

November 4, 2020

**BY E-MAIL**

John Swiecki, Director  
Community Development Department  
City of Brisbane  
50 Park Place, Brisbane CA, 94005  
[jswiecki@brisbaneca.org](mailto:jswiecki@brisbaneca.org)

**Re: Brisbane Baylands UPC OU-SM and OU-2 FS/RAP Status Update**

Dear Mr. Swiecki:

As part of its efforts to redevelop the Brisbane Baylands (“Site”) into a mixed-use development project, known as the Brisbane Baylands Development (“Project”), Universal Paragon Company (“UPC”) has finalized the draft Feasibility Study/Remedial Action Plans (“Draft Final FS/RAPs”) to address environmental impacts from historical activities that occurred at the Site. Encompassing approximately 660-acres, the Brisbane Baylands is bordered on the west by Bayshore Boulevard, north by the City and County of San Francisco, east by U.S. HWY 101, and south by Brisbane Lagoon. The Site was formerly used as the Southern Pacific Transportation Company (“SPTC”) Brisbane Railyard (from approximately 1911 to 1982), a municipal landfill (from approximately 1932 to 1967), and commercial/industrial park along Industrial Way (over the last approximately 100 years). From the time when railyard operations ceased in 1982, the majority of the Site has been unused and vacant, though various foundations and structures remain.

In November 2018, the voters of City of Brisbane (“City”) approved Measure JJ to amend the City’s General Plan to rezone the Site thereby allowing the development of mixed residential, commercial, and public uses at the Site. Given the community’s longstanding concerns of environmental impacts from historical operations, Measure JJ was drafted to require development to support ground level residential uses and comply with the associated higher-level remediation standards. In an effort to ensure the proposed development is consistent with Measure JJ’s goals, the City requested that EKI Environment & Water, Inc. (“EKI”) and

Edgcomb Law Group, LLP (“ELG”) provide technical and legal environmental consulting services to review and comment on various work plans, reports, and remediation plans prepared by UPC for the Project. This memorandum summarizes the technical review and analysis by EKI and ELG and provides recommendations on how to address outstanding issues.

## **Background**

Since approximately 1984, numerous environmental investigations have been conducted at the Site to characterize the distribution of contaminants resulting from historical railroad operations and a contaminant plume originating from the adjacent Schlage Lock site. Early investigations found contaminants in the soil and groundwater at the Schlage Lock site, which led to the issuance of a Remedial Action Order (“RAO”) to the SPTC by the State Department of Health Services in 1988, followed by an Imminent and/or Substantial Endangerment Order (“Order”) issued by the Department of Toxic Substances Control (“DTSC”) in 1990 to Tuntex Properties, Inc., the predecessor company to UPC. The Order requires the submission of a Feasibility Study (“FS”), Remedial Action Plan (“RAP”), Remedial Design and Implementation Plan (“RDIP”), Implementation of Final RAP, and Operation and Maintenance in accordance with the Final RAP and RDIP among other required items to address the actual and threatened releases of hazardous substances at the Site.

The Order has been amended a few times. Significantly, as part of the Second Amendment to the Order, issued by the DTSC in 1994, the DTSC divided the Site into the following operable units: Operable Unit San Mateo<sup>1</sup> (“UPC OU-SM”), the Bayshore Railyard North Area; and Operable Unit 2 (“OU-2”), the Bayshore Railyard South Area. The Third Amendment to the Order, issued by the DTSC in 1995, required the installation and operation of a groundwater remediation system to address the contaminated groundwater plume on the upgradient Schlage Lock site, contaminated groundwater at the UPC OU-SM, and any soil containing volatile organic compounds (“VOCs”) on the UPC OU-SM that is impacted from the contaminated groundwater. In 1995, as part of a Fourth Amendment to the Order, the DTSC transferred lead agency authority for OU-2 to the San Francisco Bay Regional Water Quality Control Board (“Water Board”). In addition to the OU-2 area, the Water Board oversees the investigation and closure of the former Brisbane Landfill jointly with the San Mateo County Department of Environmental Health.

The Project includes the following three parcels:

- UPC OU-SM, an approximately 35-acre parcel of land within San Mateo County that was the northern portion of the SPTC Brisbane railyard property;

---

<sup>1</sup> UPC OU-SM is called out as Operable Unit One (“OU-1”) in the Order but was renamed as UPC OU-SM in a subsequent Consent Order in 2008.

- OU-2, an approximately 140-acre parcel of land that includes the southern portion of the SPTC Brisbane railyard property and an old industrial park; and
- Former Brisbane Landfill<sup>2</sup>, an approximately 384-acre parcel of land that was formerly used as a landfill.

To comply with the amended Order, UPC prepared a draft FS/RAP for OU-SM and a draft FS/RAP for OU-2 and has submitted each to the respective regulatory agency (i.e., the DTSC for UPC OU-SM and the Water Board for OU-2) with oversight for approval. A FS/RAP is a detailed report that defines the nature and extent of contamination found on a property based on site characterization activities, outlines a plan of action to remediate the contamination by developing a cleanup strategy and alternatives to eliminate potentially harmful human health and environmental impacts, and evaluates which alternatives and proposed remedies will be used to achieve acceptable cleanup goals. Following preparation of the draft FS/RAPs, the DTSC and the Water Board will accept comments from the public and each will host a virtual public meeting to provide information on the FS/RAP under their respective oversight. The DTSC has not yet issued notice of the Draft Final FS/RAP for UPC OU-SM with a public comment period<sup>3</sup>; however, the Water Board issued notice of the Draft Final FS/RAP for OU-2 and the public comment period to review and comment on the draft will run from October 28, 2020 to December 18, 2020. Once the FS/RAPs have been approved, UPC will begin preparing the RDIP.

### **Environmental Review and Participation in FS/RAP Preparation**

EKI and ELG have consulted and advised the City on the Project since 2018. Such work has included review of environmental documents; participation in meetings with the DTSC and the Water Board; participation in conference calls with UPC, its environmental consultants, community relations consultant, and counsel; participation in Brisbane Baylands Community Advisory Group (“BBCAG”) meetings; and participation in conference calls and meetings with the City representatives. Given the high level of public interest in the Project, the City and regulatory representatives were generally successful in convincing UPC that it was in UPC’s interest to work collaboratively with the City to address issues identified by EKI.

As reflected by the various iterations of the draft FS/RAP and the Draft Final FS/RAP below, EKI and ELG raised numerous concerns regarding the FS/RAPs, suggested revisions to the documents, and spent many hours working with UPC’s consultants and counsel to correct and implement changes to address identified concerns.

---

<sup>2</sup> UPC has not begun the preparation of remedial investigation or remedial action documents for the former Brisbane Landfill.

<sup>3</sup> UPC expects the DTSC will issue notice of the Draft Final FS/RAP for UPC OU-SM on November 9, 2020 with a 45-day public comment period. Discussions regarding the Draft Final FS/RAP for UPC OU-SM pertains to the September 17, 2020 version.

To date, EKI and ELG have reviewed the following environmental documents for OU-SM and OU 2:

<b>Area</b>	<b>Document</b>	<b>Date of Document Version</b>
UPC OU-SM	Final Data Gap Investigation Work Plan	October 15, 2018
	Data Gap Investigation Report	December 21, 2018
	Draft FS/RAP and associated appendices	April 9, 2019; August 5, 2019; November 4, 2019; December 13, 2019; and December 23, 2019
	Draft Final FS/RAP and associated appendices	June 9, 2020; and September 17, 2020
OU-2	Data Gap Investigation Work Plan	November 27, 2018
	Draft FS/RAP and associated appendices	September 19, 2019; and February 19, 2020
	Draft Final FS/RAP and associated appendices	May 8, 2020; May 29, 2020; August 21, 2020; and September 17, 2020
Schlage Lock Operable Unit <sup>4</sup>	FS/RAP and associated appendices	November 4, 2009

*Proposed Preferred Remedial Alternative*

UPC has selected Alternative 3: Land Use Restrictions, Soil Capping, and Excavation with Partial Onsite Relocation and Partial Offsite Disposal as the preferred alternative for UPC OU-SM and Alternative 3: Land Use Restrictions, Engineering Controls, Soil Capping and Excavation with Relocation and/or Offsite Disposal and/or Onsite Ex Situ Treatment, In Situ Groundwater Treatment and Monitoring as the preferred alternative for OU-2.

The remedial alternative selected for UPC OU-SM includes:

---

<sup>4</sup> Schlage Lock Operable Unit includes the San Francisco County Portion of UPC Operable Unit for which the RAO was first issued to SPTC to cleanup the known releases of hazardous substances into soil and groundwater that are migrating onto UPC OU-SM. The Order required VOC impacted groundwater and soil to be addressed in the FS/RAP for the Schlage Lock Site.

- Capping of soil that contains chemicals of concern (“COCs”) at concentrations exceeding cleanup levels (“CULs”) in areas where significant fill (i.e., greater than 5 feet of fill) or other capping (e.g., foundations, roads) will be placed over existing soil;
- Excavation, partial off-haul and disposal, and partial relocation and capping of impacted soil that contains COCs at concentrations exceeding CULs in areas that will not be filled (capped);
- Soil vapor mitigation systems as part of future building construction, if required based on subsequent soil vapor testing and Site-specific risk assessment after remediation is completed;
- Land use restrictions including administrative actions and engineered actions; and
- Ongoing operation and maintenance of caps and any engineered systems such as soil vapor mitigation systems.

The remedial alternative selected for OU-2 includes:

- Capping of soil in portions of the Site that contain chemicals of potential concern (“COPCs”) at concentrations exceeding CULs. Capping includes placement of clean soil, building foundations, roads, parking pavement, or other hardscape over the existing or future land surface;
- Excavation of soil in portions of the Site that contains COPCs at concentrations exceeding CULs and where capping is not possible. Some excavated soil will be off-hauled and disposed of offsite and some soil will be relocated into onsite containment cells and capped. As an option to excavation, onsite treatment and reuse of soil containing potentially mobile petroleum hydrocarbons may be conducted;
- Treatment of CVOC-impacted groundwater and post-remediation groundwater monitoring;
- Land use controls consisting of the following components:
  - Soil vapor mitigation systems as part of future building construction, if required based on a soil vapor intrusion evaluation that will be conducted after mass grading and prior to building construction;
  - Land use restrictions including administrative actions and engineered actions; and
- Ongoing operation and maintenance of caps and any engineered systems such as soil vapor mitigation systems.

The preferred alternative selected for each operable unit appears to have the potential to adequately address soil, soil vapor, and groundwater contamination at the Site, subject to regulatory approval and implementation of the RDIPs, O&M Plans, soil vapor sampling plan, and other design documents. A discussion of the technical evaluation, collaboration with UPC, and recommended strategy for the City to continue efforts to ensure Measure JJ goals are achieved going forward is provided below.

### *Areas Where UPC Addressed Concerns Raised by City's Consultants*

Since the first versions of the Draft FS/RAPs were provided by UPC to the City and the regulatory agencies, the City's consultants have been generally successful at getting UPC to modify the initially inadequate Draft FS/RAPs to provide more background and detail, implement more conservative thresholds and standards for the remedial design, and present the proposed remediation activities with more clarity to provide better public understanding. Issues of concern that were identified by EKI and addressed by UPC in the Draft Final FS/RAP include, but are not limited to, the following:

- Adding a discussion requiring that the selection of a remedial alternative must be in compliance with Measure JJ;
- Evaluating potential exposures for off-Site receptors and future maintenance workers in the Health Risk Assessment ("HRA");
- Applying a more acceptable attenuation factor in calculating the health risks of exposure to contaminants in soil vapor to indoor air in the HRA;
- Establishing CULs for groundwater and soil vapor, moreover, calculating more conservative CULs for soil vapor regarding exposure to commercial and industrial workers;
- Adding a remedial delineation of soil impacted with chlorinated volatile organic compounds ("CVOCs") area in OU-2, which would occur prior to preparation of the RDIP; as well as excavating impacted soil in the CVOC area of OU-2;
- Adding additional soil screening for pentachlorophenol ("PCP") in soil following demolition of existing buildings in the OU-2 area along Industrial Way to confirm PCP is not present in soil;
- Applying a more conservative screening value for arsenic when evaluating import fill;
- Adding information about future soil vapor sampling and measures to address potential vapor intrusion issues including a minimum of two rounds of indoor air sampling;
- Adding an agency approved Soil Management Plans ("SMP") that provide acceptable parameters for any capping, excavation, grading, trenching, or backfilling of contaminated soils;
- Adding Operation and Maintenance Plans ("O&M Plans") governed by O&M Agreements with the respective regulatory agencies to evaluate the effectiveness of the cap (for any contaminated soils capped onsite), maintenance of the cap, and to ensure compliance with Land Use Covenants ("LUCs");
- Evaluating O&M costs over a 30-year period (the standard length typically applied) instead of a 10-year period; and
- Adding an alternative that analyzes excavation of all impacted soils with offsite disposal and land use restrictions.

### *Outstanding Concerns Raised by City's Consultants*

While the Draft Final FS/RAPs address many of the potential concerns identified by EKI, the level of detail provided in the documents for pre-design studies and actual implementation of the remedial alternatives is still limited and lacks critical information<sup>5</sup>. The Draft Final FS/RAPs indicate many specifics will be provided in the forthcoming RDIPs and O&M Plans that will be submitted to the applicable regulatory agencies for review and approval. Items raised by EKI on various occasions that UPC has acknowledged but pushed back on include the following:

- Adding a requirement that soils detected with levels of metals exceeding acceptable State regulatory limits must be excavated and disposed of offsite;
- Concerns with the lack of criteria allowing for the excavation and relocation of contaminated soils on Site;
- Concerns with the adequacy of sampling methods, and scope of characterization, including the failure to sufficiently evaluate baseline conditions for soil vapor due to the lack of recent soil vapor testing; and
- Concerns with how future soil vapor sampling and engineering control measures will be designed to address potential vapor intrusion issues in the forthcoming environmental documents.

Given UPC's position, and the regulatory agencies' acceptance, that many of these items will be addressed in the forthcoming RDIPs, O&M Plans, and/or other environmental documents subject to regulatory review and approval, it is imperative that the City requests and is provided a copy of these documents for review and coordination of comments with the applicable regulatory agencies. More specifically, EKI has identified and recommends performing a careful review of future submittals related to:

- Soil vapor sampling in both UPC OU-SM and OU-2;
- Vapor intrusion evaluations in both UPC OU-SM and OU-2;
- Vapor intrusion mitigation system designs for both UPC OU-SM and OU-2;
- Indoor air sampling for both UPC OU-SM and OU-2;
- Excavation of soil from the CVOC area in OU-2;
- In-situ groundwater remediation within the CVOC Area in OU-2;
- Post-demolition soil assessment in the Industrial Way area in OU-2;
- Long-term maintenance of the cap at UPC OU-SM and OU-2; and
- Import fill for UPC OU-SM and OU-2.

---

<sup>5</sup> Specific information including preconstruction activities, excavation of soils, stockpiling and staging of soils, haul roads, traffic control elements, dust control and air monitoring programs, erosion control measures, and other details regarding the preferred remedial approach will be set forth in the RDIPs and O&M plans.

Additionally, as CVOC impacted groundwater and associated CVOC soil vapor in UPC OU-SM is to be addressed as part of the Schlage Lock Operable Unit remediation, continued evaluation of investigation, remediation and other reports submitted in connection with the Schlage Lock Operable Unit is recommended to ensure such work is consistent with Measure JJ.

### **Recommendation Going forward**

It is anticipated that the Site can be remediated and redeveloped consistent with the requirements of Measure JJ; however, approval of the Draft Final FS/RAP by the respective regulatory agencies is just the beginning of achieving that outcome. Both the City and the public will be given an opportunity to comment on the Draft Final FS/RAPs during the public comment period. While many of the concerns identified by EKI and ELG were addressed, there are some items where UPC and the City could not come to an agreement. Thus, it would be in the City's best interest to write a comment letter that reiterates its concerns with the shortfalls of the Draft Final FS/RAPs and highlights its expectation that the respective regulatory agencies will conduct a more robust evaluation of future submittals in the remedial design in the forthcoming environmental documents/plans to ensure the project is developed consistent with Measure JJ.

The City should also request the opportunity to review and comment on the related plans and future environmental documents (at both UPC OU-SM and OU-2, as well as the Schlage Lock Operable Unit). As the Project is still in its initial design phase and a development agreement is still being negotiated, locations of public facilities including roads and utility corridors, and other land use categories that would transfer ownership from UPC to the City are subject to change. The City will want to pay special attention to any area impacted by contaminants that will be dedicated to it. Therefore, it is recommended that the City continue to take a deliberate and proactive approach of reviewing and commenting on future submittals related to the Site including implementation of the Draft Final FS/RAPs.

Very truly yours,



Kiana Amiri-Davani