution Reduction Act of 2015**

The Clean Energy and Pollution Reduction Act of 2015 (SB 350) was signed into law on October 7, 2015. SB 350 requires that the amount of electricity generated and sold to retail customers per year from eligible renewable energy resources be increased from 33% to 50% by December 31, 2030, and thereby double energy efficiency within the state. SB 350 makes revisions to the California

Renewable Portfolio Standards (RPS) Program and to certain other requirements on public utilities and publicly owned electric utilities. SB 350 also requires local publicly owned electric utilities to establish annual targets for energy efficiency savings and demand reduction consistent with a statewide goal established by the California Public Utilities Commission, and provides incentives for electrification of rail facilities. Local utilities would be required to develop more detailed strategies and incentives for use of renewable energy sources, resulting in an increased demand for renewable energy generation.

SB 350 emphasizes the important role of electric vehicles in California's overall scheme to combat climate change, declaring that "[d]eploying electric vehicles should assist in grid management, integrating generation from eligible renewable energy resources, and reducing fuel costs for vehicle drivers...." The bill promotes the development of additional electric vehicle charging infrastructure to encourage greater use of electric cars, and requires electrical utilities to include expansion of electrical vehicle charging facilities as part of their strategies and incentives for reducing overall energy consumption.

SB 350 does not establish specific development standards for the Planning Commission to consider as part of its deliberations.

#### **Areas within the Baylands that Meet State Guidelines for Location of a Public School**

State regulations for the siting of school facilities are contained in CCR Title 5 Section 14010, and include the following:

- c. The property line of the site... shall be at least the following distance from the edge of respective power line easements:
  1. 100 feet for 50-133 kV line.
  2. 150 feet for 220-230 kV line.
  3. 350 feet for 500-550 kV line.

*Because all existing above-ground lines will be undergrounded as part of site development, these setbacks would not apply unless renewable energy facilities constructed onsite would require above-ground transmission lines.*

- d. If the proposed site is within 1,500 feet of a railroad track easement, a safety study shall be done by a competent professional trained in assessing cargo manifests, frequency, speed, and schedule of railroad traffic, grade, curves, type and condition of track need for sound or safety barriers, need for pedestrian and vehicle safeguards at railroad crossings, presence of high pressure gas lines near the tracks that could rupture in the event of a derailment, preparation of an evacuation plan. In addition to the analysis, possible and reasonable mitigation measures must be identified.

*While the location of the Caltrain line within the Baylands would not necessarily preclude location of a school within 1,500 feet of the railroad right-of-way, a safety study would be required to be conducted, and would determine whether a setback of up to 1,500 feet from the Caltrain right-of-way should be maintained for any*

*school within the Baylands.*

- e. The site shall not be adjacent to a road or freeway that any site-related traffic and sound level studies have determined will have safety problems or sound levels which adversely affect the educational program.

*Noise generated along the US 101 freeway would be sufficiently loud as to adversely affect school programs in the easterly portion of the Baylands. While neither Baysshore Boulevard nor Caltrain operations would generate sufficient **average** noise levels to adversely affect school programs, **peak** noise levels from Caltrain operations might be considered to have an adverse affect. Establishment of the setback described under criterion d, above, (if required) would address noise levels.*

- f. (The)... site is not within an area of flood or dam flood inundation unless the cost of mitigating the flood or inundation impact is reasonable.

*Required flood protection will be provided as part of overall Baylands site development. Because it is not likely that flood protection costs would be charged specifically to a school site within the Baylands, it is not likely that this criterion would affect location of a school within the Baylands.*

- g. The site shall not be located near an above-ground water or fuel storage tank or within 1,500 feet of the easement of an above ground or underground pipeline that can pose a safety hazard as determined by a risk analysis study, conducted by a competent professional, which may include certification from a local public utility commission.

*A 1,500-foot setback from the Kinder Morgan tank farm would likely be required.*

- h. The site is not subject to moderate to high liquefaction or landslides.

*Draft EIR Figure 4.E-11 shows that the liquefaction hazard is "very high" throughout the Baylands Project Site with the exception of Icehouse Hill. Thus, this criterion would not be met.*

- n. The site shall be located within the proposed attendance area to encourage student walking and avoid extensive bussing unless bussing is used to promote ethnic diversity.

*While a school site could meet this criterion in the DSP/DSP-V scenarios, the proposed charter high school in the CPP-CPP-V scenarios would not.*

- p. The site shall be conveniently located for public services including but not limited to fire protection, police protection, public transit and trash disposal whenever feasible.

*As part of proposed Baylands development, appropriately located public services would be available to a school site within the Baylands, since services would be provided as part of proposed development for the area.*

- q. The district shall consider environmental factors of light, wind, noise, aesthetics, and air pollution in its site selection process.

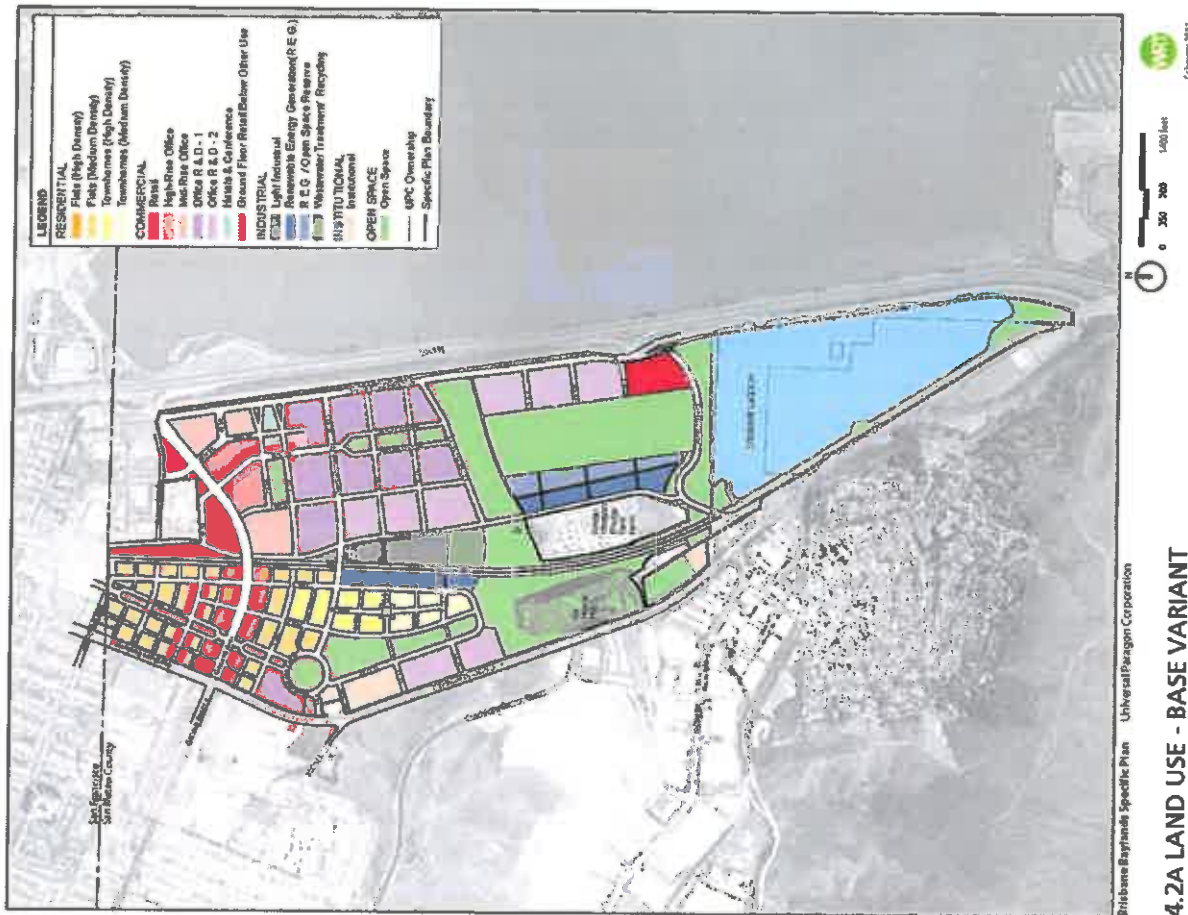
*This criterion identifies locational considerations, but does not set specific standards for school site location.*

- t. If the proposed site is on or within 2,000 feet of a significant disposal of hazardous waste, the school district shall contact the Department of Toxic Substance Control for a determination of whether the property should be considered a Hazardous Waste Property or Border Zone Property.

*Given existing contamination issues within the former rail yard, review by the Department of Toxic*

*Substance Control (DTSC) may be required for any proposed school site within the Baylands. Because site remediation would be required not only for a proposed school site, but also for other areas surrounding the school site (e.g., OU-1, OU-2), DTSC might concur with location of a school in the Baylands once remediation is completed.*

The presence of very high liquefaction hazards, as well as the need for a 1,500-foot setback from the Kinder Morgan Tank Farm, and potentially a 1,500-foot setback from the Caltrain line could preclude location of a school within the Baylands. However, it should be noted that applicable regulations cited above are not absolute. CCR Title 5 Section 14010(u) permits the governing board of a school district to request that the State Superintendent of Public Instruction grant an exemption to “any of the standards in this section if the district can demonstrate that mitigation of specific circumstances overrides a standard without compromising a safe and supportive school environment.”



# **Development Case Studies**

**Britannia East Grand Campus – South San Francisco, California**

**Gables End Residential Development – Mountain View, California**

**Gold Street Technology Center – San Jose, California**

**Mission Bay Development - San Francisco, California**

**Pixar Animation Studios - Emeryville, California**

**San Quentin Solid Waste Disposal Landfill - Home Depot and Target - San Rafael, California**

**Sierra Point Landfill – Brisbane, California**

**Taube Koret Campus for Jewish Life - Palo Alto, California**

**West Covina Landfill – West Covina, California**

**Westport Office Park - Redwood City, California**

## Britannia East Grand Campus – South San Francisco, California

The Britannia East Grand Campus is located in a mixed industrial-commercial area of South San Francisco at the eastern end of East Grand Avenue at the southern margin of Point San Bruno. The property covers approximately 27 acres and is bordered by San Francisco Bay on the east, a marginal wetlands-filled channel to the south; and light industrial properties to the north and west.

The site has been developed into a campus consisting of eight multi-level biotechnology research and development buildings. Structures in the northern portion of the site include Buildings 1, 3,



**Figure 1: Britannia East Grand Building Layout**

4, 5/6, Parking Structure A, and the proposed Child Care Center. Structures in the southern portion of the site include Buildings 2, 7, 8, 9, and Parking Structure B. Other site features include at grade parking, an amphitheater, landscape areas, and numerous walkways. There is a capped area in the southern portion of the site comprised of 3 feet of clean material, buildings,

or other hardscape features (e.g., sidewalks or asphalt parking areas). A majority of the site is relatively flat as a result of filling activities conducted as part of construction. The site slopes very gently towards the south and is bounded by rip rap and shoreline improvements (e.g., bay trail) on the east, downward sloping banks on the south, and a steep up slope of fill and bedrock outcrops to the north.

Portions of the site were used for paint manufacturing since 1898 by W.P. Fuller. From 1898 to 1968 the facility included lead works; rubber paint works; plate glass, pigments, and colorants paste production; varnish manufacturing plant, linseed oil refinery and linseed and mineral oil storage, machine shop, powerhouse, and wharfs. The O'Brien Corporation took ownership of the site in 1968 and removed the lead works and varnish factory, and shifted production from enamel to latex-based paints. Industrial operations were decommissioned in the mid-1980s and the property was purchased by Cherokee Investment Partners, who in turn sold the property to Slough LLC in 2001. Slough LLC has since been purchased by the current owners, HCP SSF, LLC.

The primary chemicals detected in soil at the site are lead, petroleum hydrocarbons, and polynuclear aromatic hydrocarbons (PAHs). These constituents have historically been present in

the southern area of the site in the vicinity of Buildings 2, 7, 8, 9, and Parking Structure B, as these are the areas where a majority of former manufacturing activities took place. In addition, asbestos-containing serpentine is present in the bedrock, which outcrops in the northeastern area of the site, primarily in the area of Buildings 1 and Parking Structure A. The primary chemicals detected in groundwater include petroleum hydrocarbons (primarily xylenes, naphthalene, petroleum, etc.) and low concentrations of selected metals (nickel and chromium) and chlorinated solvents (primarily trichloroethylene [TCE] and TCE breakdown products).



Figure 2: 545 East Grand Avenue

Environmental oversight for the site is currently provided by the Department of Toxic Substances Control (DTSC). Initially, the U.S. Environmental Protection Agency (EPA) provided regulatory oversight under the Resource Conservation Recovery Act (RCRA). The U.S. EPA approved the soil remedy in April 2000 (Henshaw and Associates, 2000), which included soil removal, capping, and land use restrictions. In March 2001, Cherokee Investment Partners signed a Corrective Action Consent Agreement (CACA) with DTSC, which describes the final remedy for the site as capping and groundwater monitoring. The DTSC has since determined that groundwater monitoring at the site is not required (DTSC, 2006a). In June of 2008, the DTSC issued the Technical Completeness Determination of the Corrective Measures Study Report (CMS [Geomatrix Consultants, Inc. 2008a]). The CMS describes the final remedies for the site, which include the implementation of a Methane Mitigation Plan (Geosyntec Consultants, 2006) and the Land Use Covenant Implementation or Enforcement (LUCIE) Plan (DTSC, 2006b). The current property owner, HCP SSF, LLC, entered into an Operation and Maintenance Agreement with DTSC in March 2008; this SMP provides guidelines in support of implementation of the Operation and Maintenance Agreement.



Figure 3: Capped Area at Britannia East Grand Campus

In the capped area, green mesh or orange snow fence highlight the fill/existing material contact. In the unlikely event that a landscape maintenance worker will dig deeper than 3 feet for maintenance purposes, the green mesh/snow fence provides a marker beyond which digging is prohibited. The cap is inspected immediately after a seismic



event and at least once per year to assess the presence of damage that could result in exposed native soil. If exposed soil is present, the cap is repaired or replaced as soon as practical. In the event that major cracks occur and soil is exposed, the cracks are repaired with asphalt patch or concrete.

The design, installation and monitoring of the methane mitigation measures beneath the buildings were under the oversight of the DTSC. The methane mitigation measures consist of a passive gas extraction system installed beneath each building slab, with subsurface gas monitoring points to evaluate methane concentrations, as well as a continuous geomembrane gas barrier directly beneath the building slab underlying some of the buildings. The gas extraction system is attached to a wind-driven turbine atop each building, which provides a low-level vacuum to passively extract the collected gases from beneath the building foundation slab.

## Gables End Residential Development – Mountain View, California



**Figure 1: Gables End Development**

This 5.3-acre development of 108 condominium homes in Mountain View was built in 2008 by local developer Regis Homes of Northern California. The residences at Gables End are constructed on a US Environmental Protection Agency (US EPA) Superfund Site, known as the CTS Printex Superfund Site. The Site was developed with engineering and institutional controls to protect residents.

Printex Corporation leased the buildings at the Site beginning in 1970 and operated a printed circuit board manufacturing facility. Printex was acquired by CTS Corporation in 1981 and was renamed CTS Printex, Inc. CTS Printex continued to manufacture printed circuit boards at the site until early 1985. As part of the manufacturing processes that occurred, waste water containing copper, lead, and volatile organic compounds (VOCs) drained via floor drains to a sump located south of the building. In the sump, the waste water was neutralized with ammonia and then discharged to the Mountain View sanitary sewer. CTS Printex initiated subsurface environmental investigations at the Site in 1985 before moving

their manufacturing operations to Fremont, California. Results of the investigation indicated elevated concentrations of copper and lead in the soil and VOCs, primarily trichloroethylene (TCE), in soil and groundwater. In 1985 and 1986, the sump and 290 cubic yards of soil were excavated and disposed of off-site.

Remediation of groundwater at the Site began in 1986 with the installation and operation of a groundwater extraction system. The extraction system operated from 1987 until late 1996, when the Regional Board agreed that the system could be turned off due to decreasing amounts of chemicals being removed.

The US EPA placed the CTS Printex facility on the National Priority List (NPL) in February 1990. The RWQCB issued a Final Order No. 91-081 Site Cleanup Requirements (Final Order) for the Site in May 1991. The Final Order did not identify risks associated with the soil at the Site, but it did recommend implementing institutional controls to prevent use of the Site groundwater as drinking water. As a result, a deed restriction was recorded for the Site in early

1992, prohibiting the use of Site groundwater for drinking. The final cleanup plan for the Site recommended no further action for Site soil, extraction of Site groundwater until drinking water quality is achieved, and long-term monitoring of the groundwater.

The Site was purchased by Regis Homes in 2006. Regis Homes retained Geosyntec to prepare a Human Health Risk Assessment (HHRA). The scenarios developed to evaluate potential risks at the Site included inhalation of indoor air and outdoor air vapors, inhalation of particulates, dermal contact with shallow groundwater, and ingestion and dermal contact with soils. In summary, the HHRA concluded that risk criteria were exceeded for the vapor intrusion pathway; however, engineering controls were put in place to mitigate potential risks from vapor intrusion. These engineering controls, as well as other risk management measures, were described in a Risk Management Plan (RMP), approved by US EPA in 2006.

Risk management measures were implemented to cut-off the vapor intrusion pathway and provide additional protection to Site construction workers and residential occupants from the potential risks related to residual VOCs in the subsurface, following site excavation and redevelopment. Risk management measures include the following engineering and institutional controls:

- Sub-slab vapor barriers and enhanced passive sub-slab depressurization systems beneath all occupied buildings;
- Vapor migration reduction elements in utility trenches;
- Confirmation indoor air sampling following construction and prior to occupancy; and
- A deed restriction with land use restrictions and prohibition of groundwater use.

## Gold Street Technology Center – San Jose, California

This 12-acre technology center was constructed on the former Santos Landfill and is located at 2100 Gold Street in San Jose. During the 1950s, several landfills in the Alviso area accepted wastes from an asbestos cement pipe manufacturing facility. This waste was later used for raising the grade of the site and for constructing a ring-levee, resulting in asbestos contamination throughout the Alviso area and covering roughly 330 acres. The site and surrounding property



**Figure 1: Aerial View of Gold Street Technology Center**

are part of the South Bay Asbestos Area National Priorities List Site, which is administered by the US Environmental Protection Agency (EPA) since 1985.

In its 1989 Record of Decision (ROD), EPA approved capping and methane mitigation as the appropriate remedies for the site. In 1997, EPA and Lincoln 237 Associates Limited Partnership entered into a Prospective Purchaser Agreement and Covenant Not to Sue to move forward with development of the site. The agreement incorporated a Soil Management Plan describing soil

control measures for asbestos and asbestos containing materials, methane, petroleum hydrocarbons, and lead. The 1999-2000 development structures, which consist of landscaping over at least 2 feet of clean fill, as well as buildings, concrete and parking lots over at least 1-½ feet of clean fill are considered by EPA to be the approved cap for the site. A passive methane venting system was installed beneath the site, consisting of a dozen passive methane vents located throughout the site, and seven methane monitoring probes.

Ongoing monitoring of the cap conditions and methane venting system is required as detailed in the Soil Management Plan approved by the USEPA, which continues to oversee site activities. A report describing cap conditions is required to be submitted to the EPA and the City of San Jose annually. Sampling of the methane monitoring wells is also required to be performed and reported annually.



**Figure 2: Tivo Headquarters**

Embarcadero Capital Partners, a Belmont, California-based real estate investment and management firm, purchased the Gold Street Technology Center from PNC Realty Investors for

approximately \$60 million in 2013. The campus currently consists of 2100, 2130, 2150, 2160 and 2190 Gold Street. and serves as the world headquarters for TiVo, Inc. Other tenants at the complex include eSilicon Corp., Minerva Networks and PiCoral.

## Mission Bay Development - San Francisco, California

Mission Bay is a particularly relevant example of a successful reuse of a Brownfield Site. Much of the Mission Bay development area, several hundred acres sandwiched between San Francisco's South of Market and Dogpatch neighborhoods on the north and south, and San



Figure 1: Completed UCSF Campus at Mission Bay

Francisco Bay and the Potrero neighborhood on the east and west, served as a railyard and landfill during the City's days as a major working port. When complete, Mission Bay will be developed as a mixed-use site, including multi-family housing (including both market rate and affordable, rental and for-sale units), public

open space, retail and commercial uses, a hotel, a school, a police and fire station, office, biotech, and research and development facilities. Already completed is the 43-acre expansion campus for UCSF. Features include at grade parking, an amphitheater, landscape areas, and numerous walkways.

Like many former industrial areas, Mission Bay had contamination that needed to be remediated before new development could begin. Much of the landfill material underneath Mission Bay is rubble from the 1906 earthquake that contained some lead and asbestos, and topsoil contained additional petroleum hydrocarbons left behind by the area's former industrial occupants. The remedy for landfill and contaminated soil materials was containment with a clean layer of topsoil. The new layer of topsoil effectively serves as a cap on the contaminated soil beneath, which could otherwise be stirred up by winds or construction.

Soil and groundwater investigations were conducted between 1996 and 1997 in order to characterize the environmental conditions and to identify significant source areas that could impact human health and the



Figure 2: Aerial View of Mission Bay

environment. The site investigations discovered the presence of certain chemicals in the soil and groundwater. Principal chemicals detected were petroleum hydrocarbons and inorganics (which include metals, such as lead). Total petroleum hydrocarbons (TPH) were detected throughout the site in both the soil and the groundwater. The majority of the detections correspond to heavier end petroleum hydrocarbons, particularly in the diesel (TPH-d) and motor oil (TPH-mo) ranges. Most of the higher detections of TPH are located in the region of former petroleum bulk storage, pipelines and transfer facilities near the Free Product Area.



**Figure 3: Completed Park Area at Mission Bay**

Metals were detected throughout the site in the soil and groundwater. The distribution patterns of metals in the soil and ground water are not representative of isolated source areas; rather, the concentrations of metals are more likely related to the background concentrations associated with the Mission Bay fill materials placed at the turn of the century.

Additionally, asbestos was detected in the soil throughout the site and appears to be primarily associated with serpentinite rock which was imported to fill Mission Bay, although some areas contain serpentinite rock which is native to the Mission Bay area.

Volatile organic compounds (VOCs) were detected in soil and groundwater. Select volatiles (principally benzene, toluene, ethyl benzene, and xylenes, collectively referred to as BTEX) were detected in limited concentrations, and tended to be concentrated around the former petroleum storage facilities.

Because residual chemicals and landfill material are present at the site, risk evaluations were conducted to confirm that the site could be developed as planned, in a manner that would be safe for human health and the environment. Regulatory oversight and enforcement mechanisms by the Water Board and Cal-EPA provide the structure for risk management measures applicable to the development that will remain in place and continue to be effective. Risk management measures are prescribed in a Risk Management Plan, approved by the Water Board and Cal-EPA in 1999, for construction activities and long-term post-construction uses. Each owner of any portion of Mission Bay must follow the RMP and its contents, and is required to comply with it. The long-term risk management measures that are undertaken to mitigate potential long-term risks to human health and the environment after construction and development of parcels in is completed are as follows:

- Covering of areas with residual landfill material or contaminated soil or groundwater with a clean layer of soil;
- Limiting future residential development within certain areas to preclude single family homes with private front yards or back yards;
- Restricting the future use of groundwater for domestic, industrial or irrigation purposes through recordation of an Environmental Covenant;
- Providing protocols for future subsurface activities; and
- Implementing a long-term monitoring program.

Examples of additional controls include requiring gardens to be planted in raised boxes (example of an institutional control) and a requirement for a durable cover (buildings or roads) or clean topsoil across the site (example of an engineering control). Additionally, as a result of organic material decomposing in the Bay fill and underlying organic-rich native peat and bay mud around Mission Bay, methane is sometimes detected in soil gas. If methane is determined to be present above action levels, methane gas mitigation systems must be designed and installed as part of new building construction to prevent the possibility of explosion.

These risk management measures are designed to maintain the protection of human health over the life of the development.

Mission Bay will require over \$700 million in new infrastructure, including improved streets, traffic lights, street lights, sewer and water systems, and open space areas. The construction of the infrastructure is the responsibility of the primary developer (initially Catellus, now FOCIL), with new infrastructure built over time to serve adjacent new vertical (building) development. The new infrastructure is financed through a combination of tax increment funding generated by the Mission Bay projects and special Mello Roos taxes paid by the private property owners in Mission Bay. In 1999 and 2000, the Redevelopment Agency formed Mello Roos Community Facilities District Nos. 4 and 6 to finance infrastructure construction in Mission Bay North and South. To date, the Agency has issued over \$280 million in Mello Roos and tax increment bonds to fund Mission Bay infrastructure. Mission Bay South includes an innovative “split” water treatment system. Stormwater runoff will be treated onsite and released to the Bay through a series of pump stations and open space passive treatment systems, rather than being directed to the Southeast Water Pollution Control Plant to be treated together with wastewater as is typical throughout the City of San Francisco. This will reduce the impact of the project on the Southeast communities, and will serve as an environmental demonstration project for progressive water management practices.

Approximately \$300 million in infrastructure projects have been completed or are underway, including the rebuilding of Third Street to accommodate Muni’s light rail system, the construction of new and rebuilt streets and utility systems to serve residential and commercial development, and the completion of 13 acres of new parks. With the exception of open space, completed Mission Bay infrastructure is operated by the City of San Francisco through the Public Utilities Commission and Department of Public Works.



## Pixar Animation Studios - Emeryville, California

The 22-acre home to Pixar, located on former industrial manufacturing property in the heart of Emeryville, was constructed in 1999 and 2000. The Site consists of the former Del Monte plant, the portion of Watts Street between 45th Street and Park Avenue, a portion of the former Pepsi plant, and a former residential property at the southwest corner of 45th Street and Emery Street. The parcel is a Cal-EPA brownfield redevelopment site, which before undergoing construction was cleaned up to meet the requirements of Cal-EPA. In addition, engineering and institutional controls were implemented to protect site users from residual contaminants that remain in the subsurface.



Figure 1: Pixar Studios in Emeryville, California

At the former Del Monte and Pepsi properties, six underground petroleum storage tanks (USTs) were removed between 1986 and 1996. Soil containing total petroleum hydrocarbons (TPH) at concentrations greater than 100 parts per million (ppm) and total volatile organic compounds (VOCs) at concentrations greater than 1 mg/kg was excavated and removed from the property. Excavated soil that contained less than 100 ppm of TPH as gasoline, less than 200 ppm of TPH as diesel, less than 500 ppm of TPH as motor oil, and less than 1 ppm of total VOCs was used to backfill the excavations or graded into the Site. Contaminated soil left in place is subject to a Risk Management Plan (RMP) prepared for the development and approved by Cal-EPA.

Groundwater at the site containing TPH and hexavalent chromium was extracted and treated from 1993 to 1996. VOC concentrations declined to 20 parts per billion (ppb) or less during that time period. Del Monte performed annual monitoring of groundwater until 1999, when Cal-EPA approved cessation of monitoring.



Figure 2: Entrance to Pixar Studios

Limited quantities of what appeared to be foundry slag were observed on the ground surface of a portion of the site. Test pits were subsequently excavated to investigate the extent of slag. Thin layers of soil containing apparent slag or other foundry-related material were observed at several locations. Analytical results from soil samples collected above, below, and within layers that contained apparent foundry-related material did not indicate the presence of elevated levels of metals, PCBs, or polynuclear aromatic hydrocarbons (PAHs).

The RMP for the proposed redevelopment was prepared in 1998 on behalf of Pixar. Cal-EPA staff approved the RMP in 1999. The RMP addresses precautions that were undertaken to mitigate long-term risks to human health and the environment from residual contaminants in soil and groundwater after construction was complete. The RMP included the following risk management measures:

- A minimum of 3 feet of clean imported soil will be maintained in the vegetable gardens;
- If subsurface activities disturb the cover overlying foundry-related material, the cover will be replaced using appropriate material (e.g., a concrete slab, pavement or 3 feet of clean soil);
- A deed restriction with land use restrictions that require implementation of the RMP and prohibit groundwater use; and
- Procedures will be developed by site owners and tenants to inform workers and contractors about the RMP, as needed, and to maintain compliance with the RMP.



**Figure 3: Vegetable and Flower Gardens at Pixar**

## San Quentin Solid Waste Disposal Landfill Home Depot and Target - San Rafael, California

The San Quentin Solid Waste Disposal Landfill, located at 1615 East Francisco Boulevard in the City of San Rafael, operated from 1967 through 1987. The Landfill was constructed on an area previously occupied by San Pablo Bay using land reclamation methods accepted at the time, including dredging of bay floor sediments and construction of dikes made from dredged materials. Waste fill was placed behind the dikes directly on the dredged surface, which consisted primarily of Bay Mud.



Figure 1: Aerial View of Former San Quentin Landfill

Although individual cells were constructed for disposal convenience, no portion of the Landfill floor was lined and waste materials were not segregated. The Landfill was closed as required by California Title 27 standards including a foundation layer, a minimum 1-foot thick low hydraulic conductivity layer, and at least 3 feet of topsoil as an erosion layer. The property is regulated by the San Francisco Regional Water Board Waste Discharge Requirements (WDR) Order No. R2-2012-0064.



Figure 2: Home Depot

The San Quentin Landfill is currently owned by Glendale West, LLC (Glendale) and Cal-Pox Incorporated (Cal-Pox). Glendale owns and leases to Target Lot 6 and Cal-Pox owns the remainder of the landfill and leases a portion to Home Depot.

The 130,000-square-foot Target retail store was constructed in 2013. The 108,000-square-foot Home Depot retail warehouse was constructed in 1993. As stated in WDR, Glendale and CalPox are named as dischargers. Home Depot Corporation, as a lessee of Cal-Pox, and Target Corporation, as a lessee of Glendale, are not named as dischargers. Prior to construction, the Dischargers were required to submit a

Development Plan that provided information demonstrating that any new development will be constructed in such a manner as to not adversely impact waste containment features of the landfill, water quality, or human or ecological health. The WDR requires the Development Plan to comply with prohibitions, monitoring, and reporting as stated in the WDR. The WDR also requires the dischargers to operate a leachate extraction system and perform a landfill gas monitoring program.

## Sierra Point Landfill – Brisbane, California

Sierra Point is a closed Class III Solid Waste Disposal Site. The site encompasses an area of approximately 131 acres, of which 29 acres are located in the City of South San Francisco and 102 acres are located in the City of Brisbane. The site is bounded to the north, south, and east by San Francisco Bay and to the west by Highway 101 and Southern Pacific Transportation Company railroad tracks. The site operated as a landfill between 1965 and 1972 and was used for the disposal of municipal solid wastes. Following closure the site was redeveloped as an office park and a marina. Sierra Point includes several low to mid-rise buildings. Three of these buildings were constructed with pile foundations prior to the Loma Prieta Earthquake of 1989.



Figure 1: Sierra Point Building Layout

The current Waste Discharge Requirements for the site are contained in Regional Water Quality Control Board for the San Francisco Bay region Order No. 96-058 (WDR), which remains in effect. The WDR states that the current owners of property overlying the site, and any new property owner, are responsible for compliance with the WDR, are jointly responsible for overall site maintenance, and have a continuing responsibility for correcting any problems associated with this disposal site during subsequent use of the site for other purposes.

Sierra Point Environmental Management Association (SPEMA) is a nonprofit mutual benefit corporation incorporated in 1998 under the Nonprofit Mutual Benefit Corporation Law of the State of California. The primary purpose of the organization is to perform environmental oversight and promote compliance by each of the members in accordance with the WDR and with other requirements arising out of the environmental condition of the real property as a former landfill. This includes semiannual compliance inspections for erosion of the landfill cover, daylighted refuse, and groundwater monitoring. The Association consists of 17 lots and is located in Brisbane and South San Francisco in the county of San Mateo, California. SPEMA is a mandatory association of the site owners. Any new property owner automatically becomes a member of SPEMA on taking title to the parcel, and all members of SPEMA are dischargers. All property owners are assessed for the annual expenses of the SPEMA.

Sierra Point Owners Association (SPOA) is a nonprofit mutual benefit corporation incorporated in June 1987 under the Nonprofit Mutual Benefit Corporation Law of the State of California. The specific and primary purpose for which the organization was formed is to repair, maintain and

manage common areas to the extent described In the Declaration of Covenants, Conditions and Restrictions, enforce the rules and regulations adopted by the Board of Directors from time to time, and discharge such other lawful duties and responsibilities required pursuant to the Corporation's Bylaws and the Declaration of Covenants, Conditions and Restrictions. The

Association consists of 16 lots located in Brisbane and

South San Francisco, California. All property owners are assessed for the annual expenses of the SPOA.



Figure 2: Sierra Point Towers



Figure 3: 5000 and 7000 Marina Blvd

In addition to the SPEMA and the SPOA the City of Brisbane created the Sierra Point Landscape and Lighting District to install and maintain public landscaping and public lighting facilities. All property owners are assessed for the annual expenses of the Landscape and Lighting District.

The California Code of Regulations, Title 27, Section 21190 contains

specific requirements for development on former solid waste landfills (e.g., construction methods for buildings to mitigate the effect of differential settlement, flexible connections and utility collars, placement of utilities) that are in effect for Sierra Point and the project site.

Under Order No. 96-058 issued by the RWQCB on April 17, 1996, a Post-Earthquake Inspection and Corrective Action Plan (Plan) for Sierra Point Landfill was prepared. The Plan would be

implemented in the event of a Magnitude 7.0 or greater earthquake within 30 miles of the former landfill. The Plan specifies that results of the inspection of containment features and groundwater and leachate control facilities potentially impacted by the static and seismic deformations of the landfill must be reported to the RWQCB within 72 hours of the event. Immediately following an earthquake event causing damage to the landfill structures, the corrective action plan is required to be implemented and the RWQCB must be notified of any damage. Inspection and Corrective Action Plan activities following a triggering event include assessing: perimeter dikes and shoreline erosion protection measures; the surface locations of underground utilities; landfill cover including roads and parking areas; ground- water monitoring systems; leachate monitoring systems; and surface-water drainage and outlet facilities.<sup>40</sup> The landfill owner must also comply with California Code of Regulations, Title 27, Section 21130(c) which requires the operator to amend emergency response plans in the event that post closure land use and/or structures on the site change and these changes are not addressed in existing plans.

## Taube Koret Campus for Jewish Life - Palo Alto, California

The \$300-million Taube Koret Campus for Jewish Life (TKCJL) is a collaborative initiative by the Albert L. Schultz Jewish Community Center in Palo Alto, the Jewish Home in San Francisco, the Jewish Community Federation and local community leaders. The parcel was a Cal-EPA brownfield redevelopment site, which before undergoing construction was cleaned up to meet the requirements of Cal-EPA. In addition, engineering and institutional controls were implemented to protect site users from residual contaminants that remain in the subsurface.

The 8.5-acre campus is home to a multiuse, intergenerational community center and independent and assisted living facility for seniors consisting of the 145,000-sq-ft Oshman Family Jewish Community Center, and a 310,000-sq-ft Jewish senior residence, all over a podium parking structure. Eco-conscious building practices, systems and programs went into the project's planning, design and construction. Twenty percent of construction materials were made from recycled products and 95% of construction debris was recycled or otherwise diverted from landfills. The campus has achieved LEED silver certification.



Figure 1: Jewish Community Center, Charleston Road

Historical industrial activities at the Site from 1957 through 1989 involved production of integrated circuits and instrumentation manufacturing. These activities required the use of chemicals such as degreasers, paint thinners, acids, and detergents. The activities generated a variety of hazardous wastes. Solvents were introduced to the subsurface soils through disposal into the sanitary sewer lines, and possibly a former water drain. Residual contaminants include tetrachloroethylene (PCE), trichloroethylene (TCE), and breakdown products of these compounds in soil, soil gas, and groundwater.

A Human Health Risk Assessment for the Site was prepared by Geosyntec Consultants on behalf of TKCJL. The development-specific human health risk assessment considered risk reduction by introduced design elements that serve as engineering controls and institutional controls. Engineering controls and institutional controls are requirements contained in a Risk Management Plan (RMP) that governed construction at the Site and future management of engineering controls.

The RMP for the proposed redevelopment was prepared by Geosyntec Consultants on behalf of TKCJL. Regional Board staff approved the RMP after public comment in June 2006. The RMP specified measures that were implemented by TKCJL as part of the redevelopment of the property to eliminate vapor intrusion into buildings. The RMP included the following engineering and institutional controls:



- Podium parking with continuously operating mechanical ventilation beneath residential units and day care facilities;
- Sub-slab vapor barriers beneath all occupied structures;
- Passive vapor extraction system beneath all podium parking areas (underlying all residential units and daycare facilities);
- Active vapor extraction system beneath the slab-on-grade commercial areas;
- Vapor migration reduction elements in elevator shafts and utility trenches;
- Ongoing sub-slab vapor monitoring beneath both podium parking/residential areas and slab-on-grade residential areas;
- Quarterly indoor air sampling in the podium parking garage for the first year following development;
- Ongoing groundwater monitoring;
- A contingency plan for operation of an active vapor extraction system, if necessary, beneath the podium parking/residential areas;
- A deed restriction with land use restrictions that require implementation of the RMP and prohibit groundwater use; and
- Financial assurances.



**Figure 2: Courtyard Overlying Podium Parking Structure**

The entire campus is covered by a one-story podium structure containing 620 parking spaces. The podium level, approximately 14 feet above grade, supports eight four-story concrete towers dedicated to independent, assisted, and memory assisted senior housing, a fitness center, and a theatre as the cultural focal point. The campus format allows its residents all of the benefits of city life without the challenges seniors face in an urban environment such as level changes and traffic. The theater and cultural hall features retractable seating and a rooftop outdoor terrace with sweeping views of Silicon Valley. The Jewish Community Center also features a nursery school with 13 classrooms and a large outdoor fenced play area, an after school learning center, a café, a cafeteria for residents, retail space, and office space for several non-profit organizations.

## West Covina Landfill – West Covina, California

This former landfill site now houses a sports complex, commercial space and a 47-acre nature preserve with walking trails. The City of West Covina won the Award for Excellence for this project in the Planning and Environmental Quality category of the 2009 Helen Putnam Award for Excellence program.

For more than 40 years, this landfill in the City of West Covina's southern area was owned and operated by BKK Corporation. This one-square-mile dump exceeded a height of 1,000 feet and accepted hazardous waste. Between 1962 and 1996, the landfill received nearly 3.5 million tons of Class I hazardous waste and 20 million tons of Class III municipal waste.

The city sought to have the landfill closed and was finally successful in 1996. The BKK Corporation tried to redevelop the site into an office park, but the site's history as a landfill and past environmental problems made redevelopment too difficult. The city took an active role in redeveloping the site starting in 1999.



Between 1999 and 2002, the city held numerous community meetings to create a vision for the site and released a questionnaire to nearby residents and businesses to gather community input. Community concerns included health and safety issues, groundwater contamination, degradation of property values, and site cleanup and redevelopment.

As city officials worked with the community and private sector, a vision for transforming the landfill emerged that combined retail and office space with recreational opportunities. The project proved to be challenging, with extensive coordination needed to develop a landfill property and the potential environmental liabilities and conforming with numerous federal and state regulatory requirements.

The city acquired 231 acres of the landfill property in 2003. The city's role resulted in an amendment of the consent order between BKK Corporation and the U.S. Environmental Protection Agency (EPA). The amendment removed land-use deed restrictions to allow recreational uses on a portion of the landfill and established a prospective purchaser agreement with the EPA and California Department of Toxic Substances Control (DTSC) to secure environmental liability protection for the city, developers and future landowners.

BKK Corporation and the city completed landfill closure and related remediation, including groundwater contamination cleanup and a conservation easement and habitat mitigation monitoring plan.

The city immediately contributed \$3.3 million in tax increment funds (TIF) for insurance premiums, overseeing soil testing and landfill drainage systems construction, and securing another \$6.2 million TIF to purchase and lease additional property. West Covina also obtained an additional \$1.2 million grant from the California Integrated Waste Management Board for site remediation and closure.

Today, the former landfill site is a highly successful project encompassing 340,000 square feet of commercial space and recreational uses. The 360,000-square-foot office towers, 18-hole golf course and 47-acre natural habitat preserve with walking trails are in the design and development phase. The project has generated more than 1,000 jobs and benefited the entire region. The West Covina Commercial Center and Sportsplex enjoys the enthusiastic support of community groups, the local chamber of commerce and the San Gabriel Mountains Regional Conservancy.



Figure 2: Playground at the West Covina Commercial Center and Sportsplex

## Westport Office Park - Redwood City, California

Westport Office Park is an 84.4-acre site in Redwood City, adjacent to Belmont Slough. A portion of the site was formerly an unlined landfill. The landfill area was approximately 45 acres and was used from about 1940 to 1970. The landfill was used for disposal of municipal solid waste and incinerator ash, with about 650,000 cubic yards of waste being deposited on the existing unlined Bay Mud. Landfill closure began under Regional Water Quality Control Board oversight in 1976 and was completed after receiving a new Water Board order in 1994.



Figure 1: Aerial View of Westport Office Park

Prior to the Westport Office Park project, no proposed development continued beyond the preliminary stage. In conjunction with the planning and design of the office park, additional investigations were performed and substantial information was developed and

recorded. Concurrent with site and building approval and construction, landfill gas venting and monitoring systems were approved and installed to meet regulatory requirements. The leachate collection system at the site was expanded and upgraded in 1998, concurrent with site development.

The site currently includes a commercial business park with twenty two-story office and research buildings totaling approximately 968,000 square feet. Because the intended future use was an office/business park, the construction of building gas protection and sensor systems, as well as groundwater contamination barriers were required. Design plans and specifications to protect site structures from landfill gas infiltration were also prepared. Construction observation services verified that the protection features were installed as per the design plans and regulatory requirements.

Essential protection/monitoring features incorporated into the development included:

- sub-floor membrane, passive gas venting systems and continuous, automated combustible gas sensors installed at each building;
- subsurface gas migration barriers installed in site utility corridors;
- a venting system to relieve gas pressure build-up in parking lot areas overlying the deeper portions of the landfill; and
- a leachate cut-off trench and subsurface gas venting/monitoring system installed at the property line.

A comprehensive landscaping and drainage plan was also required. The objective of this plan was to protect the landfill cap from water infiltration and root damage, while promoting healthy long-term plant growth in a distressed environment.

The 1994 Water Board Order for the site requires ongoing monitoring of groundwater and leachate, as well as vadose zone monitoring as part of the landfill gas and monitoring program. The Order additionally requires annual Stormwater Prevention Plan monitoring, as well as a Contingency Plan in the event of a leak or spill from the leachate collection system. The Contingency Plan also provides for the implementation of a corrective action plan to stop and contain migration of pollutants from the site. The Order required a Post-Earthquake Inspection and Corrective Action Plan to be implemented in the event of an earthquake generating groundshaking of Richter Magnitude 7 or greater at, or within 30 miles of, the landfill.



Figure 2: Specialty's Cafe at Westport Office Park

At the time, the Westport project was one of the most ambitious projects ever undertaken on a former landfill site. The estimated site development cost of over \$150 million made it one of the largest projects in 1996 in Northern California.

## **Response to 01/06/2016 John Swiecki Email Request for Information**

**Swiecki Question:** Who will be financially liable for addressing any problems that time occur following remediation and site development (e.g., death, injury, illness, property or environmental damage) related to site contamination, remediation, or landfill closure?

The determination of liability for a specific damage or injury is always a question of fact. Our response, therefore, cannot account for unique circumstances such as, without limitation, Acts of God or negligent or malicious acts by third parties. As a general matter, however, to the extent that problems arise out of UPC's failure to properly implement the Closure/Remedial Action Plan(s) (RAP) for the property approved by DTSC and/or the Regional Board, including any long-term operation and maintenance (O&M) requirements, UPC or its approved successor would be financially responsible to address them.

**Swiecki Question:** Who would be responsible for actually making any needed repairs following site development, remediation, and landfill closure?

UPC expects that, absent unusual circumstances, pursuant to the terms of any approved RAP, UPC and/or its approved successor will be primarily responsible to perform all O&M requirements imposed by the RAP, including necessary repair or maintenance of the installed remedy.