



CITY COUNCIL AGENDA REPORT

Meeting Date: November 19, 2020

From: John Swiecki, Community Development Director

Subject: Baylands Remediation Update and City Comments on Draft Feasibility Studies/Remedial Action Plans for Operable Unit San Mateo and Operable Unit 2

Community Goal/Result

Safe Community - Residents and visitors will experience a sense of safety

Purpose

To provide the City Council with an update on the remediation process for the Baylands, including proposed City comments on the draft Feasibility Study/Remedial Action Plan (RAP) for Operable Unit San Mateo (OU-SM) and Operable Unit 2 (OU-2).

Recommendation

Receive this report and authorize the City Manager to submit comment letters on the draft FS/RAPs for OU-SM and OU-2 to address the issues noted in this Agenda Report and the memorandum prepared by the City's consultants included as Attachment 6.

Background

A key objective for the City of Brisbane (City) when considering future development activities within the Baylands is to protect the health and well-being of future residents, employees, and visitors. The City's commitment to this objective was reaffirmed and strengthened by the passage of Measure JJ, which established requirements for site remediation as well as post-remediation operations, maintenance, and monitoring to provide for the continued effectiveness of the implemented remedies over time.

While the City's goals and expectations are clearly identified in Measure JJ, the regulatory authority to approve remediation plans for the Baylands does not lie with the City, but instead with the Department of Toxic Substances Control (DTSC) and Regional Water Quality Control Board (RWQCB) which each regulate specific areas of the Baylands (Attachment 1). The DTSC has oversight over the northwestern portion of the Baylands (Operable Unit San Mateo or OU-SM) and RWQCB has oversight over the southwestern portion of the Baylands (Operable Unit-2 or OU-2); the former landfill portion of the Baylands (east of Caltrain) is under the jurisdiction of the RWQCB and San Mateo County Health Department.

The environmental remediation process followed by the DTSC and RWQCB involves the following steps:

1. **Site Evaluation** – The purpose of this phase is to collect pertinent information about the site to determine if there has been a release of hazardous substances that may pose a risk to human health and the environment. This phase typically identifies which chemicals are present at the site at levels of concern, evaluates potential exposure pathways, and assesses potential risks for human and ecological receptors.

2. **Remedy Selection** – The purpose of this phase is to identify remedial action objectives, applicable laws and regulations, and potential technologies that can be used to address impacts at the site. This phase of work also includes the preparation of a remedy selection document that summarizes the key components of the conceptual plan for site remediation. Upon regulatory agency approval of the selected remedy, the project proceeds to the next phase. As discussed further below, the remedy selection phase is the current phase for both OU-2 and OU-SM.

3. **Implementation** – This phase of work begins with the preparation of documents that provide details regarding the design and implementation of the selected remedy; these documents include both technical and operational plans as well as detailed plans for remedial activities. Upon regulatory agency approval of these plans, remedial activities may be implemented and on completion of these activities, a remedial action completion report that documents the work conducted is submitted to the regulatory agency for review and approval.

4. **Certification and Stewardship** – This phase of work begins following regulatory agency approval of the remedial action completion report and begins with documenting the long-term measures (i.e., inspections, testing, land use controls) required to confirm the effectiveness of the implemented remedial actions to control potential exposure to residual contamination at the site. Performance of the required inspections, operations, maintenance, and monitoring is documented through the submittal of reports (e.g., annual reports and/or five-year review reports) to the regulatory agency tasked with oversight of the site.

While the City does not have legal authority over site remediation, the City has been proactively engaged with the developer and state regulators to ensure that the City’s goals and expectations are understood and will be achieved.

Discussion

As noted above, the applicant has concluded the **Site Evaluation** phase of work for both OU-SM and OU-2 and is moving forward with **Remedy Selection** for these properties.¹ Specifically, a draft Feasibility Study/Remedial Action Plans for OU-2 and OU-SM have been released for public review and comment. The Draft FS/RAPs summarize the results of the **Site Evaluations**, identify and evaluate potential remediation strategies for each OU, and based on an evaluation of the Threshold and Balancing Criteria for each remediation strategy, recommend a preferred remediation strategy for each OU. The Executive Summaries for the Draft FS/RAPS are presented in Attachments 2 and 3 (for OU-2 and OU-SM, respectively) and the remediation strategies evaluated for each OU are summarized in Attachments 4 and 5 (for OU-2 and OU-SM, respectively).

At the end of the public comment periods, the DTSC and RWQCB will complete their review of the Draft FS/RAPs and public comments received on these documents and will prepare a formal response-to-comments.

¹ Before the environmental remediation process can commence for the eastern portion of the Baylands (i.e., the former landfill), the site must be closed in accordance with State of California Title 27 requirements. According to the applicant, closure plans for the eastern portion of the Baylands are currently being prepared.

City Comments

In recognition of the importance of providing for the protection of public health and compliance with the requirements of Measure JJ, the City and its consultant team have proactively engaged with both the regulators and applicant in the ongoing processes for both OU-SM and OU-2. Specific tasks undertaken by the City's consultants included a review of historical technical data, data gap studies, and preliminary versions of the FS/RAPs for both OU-SM and OU-2.

The attached memorandum from Edgcomb Law Group (Attachment 6) summarizes the consultant's work for the City and includes a discussion of the key issues identified in preliminary versions of the FS/RAPs. This review ultimately resulted in important changes to the Draft FS/RAPs that provide more information and ultimately are beneficial to the long-term protection of public health and safety. While many of the City's concerns have been addressed by these changes, because specific details regarding the planned remedial activities were not provided in the Draft FS/RAPs (these will be addressed in the next phase of work), it will be necessary for the City to review and comment on future documents prepared by the applicant and work with the regulatory agencies to address the City's potential concerns regarding the protectiveness of the remedial actions to be implemented and their compliance with the requirements of Measure JJ.

Therefore, it is recommended that the City provide formal comments for the Draft FS/RAPs for OU-2 and OU-SM to explicitly state that the City requests to remain engaged with the applicant and the regulatory agencies in the Implementation phase of the environmental remediation process and be provided the opportunity to review and comment on future regulatory agency submittals such as those identified in Attachment 6.

Fiscal Impact

None

Measure of Success

Ensuring that Baylands site remediation is protective of public health and complies with the requirements of Measure JJ.

Attachments

1. Baylands Remediation Areas
2. Executive Summary for the Draft FS/RAP for OU-2
3. Executive Summary for the Draft FS/RAP for OU-SM
4. Remedial Alternatives for OU-2
5. Remedial Alternatives for OU-SM
6. Edgcomb Law Group Memorandum, dated 11/4/2020



John Swiecki, Community Development Director



Clay Holstine, City Manager