

CITY of **BRISBANE** City Council Meeting Agenda

Thursday, October 20, 2022 at 7:30 PM • Virtual Meeting

This meeting is compliant with the Ralph M. Brown act as amended by California Assembly Bill No. 361 effective September 16, 2021 providing for a public health emergency exception to the standard teleconference rules required by the Brown Act. The purpose of this is to provide a safe environment for the public, staff and Councilmembers, while allowing for public participation. The public may address the Council using exclusively remote public comment options. The Council may take action on any item listed in the agenda.

PUBLIC MEETING VIDEOS

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TO ADDRESS THE COUNCIL

The City Council Meeting will be an exclusively virtual meeting. The agenda materials may be viewed online at <u>www.brisbaneca.org</u> at least 24 hours prior to a Special Meeting, and at least 72 hours prior to a Regular Meeting.

Remote Public Comments:

Meeting participants are encouraged to submit public comments in writing in advance of the meeting. Aside from commenting while in the Zoom webinar the following email and text line will be also monitored during the meeting and public comments received will be noted for the record during Oral Communications 1 and 2 or during an Item.

Email: ipadilla@brisbaneca.org Text: 628-219-2922 Join Zoom Webinar: <u>zoom.us</u> (please use the latest version: <u>zoom.us/download</u>) <u>brisbaneca.org/cc-zoom</u>

Webinar ID: 991 9362 8666 Passcode: 123456 Call In Number: 1 (669) 900 9128

SPECIAL ASSISTANCE

If you need special assistance to participate in this meeting, please contact the City Clerk at (415) 508-2113. Notification in advance of the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

WRITINGS THAT ARE RECEIVED AFTER THE AGENDA HAS BEEN POSTED

Any writings that are received after the agenda has been posted but before 2 p.m. of the day of the meeting will be available for public inspection at the front lobby in City Hall and on the internet (<u>www.brisbaneca.org/meetings</u>). Any writings that are received after the agenda has been posted but after 2 p.m. of the day of the meeting will be available on the internet at the start of the meeting (<u>www.brisbaneca.org/meetings</u>), at which time the materials will be distributed to the Council.

7:30 P.M. CALL TO ORDER – PLEDGE OF ALLEGIANCE

ROLL CALL

ADOPTION OF AGENDA

AWARDS AND PRESENTATIONS

A. Peninsula Clean Energy Update

ORAL COMMUNICATIONS NO. 1

CONSENT CALENDAR

- B. Approve Minutes of City Council Meeting of September 15, 2022
- C. Approve Minutes of City Council Closed Session Meeting of September 15, 2022
- D. Approve Minutes of City Council Meeting of October 6, 2022
- E. Approve Minutes of City Council Closed Session of October 6, 2022
- F. Approve Findings and Recommendations for Grand Jury Report on Water Provider
- G. Approve Findings and Recommendations for Grand Jury Report: A Delicate Balance between Knowledge and Power: Government Transparency and the Public's Right to Know
- H. Approve Memorandum of Understanding with the County of San Mateo to Carry Out Goals and Mission of the Gun Relinquishment Task Force and Authorize the City Manager to sign the MOU

NEW BUSINESS

I. Approve Open Space Plan Amendment

(It is being recommended to Amend the 2001 Open Space Plan (Plan) to expand the Priority Preservation Area (PPA) of the Brisbane Acres to include six additional lots and modify the criteria that establishes priority)

STAFF REPORTS

J. City Manager's Report on Upcoming Activities

MAYOR/COUNCIL MATTERS

- K. Countywide Assignments and Subcommittee Reports
- L. Written Communications

ORAL COMMUNICATIONS NO. 2

ADJOURNMENT

File Attachments for Item:

B. Approve Minutes of City Council Meeting of September 15, 2022



BRISBANE CITY COUNCIL

ACTION MINUTES

CITY COUNCIL MEETING

THURSDAY, SEPTEMBER 15, 2022

VIRTUAL MEETING

7:30 P.M. CALL TO ORDER – PLEDGE OF ALLEGIANCE

Mayor Mackin called the special meeting to order at 7:39 P.M. and led the Pledge of Allegiance.

ROLL CALL

Councilmembers present: Councilmembers Cunningham, Davis, Lentz, O'Connell and Mayor Mackin

Councilmembers absent: None

Staff Present: City Manager Holstine, City Clerk Padilla, City Attorney McMorrow, , Finance Director Yuen, Community Development Director Swiecki, Senior Planner Johnson, Recreation Coordinator Monroy and Communications, Assistant Fire Marshal Wittner & Digital Media Coordinator Ordona

REPORT OUT CLOSED SESSION

City Attorney McMorrow reported that updates were provided to Council, direction was given to staff and no action was taken at Closed Session regarding the two potential litigation cases in Closed Session Item D.

ADOPTION OF AGENDA

Councilmember O'Connell made a motion, seconded by Councilmember Cunningham to adopt the agenda as it stands. The motion was passed unanimously by all present.

Ayes: Councilmembers Cunningham, Davis, Lentz, O'Connell and Mayor Mackin Noes: None Absent: None Abstain: None

A. Present Commendations to the members of the Brisbane Pirates for winning the 2022 South San Francisco Pony Baseball Championships

Mayor Mackin congratulated the Brisbane Pirates, the players and the coaches, for winning the 2022 South San Francisco Pony Baseball Championships. Parks and Recreation Coordinator Ricardo Monroy presented Brisbane Pirates Coach Jason Lappano his Mayoral Commendation.

B. National Preparedness Month

Mayor Mackin proclaimed September 2022 as National Preparedness Month and encouraged all Brisbane residents to increase their knowledge and awareness of proper safety measures to follow before, during, and after a disaster. Assistant Fire Marshal Wittner accepted the Proclamation and thanked the Council for the proclamation.

ORAL COMMUNICATIONS NO. 1

No member of the public wished to make public comment.

CONSENT CALENDAR

- C. Approve Minutes of City Council Meeting of July 7, 2022
- D. Approve Minutes of City Council Closed Session Meeting of July 7, 2022
- E. Accept Investment Report as of June 2022
- F. Accept Investment Report as of July 2022
- G. Adopt a Resolution Establishing the Business License Tax on Recycling Establishments for Fiscal Year 2022/23
- H. Adoption of a Resolution Declaring the Continued Need to Conduct City Council, Commission and Committee Meetings Remotely Due to Health and Safety Concerns for the Public

Councilmember Davis made a motion, seconded by Councilmember O'Connell to approve Consent Calendar Items C-H. The motion was passed unanimously by all present.

Ayes: Councilmembers Cunningham, Davis, Lentz, O'Connell and Mayor Mackin Noes: None Absent: None Abstain: None

I. Applicant Appeal of the Planning Commission's April 4, 2022 Decision Denying the Modification of Interim Use Permit 2021-UP-3 to Allow the Use of a Vacant Site On the Baylands To Be Used For a Google Bus Staging Yard

(This item was continued from the July 7, 2022 and May 19, 2022 City Council Meetings. City Council will consider applicant appeal of the Planning Commission's April 4, 2022 decision denying the modification of Interim Use Permit 2021-Up-3 to allow the use of a vacant site on the Baylands to be used for a Google Bus staging yard (Planning Commission Resolution 2021-UP-3-M) and revoking Interim Use Permit 2021-UP-3 (Planning Commission Resolution 2021-UP-3-R); Eric Aronsohn, applicant; Oyster Point Properties Inc, applicant/owner.)

Mayor Mackin announced that the Council and staff received a correspondence from the applicant regarding this appeal.

Community Development Director reported that the applicant has withdrawn their request for appeal and extension of their Use Permit. They are requesting Council to allow for a 90-day wind down period s

After council questions of staff and applicant, and after no public comment, Councilmember Lentz expressed his disappointment of not having the opportunity to have Tunnel Avenue improvements. Councilmember Lentz made the motion, seconded by Councilmember Davis to allow for a 90-day wind down period from September 15, 2022. The motion was passed by a 4-1 vote.

Ayes: Councilmembers Cunningham, Davis, Lentz, and O'Connell Noes: Mayor Mackin Absent: None Abstain: None

STAFF REPORTS

J. City Manager's Report on upcoming activities

City Manager Holstine reported on the latest news and events in the City.

MAYOR/COUNCIL MATTERS

K. Creation of the Ordinance No. 528 Review Ad Hoc Subcommittee and Selection of Members

(Ordinance No. 528 allowed for research and development (R&D) uses at Sierra Point)

City Manager Holstine reported that a new Ad Hoc Subcommittee will be created to review Ordinance No. 528 regarding the research and development uses at Sierra Point. Councilmember Cunningham and Mayor Mackin volunteered to be the members of the Ad Hoc Subcommittee.

L. Countywide Assignments and Subcommittee Reports

Councilmembers reported on their activities in the subcommittees and countywide assignments.

M. Written Communications

Written Correspondence was received by the Council between September 1-15, 2022 from the following members of the public:

Susan Kirsch (9/2/22) Catalysts Town Hall

Eric Aronsohn (9/13/22) Interim Use Permit 2021-UP-3

Dana Dillworth (9/15/22) Comment Item K

ORAL COMMUNICATIONS NO. 2

No member of the public wished to speak.

ADJOURNMENT

Mayor Mackin adjourned the meeting at 8:42P.M.

Ingrid Padilla, City Clerk

File Attachments for Item:

C. Approve Minutes of City Council Closed Session Meeting of September 15, 2022



BRISBANE CITY COUNCIL

ACTION MINUTES

BRISBANE CITY COUNCIL CLOSED SESSION MEETING

THURSDAY, SEPTEMBER 15, 2022

VIRTUAL MEETING

6:00 P.M. CLOSED SESSION

A. Approval of the Closed Session Agenda

B. Public Comment. Members of the public may address the Councilmembers on any item on the closed session agenda

C. Adjournment into Closed Session

D. CONFERENCE WITH LEGAL COUNSEL—POTENTIAL LITIGATION Government Code, Section 54956.9 (d) (1). Number of Cases: Two

ADJOURNMENT

Mayor Mackin called the meeting to order at 6:33 P.M. No members of the public attended the meeting.

Councilmember Cunningham made a motion, seconded by Councilmember O'Connell to approve the agenda as it stands. The motion was carried unanimously by all present.

Ayes: Councilmembers Cunningham, Davis, Lentz, O'Connell and Mayor Mackin Noes: None Absent: None Abstain: None

Mayor Mackin adjourned the meeting into Closed Session.

REPORT OUT CLOSED SESSION

City Attorney McMorrow reported that updates were provided to Council, direction was given to staff and no action was taken at Closed Session regarding the two potential litigation cases in Closed Session Item D.

ADJOURNMENT

The meeting was adjourned at 6:36 P.M.

Ingrid Padilla, City Clerk

С.

File Attachments for Item:

D. Approve Minutes of City Council Meeting of October 6, 2022



BRISBANE CITY COUNCIL

ACTION MINUTES

CITY COUNCIL MEETING

THURSDAY, OCTOBER 6, 2022

VIRTUAL MEETING

7:30 P.M. CALL TO ORDER – PLEDGE OF ALLEGIANCE

Mayor Mackin called the special meeting to order at 7:33 P.M. and led the Pledge of Allegiance.

ROLL CALL

Councilmembers present: Councilmembers Cunningham, Davis, O'Connell and Mayor Mackin

Councilmembers absent: Councilmember Lentz

Staff Present: City Manager Holstine, City Clerk Padilla, City Attorney McMorrow, Assistant City Manager Schillinger, Finance Director Yuen, Community Development Director Swiecki, Senior Planner Johnson, Senior Planner Ayers, Deputy Fire Chief Kavanaugh, Assistant Fire Marshal Wittner, Administrative Management Analyst Solis, Police Commander Garcia, Human Resources Technician Solis and Admin Management Analyst Ibarra

REPORT OUT CLOSED SESSION

City Attorney McMorrow reported that updates were provided to Council, direction was given to staff and no action was taken at Closed Session regarding the two cases in Closed Session Item D. Liability Claim Item E was rejected by Council and agreed to settle the claim for the claimant's out of pocket expense in exchange for a signed release of all claims.

ADOPTION OF AGENDA

Councilmember Davis made a motion, seconded by Councilmember Cunningham, to adopt the agenda as it

Council Minutes D. pber 6, 2022 Page 2 stands. The motion was carried unanimously by all present.

Ayes: Councilmembers Cunningham, Davis, O'Connell and Mayor Mackin Noes: None Absent: Councilmember Lentz Abstain: None

AWARDS AND PRESENTATIONS

A. Proclamation for the Volunteer of the Year

Mayor Mackin declared June Heavner, the 2022 Brisbane Volunteer of the Year. June Heavner thanked her family and friends for their support and the Council for the award.

B. Proclaiming National Hispanic & Latinx Heritage Month

Mayor Mackin declared September 15 to October 15, 2022, as Hispanic and Latinx Heritage Month.

Elizabeth Solis, Administrative Management Analyst, Office of the Fire Chief and Carla Solis, Human Resources Technician, Human Resources Office accepted the Proclamation as mother and daughter. They each shared how proud they are of their heritage and achievements of the Hispanic and Latinx communities.

C. Proclamation of Fire Prevention Week of October 9th - 15th

Mayor Mackin proclaimed October 9-15, 2022, as Fire Prevention Week and urged residents to implement simple and proven preventative measures to ensure the safety of their homes and families.

Craig Wittner, Assistant Fire Marshal, Special Services Bureau, Fire Prevention Services Division accepted the proclamation and thanked the Council for their support.

ORAL COMMUNICATIONS NO. 1

Nancy Lacsamana shared that bully tactics were being used by City Council candidates.

<u>Paul Bouchard</u> shared his concerned about the City Council candidates' statements during the Candidate's Forum.

Jamesanne Dunn shared that the endorsement signs supporting the two incumbents was unfair.

Kim Follien was concerned about the social media attacks pertaining to postings about the City Council race

- D. Approve Minutes of City Council Special Meeting of July 14, 2022
- E. Approve Minutes of City Council Closed Session Meeting of July 14, 2022
- F. Approve Minutes of City Council Special Meeting of August 4, 2022
- G. Approve Minutes of City Council Special Meeting of September 1, 2022
- H. Approve Minutes of City Council Closed Session Meeting of September 1, 2022
- I. Accept Investment Report as of August 2022
- J. Approve Co-Sponsorship Event for San Bruno Mountain Watch
- K. Approve Co-Sponsorship Event Excelsior Running Club
- L. Approve Co-Sponsorship Event for Brisbane Chamber of Commerce
- M. Approve Co-Sponsorship Event for Brisbane Dance Workshop
- N. Adoption of a Resolution Declaring the Continued Need to Conduct City Council, Commission and Committee Meetings Remotely Due to Health and Safety Concerns for the Public

Councilmember O'Connell made a motion, seconded by Councilmember Davis, to approve Consent Calendar Items D-K and M-N. The motion was carried unanimously by all present.

Ayes: Councilmembers Cunningham, Davis, O'Connell and Mayor Mackin Noes: None Absent: Councilmember Lentz Abstain: None

Councilmember Davis recused herself of the discussion and vote of Consent Calendar Item L and left the meeting. Councilmember O'Connell made a motion, seconded by Councilmember Cunningham to approve Consent Calendar Item L. The motion was passed by 3-0 and Councilmember Davis was recused.

Ayes: Councilmembers Cunningham, O'Connell and Mayor Mackin Noes: None Absent: Councilmember Lentz Abstain: None Recusal: Councilmember Davis

O. Approve Purchase of Fire Apparatus Ahead of Current Vehicle Replacement Budget Schedule (The cost of the apparatus is \$930,000. We will pay 50% now in the amount of \$465,00 and the remaining 50% upon completion.)

After a brief report from Councilmembers Cunningham and O'Connell on their discussion at the

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subcommittee level, Councilmember Davis made a motion, seconded by Councilmember Cunningham to approve Consent Calendar Item O. The motion was passed unanimously by all present.

Ayes: Councilmembers Cunningham, Davis, O'Connell and Mayor Mackin Noes: None Absent: Councilmember Lentz Abstain: None

PUBLIC HEARING

P. Review of the Draft 2023-2031 Housing Element; Application Number: General Plan Amendment 2022-GPA-1

(City Council's action at this time will be to direct staff to submit the Housing Element to the California Dept. of Housing and Community Development (HCD) for review prior to its adoption by Council at a future public hearing.)

The Housing Element is a mandated element of the City's General Plan that must be updated every eight years and establishes the city's goals, policies, and programs to address current and future housing needs. Community Development Staff provided a report on the following:

- New state regulations
- Goals, policies and programs
- How the City will meet the Regional Housing Needs Assessment (RHNA)
- Comments on the public review draft Housing Element
- The California Environmental Quality Act (CEQA) Determination
- Next steps and timing

Staff reported that once City Council authorizes the submission of the draft to HCD for review, staff will forward it

along to the California Dept. of Housing and Community Development (HCD, which has up to 90 days to review and provide comments on the draft element. Once comments are received by the City, the draft element will likely require revision to respond to HCD comments. The final deadline for adoption of the final Element by Council and HCD certification is May 31, 2023.

After Council questions, Mayor Mackin opened the Public Hearing.

<u>Michele Salmon</u> mentioned that ADU's in the North East Ridge should not be allowed and could affect the stability of the development.

Councilmember O'Connell made a motion, seconded by Councilmember Cunningham to close the public hearing. The motion was passed unanimously by all present.

Ayes: Councilmembers Cunningham, Davis, O'Connell and Mayor Mackin Noes: None Absent: Councilmember Lentz <u>Abs</u>tain: None After Council discussion, Councilmember Cunningham made a motion, seconded by Councilmember Davis to adopt a resolution directing staff to submit the Housing Element to the California Dept. of Housing and Community Development and approve the programs outlined in the Housing Element . The motion was passed unanimously by all present.

Ayes: Councilmembers Cunningham, Davis, O'Connell and Mayor Mackin Noes: None Absent: Councilmember Lentz Abstain: None

Q. Consider Adoption of a Resolution to Implement the Second of Four Capital Facilities Fee for the Utility Fund.

(It is being recommended to Adopt a Resolution setting the rate for the second Capital Charge for water and wastewater services. Over a 17-year period, the City is phasing in four planned fee increases in order to pay for improvements to the City's aging water and wastewater systems. If adopted, the City will raise approximately \$350,000 a year in this second phase. The cost for a customer who uses 10 units of water (approximately 7,480 gallons) every two months, would be \$35 per bill or \$210 a year.)

Assistant City Manager reported In April of 2014 the City Council approved a policy to create a Capital Charge to pay for Capital Improvements need for the water and sewer systems. The Capital Charge would pay for the needed projects on the City's Capital Improvement Plan. If Council adopts a Resolution to Implement the Second of Four Capital Facilities Fee for the Utility Fund , then the City will raise approximately \$350,000 a year it the second phase. The cost for a customer who uses 10 units of water (approximately 7,480 gallons) every two months, would be \$35 per bill or \$210 a year. The projects that will be completed with this round of funding are:

- Lift Station Condition Assessment and Hydraulic Evaluation
- Sewer Pipeline Replacements
- Glen Park Pump Station Upgrade
- SCADA System Replacement
- Water Meter AMI (Advanced Metering Infrastructure) System
- Water Pipeline Replacements

After Council questions, Mayor Mackin opens the Public Hearing. <u>Michele Salmon</u> thanked Assistant City Manager Schillinger for securing our water supply.

Councilmember Cunningham made a motion, seconded by Councilmember O'Connell to close the public hearing. The motion was passed unanimously by all present.

Ayes: Councilmembers Cunningham, Davis, O'Connell and Mayor Mackin Noes: None Absent: Councilmember Lentz Abstain: None



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Council Minutes

After Council discussion, Mayor Mackin emphasized that the water and sewer infrastructure is old. Councilmember Davis made a motion, seconded by Councilmember O'Connell to adopt a Resolution to implement the second of four Capital Facilities Fee for the Utility Fund. The motion was passed unanimously by all present.

Ayes: Councilmembers Cunningham, Davis, O'Connell and Mayor Mackin Noes: None Absent: Councilmember Lentz Abstain: None

STAFF REPORTS

- R. City Manager's Report on Upcoming Activities
 - Update on Application Status of Baylands Specific Plan

Community Development Director Swiecki provided an update on the application status of Baylands Specific Plan and City Manager Holstine reported on the latest news and events for the coming weeks.

MAYOR/COUNCIL MATTERS

S. Mickelson Pool Request

The Mayor reported that Council received a request from Jane Stahl, secretary of Warm Water Wellness Inc. In June 2021, Sutter Health permanently closed the Mickelson Therapy Pool in San Mateo. The members of the group are asking that the City of Brisbane pass a resolution recognizing the plight of those seeking relief from pain and demanding the pool's reopening. Alternatively, Sutter Health should return the amount originally donated — \$7.2 million in today's money — to build a new facility.

After council questions, Jane Stahl requested the Council's support on this issue. After Council discussion, Councilmember O'Connell made a motion, seconded by Councilmember Davis, to authorize the Mayor to modify the template Resolution and adopt the resolution in support of the reopening of the Mickelson Therapy Pool. The motion was carried unanimously by all present.

Ayes: Councilmembers Cunningham, Davis, O'Connell and Mayor Mackin Noes: None Absent: Councilmember Lentz Abstain: None

T. Countywide Assignments and Subcommittee Reports

Councilmembers reported on their subcommittee meetings and activities within their Countywide Assignments.

U. Written Communications

Written communication was received from United Against Hate on October 6, 2022 about the Planning Meeting - October 13th.

ORAL COMMUNICATIONS NO. 2

No members of the public wished to speak.

ADJOURNMENT

Mayor Mackin adjourned the meeting at 9:18 P.M.

Ingrid Padilla, City Clerk

File Attachments for Item:

E. Approve Minutes of City Council Closed Session of October 6, 2022



BRISBANE CITY COUNCIL

ACTION MINUTES

BRISBANE CITY COUNCIL CLOSED SESSION MEETING

THURSDAY, OCTOBER 6, 2022

VIRTUAL MEETING

6:30 P.M. CLOSED SESSION

A. Approval of the Closed Session Agenda

B. Public Comment. Members of the public may address the Councilmembers on any item on the closed session agenda

C. Adjournment into Closed Session

D. CONFERENCE WITH LEGAL COUNSEL—PENDING LITIGATION Government Code, Section 54956.9 (d) (1). Number of Cases: Two

- City of Brisbane v. CA High-Speed Rail Authority (Superior Court of Sacramento County, Case No. 80004010)
- BRE SH Brisbane Owner, LLC. v. City of Brisbane (Superior Court of San Mateo County, Case No. 22-CIV-01112)

E. Liability Claim: Claimant Agredano, pursuant to Government Code, section 54956.95

2. ADJOURNMENT

Mayor Mackin called the meeting to order at 6:32 P.M. No member of the public wished to make public comment.

Councilmember Cunningham made a motion, seconded by Councilmember O'Connell to approve the amended the agenda and discuss Item E Liability Claim prior to the Pending litigation cases. The motion was carried unanimously by all present.

Ayes: Councilmembers Cunningham, Davis, O'Connell and Mayor Mackin Noes: None Absent: Councilmember Lentz <u>A</u>bstain: None



E. ober 6, 2022 Page 2

Council Minutes

Mayor Mackin adjourned the meeting into Closed Session.

REPORT OUT CLOSED SESSION

City Attorney McMorrow reported that updates were provided to Council, direction was given to staff and no action was taken at Closed Session regarding the two cases in Closed Session Item D. Liability Claim Item E was rejected by Council and agreed to settle the claim for the claimant's out of pocket expense in exchange for a signed release of all claims.

ADJOURNMENT

The meeting was adjourned at 7:15 P.M.

Ingrid Padilla, City Clerk

File Attachments for Item:

F. Approve Findings and Recommendations for Grand Jury Report on Water Provider



CITY COUNCIL AGENDA REPORT



Meeting Date: October 20, 2022 From: Director of Public Works/City Engineer Subject: Grand Jury Report: "The Other Water Worry: Is Your Water Provider Prepared for the Big One?"

Community Goal/Result: Safe Community

Purpose

To give Council the opportunity to provide comments on the findings and recommendations of the Grand Jury report on water provider preparedness.

Recommendation: Provide input on the draft comment letter prepared by staff.

Background

No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body . . . In any city and county, the mayor shall also comment on the findings and recommendations.

Fiscal Impact

There is no direct fiscal impact envisioned to the city as a result of providing the required response.

Measure of Success

A response within the timeframe required by state law.

Attachments

- Grand Jury Report letter dated August 5, 2022
- Draft October 21, 2022 city response letter

Randy Breault, Public Works Director

Clayton L. Holstine Clay Holstine, City Manager



Superior Court of California, County of San Mateo Hall of Justice and Records 400 County Center Redwood City, CA 94063-1655

NEAL TANIGUCHI COURT EXECUTIVE OFFICER CLERK & JURY COMMISSIONER

August 5, 2022

Randy Breault

City of Brisbane 50 Park Place Brisbane, CA 94005

Director of Public Works

(650) 261-5066 www.sanmateocourt.org

RECEIVED

AUG 08 2022

Public Works Department Brisbane, CA

Re: Grand Jury Report: "The Other Water Worry: Is Your Water Provider Prepared for the Big One?"

Dear Mr. Breault:

The 2021-2022 San Mateo County Civil Grand Jury filed the above-titled report on August 5, 2022, which contains findings and recommendations pertaining to your agency. Your agency must respond, within 90 days, to the Hon. Amarra A. Lee. Your agency's response is due no later than November 4, 2022.

There are several requirements for the content of your response. The response should indicate that it was approved by your governing body at a public meeting. In addition, please be aware that your agency is expected to adhere to the wording, as instructed below, when responding to the findings and recommendations of the Grand Jury report.

For each Grand Jury finding, your agency must indicate one of the following:

- 1. The respondent **agrees** with the finding; or
- 2. The respondent disagrees wholly or partially with the finding, specifying the portion of the finding that is disputed and including an explanation of the reasons therefor.

For each Grand Jury recommendation, your agency must indicate one of the following actions:

- The recommendation has been implemented, with a summary of the implemented action; 1.
- 2. The recommendation has not yet been implemented, but will be implemented in the future, with an estimated date for implementation;
- 3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and an estimated date (no later than six months from the publication date of the report) for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable; or
- The recommendation will not be implemented because it is not warranted or reasonable, 4. with an explanation therefor.

F.

Kindly submit your responses in ALL the following formats.

- 1. Responses to be placed on file with the Clerk of the Court by the Court Executive Office:
 - Prepare original on your agency's letterhead, indicate the date of the public meeting that your governing body approved the response address, and mail to:

Hon. Amarra A. Lee Judge of the Superior Court c/o Jenarda Dubois Civil Grand Jury Coordinator Hall of Justice 400 County Center; 2nd Floor Redwood City, CA 94063-1655.

- 2. Responses to be placed at the Grand Jury website:
 - Scan response and send by e-mail to: <u>grandjury@sanmateocourt.org</u>. (Insert agency name at the top of your response if it is not indicated.)
- 3. Responses to be placed with the clerk of your agency:
 - File a copy of the response directly with the clerk of your agency. Do not send this copy to the Court.

The 2021-22 Grand Jury foreperson is available to clarify the recommendations of the Grand Jury report until August 15, 2022. To reach the foreperson, please contact Jenarda Dubois, Civil Grand Jury Coordinator, at (650) 261-5066.

If you have any questions regarding these procedures, please do not hesitate to contact David Silberman, Chief Deputy County Counsel, at (650) 363-4749.

Very truly yours,

yber J. Laniguetie

Neal Taniguchi Court Executive Officer

Enclosure

cc: Hon. Amarra A. Lee David Silberman



The *Other* Water Worry: Is Your Water Provider Prepared for the Big One?

Release Date: August 5, 2022

ISSUE

To what extent are water providers in San Mateo County prepared to supply water to customers in the event of a major seismic catastrophe?

SUMMARY

Along with the danger of drought, San Mateo County faces the likelihood of a powerful earthquake that could disrupt our supply of drinking water. Most of the water consumed in San Mateo County is sourced from the Hetch Hetchy Water System operated by the San Francisco Public Utilities Commission. In the event of a major earthquake, County water providers expect to regain access to this water supply within 72 hours after a catastrophic seismic event. However, some of those same water providers lack sufficient water reserve capacity to keep their customers' taps flowing for a three-day period without access to Hetch Hetchy water.

The Grand Jury found that the challenges of the County's aging water infrastructure are exacerbated by the diffuse patchwork of 16 water providers, each with its own pipes, tanks, management, and business model. Each of the 12 water providers the Grand Jury investigated had adopted a formal emergency response plan (ERP) as required by the Environmental Protection Agency (EPA). Nearly all the ERPs reviewed include provisions for exercises and after-action reports to identify problems. Some of those water providers indicated they had attended emergency response exercises run by other organizations, but none provided documentation that they had performed the emergency exercises specified by their ERPs. None of those water providers produced any after-action reports consistent with their ERPs.

Electric power is critical to the basic functioning of water providers' service, so back-up generators with sufficient fuel are needed in the event of an electrical power loss. Only about half of the water providers interviewed by the Grand Jury maintain a three-day supply of fuel for their emergency needs.

The County Department of Emergency Management is responsible for coordinating countywide emergency preparedness. The Grand Jury found that this department has had limited contact with water providers and could not produce a current list of emergency contacts. Based on its investigation, the Grand Jury recommends that:

- County water providers perform emergency preparedness exercises consistent with their emergency response plans;
- County water providers perform an analysis and document an after-action report consistent with their emergency response plans;

- County water providers develop plans to increase emergency water storage sufficient to . provide emergency water for a period of at least three days;
- County water providers develop plans to increase emergency fuel storage sufficient to provide emergency fuel for a period of at least three days; and
- County Department of Emergency Management develop a plan to bring its policy in line with EPA recommendations to coordinate disaster response with County water providers.

GLOSSARY

After-Action Report – An After-Action Report is an evaluation of an emergency response exercise designed to assess performance of exercise objectives and capabilities by documenting strengths, weaknesses, and corrective actions.

BAWSCA – The Bay Area Water Supply and Conservation Agency is a consortium formed by the State of California and major water providers in the San Francisco Bay area for the purpose of negotiating water purchases to buy water from the Hetch Hetchy Regional Water System.

SFPUC – The San Francisco Public Utilities Commission owns and controls the water that flows from the Hetch Hetchy Regional Water System to water providers.

BACKGROUND

Water Matters

Access to clean drinking water is widely recognized as an essential public service. The current drought is now the most visible challenge to our water supply service, but there is another dangerous, and likely inevitable threat to the local water delivery infrastructure in San Mateo County.

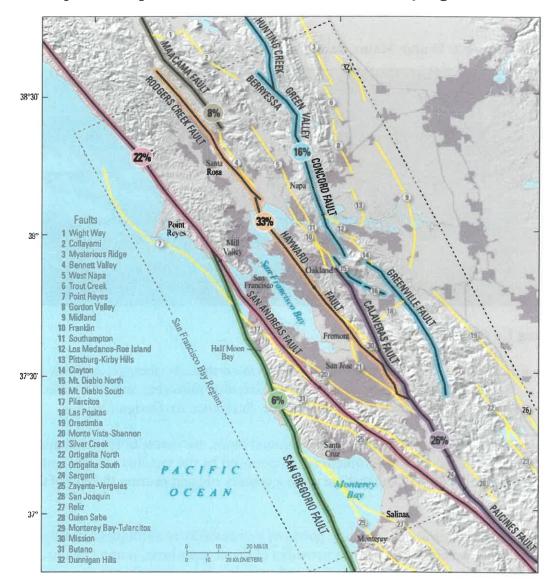
Earthquakes (Will) Happen

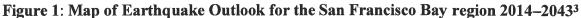
The U.S. Geological Survey estimates that the San Francisco Bay area faces a 72% probability of a magnitude 6.7 earthquake sometime in the next 30 years.¹ The San Andreas Fault, which triggered the devastating 1906 San Francisco earthquake (magnitude 7.8), runs straight through San Mateo County. The Hayward Fault, which geologists say is overdue for a major earthquake that may destroy important infrastructure, runs through the East Bay.² In Figure 1, the percentage shown in the colored circles on each named fault represents the probability that a magnitude 6.7 or greater earthquake will occur somewhere on that fault by the year 2043. The

¹ USGS, "What is the probability that an earthquake will occur in the Los Angeles Area? In the San Francisco Bay area?", accessed June 4, 2022, https://www.usgs.gov/faqs/what-probability-earthquake-will-occur-los-angeles-areasan-francisco-bay-area

² USGS, "Earthquake outlook for the San Francisco Bay region 2014–2043 - Fact Sheet", accessed June 4, 2022, https://pubs.er.usgs.gov/publication/fs20163020

dark lines outlined in various colors represent major plate boundary faults; the thinner, yellow lines mark smaller and lesser-known faults.



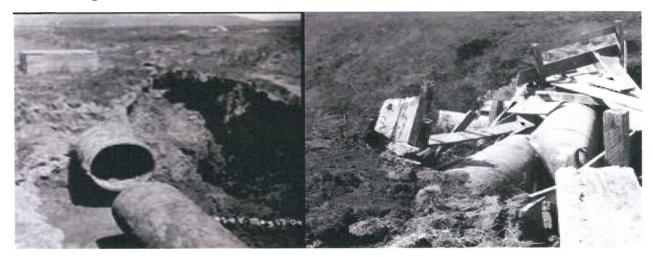


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³ <u>https://www.usgs.gov/faqs/what-probability-earthquake-will-occur-los-angeles-area-san-francisco-bay-area</u>, June 13, 2022

A large earthquake along any of the major faults in the area could cause land displacement and related damage. For example, the images in Figure 2 show the damage to large water mains caused by the 1906 San Francisco earthquake on the San Andreas Fault.⁴ Most of the damage done to San Francisco as a result of the earthquake was attributable to lack of water to fight the fire.

Figure 2: Water Mains Damaged by the 1906 San Francisco Earthquake



Shaking Up the Water System

"The water system is the utility most vulnerable to earthquake damage, and that damage could be the largest cause of economic disruption following an earthquake." - Los Angeles Mayor's Office, Resilience By Design (2015)⁵

Water systems, relying as they do on underground pipes, are susceptible to damage and failure in the event of earthquakes. This problem is compounded by the fact that County water providers are operating with components that are up to a century old and nearing the end of their useful lives.⁶

Potential pipe failures are not the only points of vulnerability to earthquake damage. The County's many water systems – with networks of dams, aqueducts, pump stations, valves, storage tanks, above-ground water mains, and tunnels – are susceptible to damage from earth movement or loss of pumping power. Damage to the electrical grid, phone systems, and transportation infrastructure are also likely obstacles to rapid earthquake response. In August 2014, a magnitude 6.0 earthquake occurred in Napa County. Aftershocks causing earth movement and further damage continued for months. As many as 163 water pipeline breaks were

⁴ Water Mains Damaged in 1906 San Andreas Fault Earthquake

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www.geengineeringsystems.com/ewExternalFiles/1906-2006.pdf, accessed June 2, 2022 and J.B. Macelwane archives, St. Louis University

⁵ Los Angeles Mayor's Office, "Resilience by Design" 2015, accessed June 4, 2022, <u>https://www.usrc.org/wp-content/uploads/LA-Resilient-by-Design.pdf</u>

⁶ Grand Jury interview

reported and service to some customers was disrupted for weeks.⁷ In 2011, more than two million Japanese households were without water service following the magnitude 9.1 Tohoku earthquake. Over a million households remained without water service for two weeks.⁸

The California Governor's Office of Emergency Services has published a warning to Californians that they should be self-sufficient for at least three days after a major earthquake.⁹ The Centers for Disease Control recommends that households keep on hand at least a gallon of water per day for each person in the household, with sufficient water for three days for drinking and sanitation.¹⁰ The East Bay Municipal Utility District recommends two gallons of water per day for at least seven days for each person in the household.¹¹

So, Who Will Keep Your Taps Flowing?

The County's drinking water is almost entirely sourced from the Hetch Hetchy Regional Water System, including the Hetch Hetchy reservoir impounded behind the O'Shaughnessy Dam in Yosemite National Park, over 130 miles away and administered by the San Francisco Public Utilities Commission (SFPUC). The Bay Area Water Supply and Conservation Agency (BAWSCA) was formed in 2003 to represent 26 cities, water districts, and private utilities that purchase water from the SFPUC.¹²

https://www.cdc.gov/healthywater/emergency/creating-storing-emergency-water-supply.html/

⁷ Pacific Earthquake Engineering Research Center, University of California Berkeley, "The M_w 6.0 South Napa Earthquake of August 24, 2014", June 2016, <u>https://peer.berkeley.edu/sites/default/files/cssc1603-peer201604_final_7.20.16.pdf</u>

⁸ T. Okamoto, Y. Kuwata, "Influence to Water Outage due to Damage to Regional Water Supply during the 2011 off the Pacific Coast of Tohoku Earthquake", 2012, <u>https://www.iitk.ac.in/nicee/wcee/article/WCEE2012_1681.pdf</u> ⁹ "Community members are expected to be self-sufficient up to 3 days after a major earthquake without government response agencies, utilities, private-sector services, and infrastructure components. Education programs are currently in place to facilitate development of individual, family, neighborhood, and business earthquake preparedness." California Governor's Office of Emergency Services, "Earth Quake, Can You Go It Alone For Three Days", accessed June 10, 2022, <u>https://www.ucop.edu/risk-services/_files/bsas/safetymeetings/oesearthquakebrochure.pdf</u>

¹⁰ CDC, "Creating and Storing an Emergency Water Supply", accessed June 4, 2022,

¹¹ East Bay Municipal District (EBMUD), accessed June 14, 2022, <u>https://www.ebmud.com/about-us/construction-and-maintenance/fire-safety-and-suppression/emergency-preparedness</u>

¹² Two small water providers do not get their water from SFPUC -- they are County Service Area 7, with 70 customers, in La Honda, and County Service Area 11, with 90 customers in Pescadero.

Sixteen water providers in the County deliver water purchased from SFPUC to residential and business customers in their territories, as shown in Figure 3.¹³

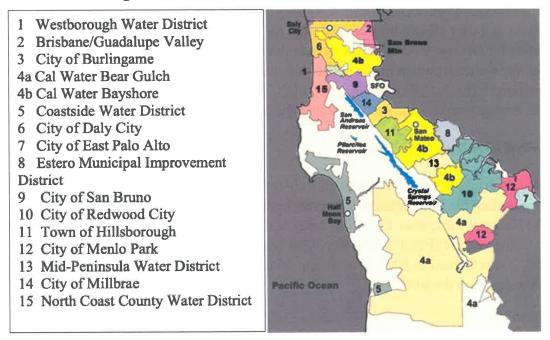


Figure 3: Water Providers in San Mateo County

Those water providers vary significantly in size of area served, number of customers, water capacity, and form of ownership and control. Some water providers are municipal water districts managed by individual cities; some are special districts run by an elected board; and still others are investor-owned utilities regulated by the California Public Utilities Commission. The areas served by water providers generally do not conform to city boundaries. A single city may be served by several water providers, and one water provider may serve residents in different cities.

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¹³ Based on User Survey 2014-2015, bawsca.org, accessed June 13, 2022

Although water providers are independently managed, most of their systems include physical linkages – known as "interties" – that allow them to share water supplies with another provider. Figure 4 shows the daily water usage by each water provider in San Mateo County.

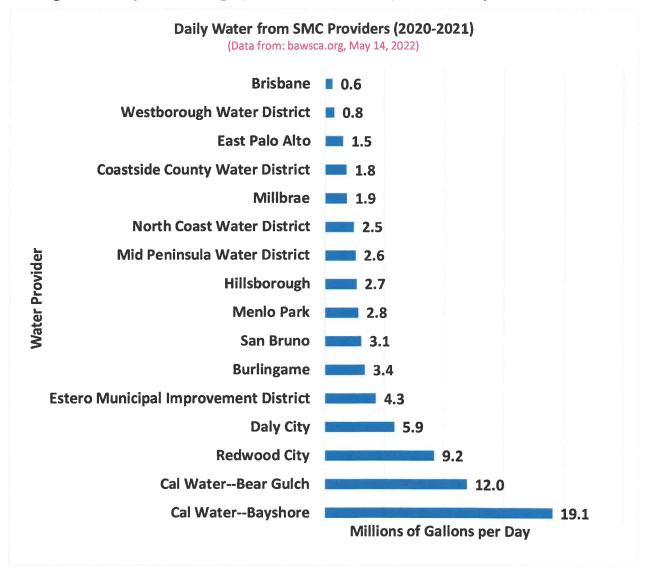


Figure 4: Daily Water Usage (in Millions of Gallons) from County Water Providers

Securing the Source

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The SFPUC has almost completed a ten-year water system improvement project on the Hetch Hetchy Water System. The work included earthquake-hardening construction on dams, aqueducts, underground tunnels, and 280 miles of large diameter pipes that span three major faults (Calaveras, Hayward, and San Andreas) and many secondary faults.

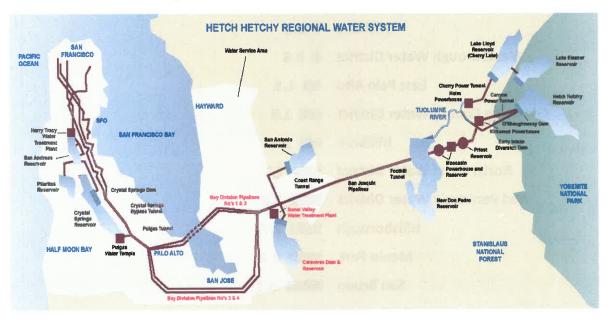


Figure 5: Hetch Hetchy Regional Water System

Prior to a recent Water System Improvement Program, BAWSCA estimated that the water delivery system was at significant seismic risk for outages of 20 - 30 days or more following an earthquake.¹⁴ The design criteria for the Hetch Hetchy System seismic upgrade included the goal that most of the water network managed by SFPUC will be restored to 70% of water providers within 24 hours after a major earthquake.¹⁵

Hardening and modernizing vulnerable water infrastructure against a major earthquake is costly, disruptive, and impractical for individual water providers. Therefore, much of the local distribution system, between the SFPUC "turnout" to the water provider and the water providers' customers' taps, is likely to be older and more vulnerable to earthquake damage.¹⁶

¹⁴ BAWSCA, "Water System Improvement Program", accessed June 5, 2022, https://bawsca.org/water/supply/improvement

¹⁵ https://ssc.ca.gov/wp-content/uploads/sites/9/2020/08/sfpuc_final_version_12_4-19-06.pdf

¹⁶ Grand Jury interview

Federal Oversight

Several federal agencies share responsibility for regulation and oversight of water providers in San Mateo County.¹⁷

Of primary importance to this investigation is oversight administered through the Environmental Protection Agency (EPA). It implements the America's Water Infrastructure Act of 2018 (AWIA). AWIA requires water providers serving more than 3,300 people to develop a Risk and Resilience Assessment (Resiliency Assessment) that addresses risks from both natural hazards and malevolent actors. It includes an assessment of the resilience of water system infrastructure and operations, including cybersecurity. AWIA also requires providers to develop an Emergency Response Plan (ERP) that includes plans, procedures, and strategies to prepare for and respond to threats identified in their Resiliency Assessment. Water providers were required to self-certify and submit their ERPs to the EPA by December 31, 2021.¹⁸ The AWIA requirements for a compliant ERP are shown in Appendix A.

The EPA offers online tools and other resources to help water providers prepare and comply with their AWIA requirements.¹⁹ The EPA also encourages utilities to conduct tabletop emergency preparedness exercises as part of their emergency preparedness.²⁰

State Oversight

The State of California has numerous departments, councils, agencies, and commissions involved with water service in one way or another. With respect to emergency preparedness in particular, the California Water Code requires each provider serving more than 3,000 customers to prepare, and submit to Department of Water Resources, an Urban Water Management Plan outlining plans for a diminished water supply. This plan should include planning for water shortages in the event of a natural disaster, and is required to be updated every five years.²¹

Some water providers are investor-owned companies. These providers are regulated as public utilities by the California Public Utilities Commission, which oversees their rates and operations. The California Water Service Company, an investor-owned company, is the single largest provider in San Mateo County (see Appendix B).

¹⁷ E.g., Department of Homeland Security, Department of Defense, Department of the Interior, Department of Agriculture, Department of Energy, and Department of Health and Human Services. Cody, Schneider, Tiemann, *Selected Federal Water Activities: Agencies, Authorities, and Congressional Committees*, Congressional Research Service, 2017

¹⁸ EPA, "America's Water Infrastructure Act: Risk Assessments and Emergency Response Plans", accessed June 9, 2022, <u>https://www.epa.gov/waterresilience/awia-section-2013</u>

 ¹⁹ EPA, "<u>Vulnerability Self-Assessment Tool (VSAT): Protect Your Community From Risk</u>", accessed June 14, 2022

²⁰ EPA, "Tabletop Exercise Tool for Water Utilities", accessed June 9,

https://www.epa.gov/waterresiliencetraining/tabletop-exercise-tool-water-utilities-emergency-preparednessresponse-and Climate Resiliency

²¹ 2022, California Department of Water Resources, "Urban Water Management Plans", accessed June 9, 2022, https://water.ca.gov/Programs/Water-Use-And-Efficiency/Urban-Water-Use-Efficiency/Urban-Water-Management Plans#:~:text=The%20requirements%20for%20UWMPs%20are,required%20to%20submit%20an%20UWMP

County Oversight

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No County agency is specifically assigned responsibility for regulation of water providers.

COVID-19 Considerations

Beginning in 2020, the COVID-19 pandemic dramatically impacted every aspect of life, including how public agencies delivered their services. Supply chain disruptions, staffing dislocation, and pandemic restrictions had significant impact on these agencies.

The Role of Readiness: Plan, Practice, Evaluate

"The water system's training program should ... include routine training drills, tabletop exercises and possibly functional exercises, depending on the utilities['] resources. ... The water system should include all the key players in the training exercises, so everyone is familiar with emergency policies and procedures."²²

"Train as you fight; fight as you train – keep the training and exercises close to real as possible because the skills and muscle memory developed is what will be called upon in the face of a real incident."²³

-California State Water Board

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²² 2015, State Water Resources Control Board Division of Drinking Water Emergency Response Plan Guidance for Public Drinking Water Systems Serving a population of 3,300 or more (approximately 1,000 SC or more, accessed June 9, 2022,

https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/documents/security/ddw_emergency_guidelines_0215.pdf

²³ California Water Boards, "Water Resiliency", accessed June 9, 2022, https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/water_resiliency/

Water service interruptions in the event of an earthquake may be inevitable, but the extent and duration of those interruptions will largely depend on preparedness of water providers and emergency managers. How do water providers anticipate and plan for the potential chaos, obstacles, hazards, and contingencies that an actual catastrophe may bring?

The EPA and the Federal Emergency Management Agency (FEMA), a major agency of the Department of Homeland Security, both play significant roles in helping water providers prepare for water emergencies.

The EPA provides tools for agencies to help them prepare their ERPs, including:

- Tools on how to train and perform exercises for their personnel and response partners on the contents of their ERPs, including the roles and responsibilities of specific parties.²⁴
- Resources on how to plan for an emergency and how to practice and evaluate those plans before they're needed. Those resources include videos, detailed checklists, interactive maps, and mitigation and funding recommendations.²⁵
- An online guide, titled "Tabletop Exercise Tool for Drinking Water and Wastewater Utilities," that offers a comprehensive program to assist managers in developing and customizing exercise scenarios with unique local elements and challenges.²⁶

²⁴ EPA, "Developing Emergency Response Plans with the Drinking Water State Revolving Fund", accessed June 9, 2020, <u>https://www.epa.gov/sites/default/files/2021-06/documents/emergency_response_plan-final.pdf</u>

²⁵ EPA, "The Earthquake Resilience Guide for Water and Wastewater Utilities", accessed June 9, 2022, https://www.epa.gov/sites/default/files/2018-02/documents/180112-earthquakeresilienceguide.pdf

²⁶ EPA, "Tabletop Exercise Tool for Water Utilities: Emergency Preparedness, Response and Climate Resiliency", accessed June 14, 2022, <u>https://www.epa.gov/waterresiliencetraining/tabletop-exercise-tool-water-utilities-</u> emergency-preparedness-response-and

- An interactive, user-friendly Earthquake Resiliency Guide that helps water and wastewater utilities be more resilient to earthquakes.²⁷
- A Water Sector Utility Incident Action Checklist (excerpt reproduced in Figure 6).²⁸

Figure 6: EPA - Actions to Prepare for an Earthquake²⁹

Actions to Prepare f	or an Earthquake
Planning Review and update your utility's emergency contacts are current. Conduct briefings, training and exercises to ensure utility staff is aware of all preparedness, response and recovery procedures. Identify priority water customers (e.g., hospitals), obtain their contact information, may their locations and develop a plan to restore those customers first. Develop an emergency drinking water supply plan and establish contacts (potentially through your local emergency management agency [EMA] or mutual aid network) to discuss procedures, which may include bulk water hauling, mobile treatment units or temporary supply lines, as well as storage and distribution. Conduct a hazard vulnerability analysis in which you review historical records to understand the past frequency and intensity of earthquakes and how your utility may have been impacted. Consider taking actions to miligate seismic impacts to the utility, including those provided in the "Actions to Recover from an Earthquake: Mitigation" section. Complete pre-disester activities to help apply for fedoral disester funding (e.g., contact state/local afficials with contactions to funding, set up a system to document damage and costs, take photographs of the facility for comparison to post-damage photographs. Cendination Join your state's Water/Wastewater Agency Response Network.	 Coordinate with WARN members and other neighboring utilities to discuss: Outilining response activities, roles and responsibilities and mitual aid procedures (e.g., how to request and offer assistance) Conducting joint tabletop or full-scale exercises Obtaining resources and assistance, such as equipment, personnel, technical support or water Establishing interconnections between systems and agreements with necessary approvals to activate this alternate source. Equipment, pumping rates and demand on the water sources need to be considered and addressed in the design and operations Establishing communication protocols and equipment to reduce misunderstandings during the incident Coordinate with other key response partners, such as your local EMA, to discuss: How restoring system operations may have higher priority than establishing an alternative water source Potential points of distribution for the delivery of emergency water supply (e.g., bottled water) to the public, as well as who is responsible for distributing the water and what your utility may be catled on to do, as well as how local emergency responders and the local emergency responders and the local emergency responders and the local emergency your utility during a response. If your utility has asses outside of the county EMA's jurisdiction, consider coordination or preparedness efforts that alould be done in those areas.

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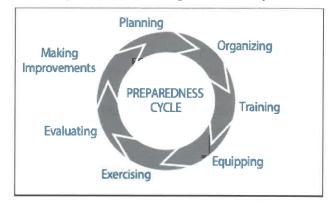
²⁷ EPA, "Earthquake Resiliency Guide" (updated February 2022),

https://www.epa.gov/waterutilityresponse/earthquake-resilience-guide, accessed June 15, 2022. This resource can be found at Appendix C.

²⁸ EPA, "Water Sector Utility Incident Action Checklist," <u>https://www.epa.gov/system/files/documents/2021-</u>10/incident-action-checklist-earthquakes_508c-final.pdf, accessed June 19, 2022

²⁹ See Appendix D

According to the EPA, "... [t]he water sector should be engaged in a continuous cycle of planning, organizing, training, equipping, exercising, evaluating, and taking corrective actions to achieve and maintain readiness to respond to, and reduce impacts from, emergencies. Preparedness also leads to increased resiliency, which is a key component of a utility's ability to provide critical services under adverse conditions."³⁰ That preparedness cycle is illustrated in Figure 7.





FEMA has long recognized that well-designed practice sessions or tabletop exercises are a costeffective, low risk mechanism for training staff, promoting communication across organizations and validating plans, procedures, equipment, systems, tools, facilities, and training for emergency management.³¹ There have been extensive government efforts to support that goal. For example, the Department of Homeland Security created The Homeland Security Exercise and Evaluation Program (HSEEP) to train stakeholders like water and sanitation systems in developing and implementing essential readiness components.³²

An "After-Action Report" is a formal review of an emergency preparedness exercise, such as a tabletop exercise, that is designed to identify what worked and what needs to be improved. It converts lessons learned from the exercise into concrete, measurable steps to improve response capabilities. It specifically details the actions to take to address recommendations presented, who will be responsible for taking the action, and the timeline for completion.³³

Experience gained from both the 1991 Oakland Hills fire and the 1989 Loma Prieta earthquake highlighted the importance of mutual aid among water providers. The California

See also NIH, "Use of After-Action Reports (AARs) to Promote Organizational and Systems Learning in Emergency Preparedness", accessed June 14, 2022, <u>https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3447598/</u>

³¹ The White House archives, President George Bush, "Katrina Lessons Learned", accessed June 9, 2022, <u>https://georgewbush-whitehouse.archives.gov/reports/katrina-lessons-learned/appendix-a.html</u>

³² FEMA, "Homeland Security Exercise ad Evaluation Program (HSEEP)", accessed June 9, 2022, https://www.fema.gov/emergency-managers/national-preparedness/exercises/hseep

³⁰ EPA, "How to Develop a Multi-Year Training and Exercise (T&E) Plan", accessed June 14, 2022, https://www.epa.gov/sites/default/files/2015-05/documents/how to develop a multiyear training and exercise plan a tool for the water sector.pdf

³³ San Francisco Department of Emergency Management, "Phase 4: After Action Report and Improvement Planning," accessed June 14, 2022, <u>https://sfdem.org/phase-4-after-action-report-and-improvement-planning-0</u>

Water/Wastewater Agency Response Network (CalWARN) was formed and membership eventually expanded to include over 190 utilities across the state. "The mission of CalWARN is to support and promote statewide emergency preparedness, disaster response, and mutual assistance processes for public and private water and wastewater utilities."³⁴ Its network enables agencies to locate and share vital resources, including both equipment and personnel during emergencies. The EPA recommends that water providers participate in mutual aid activities.³⁵

The County Executive's Office describes the responsibility of the Department of Emergency Management (County DEM) as "alerting and notifying appropriate agencies within the county's 20 cities when disaster strikes; coordinating all agencies that respond; ensuring resources are available and mobilized in times of disaster; developing plans and procedures in response to and recovery from disasters; and developing and providing preparedness materials for our residents."³⁶ Formerly operated by the County Sherriff's Office as the Office of Emergency Services, County DEM came under the authority of the County Executive's Office in 2021 and later became a stand-alone County department.

The Grand Jury investigated the degree to which water providers in the County are preparing for potential difficulties in restoring water to customers in the event of an abrupt service interruption.

DISCUSSION

While the SFPUC is nearing completion of its upgrade to the seismic resilience of the Hetch Hetchy Regional Water System, County water providers have managed their infrastructure upgrade programs in diverse ways. Some water providers reported that they can only afford enough capital outlay to replace about 2% of aging components per year without severely increasing water rates.³⁷ History suggests they could face crippling pipeline breaks, equipment damage, and fuel shortages during the aftermath of a major seismic event.

Mitigating an earthquake's impact requires the ability to:

- Quickly identify and repair damage, much of it underground and invisible;
- Coordinate and communicate with scattered staff in a chaotic post-quake environment;
- Locate and transport emergency equipment and supplies;

³⁴ CalWARN Mission Statement, accessed June 14, 2022. <u>https://www.calwarn.org</u>

 ³⁵ EPA, "Water Sector Utility Incident Action Checklist," accessed June 19, 2022, <u>https://www.epa.gov/system/files/documents/2021-10/incident-action-checklist-earthquakes_508c-final.pdf</u>
 ³⁶ County of San Mateo, Department of Emergency Management, accessed June 9, 2022, <u>https://www.smcgov.org/ceo/department-emergency-management</u>

³⁷ Grand Jury interviews

- Quickly react and adapt to both likely and unpredictable challenges in a stressful environment; and
- Coordinate response with emergency agencies and other water providers.³⁸

Federal and State regulations and guidelines require water providers to document the adequacy of emergency preparation measures, including an ERP. The Grand Jury sought to verify that the individual water providers were in compliance with provisions of their ERPs.³⁹ We also sought to assess emergency preparedness, and potential improvements to the emergency response planning of County water providers.

The Grand Jury selected 12 of the 16 major County water providers, representing a cross-section of populations served and types of providers (municipal water districts, special districts, and public utilities). We reviewed documents and conducted interviews with representatives from each of these water providers listed in Figure 8.

Water Provider	Provider Type ⁴⁰	Population Served (2021) ⁴¹		
Brisbane	Municipal Water District	4,657		
Hillsborough	Municipal Water District	10,869		
Westborough Water District	Special District	12,703		
Coastside County Water District	Special District	18,738		
East Palo Alto	Municipal Water District	26,181		
Mid-Peninsula Water District	Special District	26,924		
Estero Municipal Improvement District	Special District	37,687		
North Coast County Water District	Special District	38,546		
Cal Water Bear Gulch	Public Utility	60,827		
Redwood City	Municipal Water District	90,518		
Daly City	Municipal Water District	106,638		
Cal Water Bayshore	Public Utility	200,111		

Figure 8: Water Providers Investigated

As required by the America's Water Infrastructure Act (AWIA), each of these providers has prepared, self-certified, and submitted to the EPA a Resiliency Assessment and an ERP.⁴² Brisbane was not required by AWIA to submit an ERP specifically, but has an equivalent document titled an Emergency Operations Plan.

³⁸ EPA, March 2018, "Connecting Water Utilities and Emergency Management Agencies", accessed June 10, 2022, https://www.epa.gov/sites/default/files/2018-05/documents/water_emaconnection.pdf/

³⁹ Grand Jury interviews/correspondences

⁴⁰ Grand Jury interviews

⁴¹ BAWSCA.org member agency profiles

⁴² EPA, "America's Water Infrastructure Act: Risk Assessments and Emergency Response Plans", accessed June 10, 2022, <u>https://www.epa.gov/waterresilience/awia-section-2013</u>

Emergency Response Plans: Promise, Performance, Documentation

The ERPs of all water providers the Grand Jury investigated included provisions for emergency readiness exercises. Only seven specified that these exercises would be performed at least annually. Others contained no commitment about the frequency of exercises. Some water providers we investigated indicated that the COVID-19 pandemic hampered their capacity to perform the exercises required by their ERPs.

The SFPUC invites most County water providers to attend its annual emergency preparedness exercises. Several water providers told us they attend these exercises. Two water providers (Westborough Water District and East Palo Alto) indicated that they did not participate and they did not receive invitations.⁴³ In addition, several water providers informed us that they had participated in general emergency preparedness exercises organized by local public safety and similar agencies in the past.

The Grand Jury was unable to determine whether the SFPUC exercises, or local emergency response planning exercises, satisfied the specific requirements described in the water districts' respective ERPs, as submitted to EPA.

None of the water districts investigated was able to present to the Grand Jury any documentation showing that they had conducted the water district readiness exercises described in their respective ERPs. In addition, no water provider was able to present to the Grand Jury any After-Action Report related to its ERP requirements.

Backup Water and Fuel

The SFPUC publication on seismic design criteria states that their performance goal for the Hetch Hetchy's Water System Improvement Program is to restore winter demand volume to 70% of their customer turnouts within 24 hours of a major earthquake.⁴⁴ The Grand Jury noted that County water providers are reasonably confident the improved SFPUC system will be functioning within three days.⁴⁵

Grand Jury interviews and BAWSCA data indicate that only seven of the 12 water providers investigated by the Grand Jury had back-up water storage sufficient for three days of normal usage. Several water providers informed the Grand Jury that they should also maintain a three-day back-up storage of fuel to keep generators operating to run the water delivery system during an emergency.

⁴³ Grand Jury interview

⁴⁴ https://ssc.ca.gov/wp-content/uploads/sites/9/2020/08/sfpuc_final_version_12_4-19-06.pdf

⁴⁵ Grand Jury interview

Only seven of the water providers we investigated had a three-day back-up fuel supply. Only four had a three-day back-up supply of both water and fuel, as shown in Figure 9.

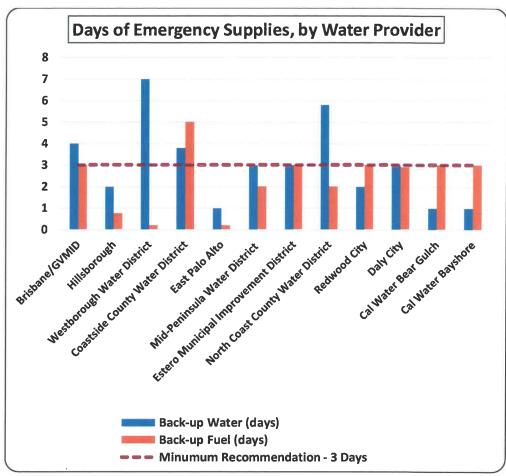


Figure 9: Days of Emergency Supplies, by Water Provider⁴⁶

County Responsibilities

In a catastrophic event, County DEM is responsible for alerting and coordinating agencies' responses, ensuring availability of resources, and developing plans for response and recovery.

The EPA has published guidance for cooperation that is needed between local emergency management agencies, such as County DEM, and the water providers serving the local communities. Its recommendations include:

- Sharing contact information between the agencies and water providers;
- Joint training and exercises and mutual facilities tours;

⁴⁶ Grand Jury interviews; BAWSCA, "Member Agency Profiles", accessed June 11, 2022, https://bawsca.org/members/profiles

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- Creating a "water desk" at the emergency agency; and
- Coordinating public messaging during a water emergency.⁴⁷

The Grand Jury found a gap between these recommendations and County DEM practices. County DEM informed us that it had no water desk, had not conducted emergency water interruption exercises, had not developed a coordination plan for emergency water interruption, and did not have a current list of emergency contacts for County water providers.

Several water providers informed the Grand Jury that they had, had no recent contact with the County DEM. Several informed us that they believe the County should be responsible for countywide water disaster exercises. To date, County DEM has conducted emergency preparedness exercises, but none addressing catastrophic water interruption.

FINDINGS

The following findings apply to the specific governing bodies identified under "Request For Responses" below:

- F1. The water provider was unable to demonstrate that it conducts the emergency exercises specified by its ERP, which may compromise its ability to supply water following a catastrophic interruption in water distribution service.
- F2. The water provider was not able to produce documentation analyzing past exercises to test readiness and improve their performance, which may compromise its ability to supply water following a catastrophic interruption in water distribution service.
- F3. The water provider does not have three days of emergency water storage, which may compromise its ability to supply water following a catastrophic interruption in water distribution service.
- F4. The water provider does not have three days of emergency fuel storage, which may compromise its ability to supply water following a catastrophic interruption in water distribution service.
- F5. The County Department of Emergency Management has not followed EPA recommendations that it coordinate disaster response with County water providers, which may compromise its ability to coordinate a response to a catastrophic interruption in water distribution service.

⁴⁷ EPA, "Connecting Water Utilities and Emergency Management Agencies", accessed June 10, 2022, https://www.epa.gov/sites/default/files/2018-05/documents/water_emaconnection.pdf

RECOMMENDATIONS

The following recommendations apply to the specific governing bodies identified under "Request for Responses" below:

- R1. The Grand Jury recommends that, by March 31, 2023, the water provider perform emergency preparedness exercises consistent with its emergency response plan.
- R2. The Grand Jury recommends that, by March 31, 2023, the water provider perform an analysis and document an After-Action Report consistent with its emergency response plan.
- R3. The Grand Jury recommends that, by March 31, 2023, the water provider develop plans to increase emergency water storage sufficient to provide emergency water for a period of at least three days.
- R4. The Grand Jury recommends that, by March 31, 2023, the water provider develop plans to increase emergency fuel storage sufficient to provide emergency fuel for a period of at least three days.
- R5. The Grand Jury recommends that, by December 31, 2022, the County Department of Emergency Management develop a plan to bring its policy in line with EPA recommendations to coordinate disaster response with County water providers.

REQUEST FOR RESPONSES

F.

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses from the following governing bodies:

Water Provider	F1	F2	F3	F4	F5	R1	R2	R3	R4	R5
Brisbane/GV Municipal Improvement District	X	X				X	X			
Hillsborough	X	X	X	X		X	X	X	X	
Westborough Water District	X	X		X		X	Х		X	
Coastside County Water District	X	X				X	X			
East Palo Alto	X	X	X	X		X	X	X	X	
Mid-Peninsula Water District	X	X		X		X	X		X	
Estero Municipal Improvement District	X	x				X	X			
North Coast County Water District	x	x		X		X	X		X	
Redwood City	X	X	X			X	X	X		
Daly City	X	X				X	X			
San Mateo County					X					X

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda, and open meeting requirements of the Brown Act.

RESPONSE REQUIREMENTS

California Penal Code Section 933.05, provides (emphasis added):

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall report one of the following:

(1) The respondent agrees with the finding.

(2) The respondent **disagrees** wholly or partially with the finding; in which case the response shall **specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor**.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for

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discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

METHODOLOGY

Preliminary Research

The Grand Jury reviewed many news articles and many publicly-available materials that described how water is distributed to San Mateo County and damage that may be caused by catastrophic earthquakes. We also researched which Federal, State, and local agencies help regulate water in San Mateo County. The sources of such documents included various departments of San Mateo County government, LAFCO, Federal and State agencies (including EPA, FEMA, DHS, and USGS), BAWSCA, and others.

Interviews and Document Requests

The Grand Jury conducted 27 interviews of public officials representing San Mateo County government departments, the San Francisco Public Utilities Commission, and water providers serving customers across San Mateo County. These included individuals that had general and specific knowledge regarding emergency services, water provision, and water ecosystems in San Mateo County. The Grand Jury also reviewed a multitude of documents provided by these agencies in response to document requests.

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List of Appendices

Appendix A: Select Federal and State Laws Affecting Water Providers

Appendix B: California Water Service, Areas Served

Appendix C: Earthquake Resiliency Guide

Appendix D: EPA Incident Action Checklist - Earthquake

APPENDIX A

SELECT FEDERAL AND STATE LAW AFFECTING WATER PROVIDERS

America's Water Infrastructure Act of 2018

Section 2013 of the law requires providers serving more than 3,300 people to develop and submit to the EPA a Risk and Resilience Assessment (Resiliency Assessment) as well as an Emergency Response Plan (ERP). The law requires that both documents include specific information.

Risk and Resilience Assessment (Section 2013)

- 1) "...[t]he risk to the system from malevolent acts and natural hazards;
- the resilience of the pipes and constructed conveyances, physical barriers, source water, water collection and intake, pretreatment, treatment, storage and distribution facilities, electronic, computer, or other automated systems (including the security of such systems) which are utilized by the system;
- 3) the monitoring practices of the system;
- 4) the financial infrastructure of the system;
- 5) the use, storage, or handling of various chemicals by the system; and
- 6) the operation and maintenance of the system."

Emergency Response Plan (Section 2013)

- 1. "...strategies and resources to improve the resilience of the system, including the physical security and cybersecurity of the system;
- 2. plans and procedures that can be implemented, and identification of equipment that can be utilized, in the event of a malevolent act or natural hazard that threatens the ability of the community water system to deliver safe drinking water;
- 3. actions, procedures and equipment which can obviate or significantly lessen the impact of a malevolent act or natural hazard on the public health and the safety and supply of drinking water provided to communities and individuals, including the development of alternative source water options, relocation of water intakes and construction of flood protection barriers; and
- 4. strategies that can be used to aid in the detection of malevolent acts or natural hazards that threaten the security or resilience of the system."

E.

California Water Code

At the State level, California Water Code California Water Code, <u>§10610-10656</u> and <u>§10608</u> specify that water providers serving more than 3,000 connections develop and submit an Urban Water Management Plan.

Urban Water Management Plan (UWMP)

The UWMP is largely focused on the need for providers to develop measures to reduce demand and to design sets of mitigation measures for possible implementation in the event of drought conditions or emergency loss of water service resulting from natural disaster. The UWMP is required to:

- (1) Assess the reliability of water sources over a 20-year planning time frame.
- (2) Describe demand management measures and water shortage contingency plans.
- (3) Report progress toward meeting a targeted 20 percent reduction in per-capita (perperson) urban water consumption by the year 2020.
- (4) Discuss the use and planned use of recycled water.

APPENDIX B

CALIFORNIA WATER SERVICE, AREAS SERVED

Bayshore District - services the cities of

- San Carlos
- San Mateo
- South San Francisco
- Colma

Bear Gulch District - services the cities of

- Portola Valley
- Woodside
- Atherton
- Menlo Park
- Unincorporated Portions of San Mateo County

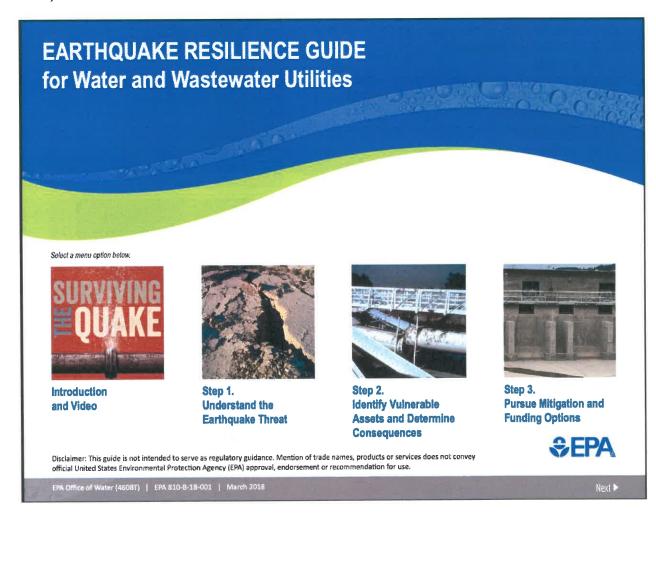
California Water Service (an investor-owned water provider) provides water to residents in these cities through its Bayshore and Bear Gulch districts. California Water Service rates Pacific Milbrae El Granada

and operations are regulated by the California Public Utility Commission.

APPENDIX C

EPA, "Earthquake Resiliency Guide" (2018)

<u>https://www.epa.gov/waterutilityresponse/earthquake-resilience-guide</u> (accessed June 15, 2022).



APPENDIX D

EPA Incident Action Checklist – Earthquake

SEPA

Incident Action Checklist – Earthquake

Earthquake Impacts on Water and Wastewater Utilities

An earthquake is caused by the shifting of tectonic plates beneath the Earth's surface. Ground shaking from moving geologic plates collapses buildings and bridges, and sometimes triggers landslides, avalanches, flah flods, fire and t snam is . The strong ground motion of earthquakes has the potential to cause a great deal of damage to drinking water and wastewater utilities, particularly since most utility components are constructed from infleible naterials (e.g., concrete, natal pipes). Earthquakes create nany cascading and secondary impacts that may include, but are not limited to:

- · Structural damage to facility infrastructure and equipment
- · Water tank damage or collapse
- · Water source transmission line realignment or damage
- · Damage to distribution lines due to shifting ground and soil liquefaction, resulting in potential water loss, water service interruptions, low pressure, contamination and sinkholes and/or large pools of water throughout the service area
- . Loss of power and communication infrastructure
- Restricted access to facilities due to debris and damage to roadways



The following sections outline actions water and wastewater utilities can take to prepare for, respond to and recover from an earthquake.



1 of 8



CITY OF BRISBANE Department of Public Works 50 Park Place Brisbane, CA 94005-1310 (415) 508-2130

October 21, 2022

Hon. Amarra A. Lee Judge of the Superior Court c/o Jenarda Dubois Hall of Justice 400 County Center; 2nd Floor Redwood City, CA 94063-1655

Subject: Response to 2021-2022 Grand Jury 8/5/22 report, "The *Other* Water Worry: Is Your Water Provider Prepared for the Big One?"

Dear Judge Lee,

Thank you for the opportunity to review and comment on the findings of the Grand Jury. This letter serves as the City of Brisbane's response to the findings and recommendations found therein. Please note this report was approved by the Brisbane City Council at its October 20, 2022 meeting.

FINDINGS

F1. The water provider was unable to demonstrate that it conducts the emergency exercises specified by its ERP, which may compromise its ability to supply water following a catastrophic interruption in water distribution service.

City Response to F1:

The city disagrees partially with the finding. As of the date of city staff interviews with members of the Grand Jury, the then current census results showed that neither water district (City of Brisbane nor Guadalupe Valley Municipal Improvement District) served a population of over 3,300 and both districts were therefore not required to have an ERP. Notwithstanding the absence of an ERP, city staff do successfully respond on a regular basis to water emergencies within both our systems. Additionally, anticipating that our populations would eventually trigger the requirement to prepare an ERP, the city authorized that work to begin in 2021.

F2. The water provider was not able to produce documentation analyzing past exercises to test readiness and improve their performance, which may compromise its ability to supply water

October 21, 2022 Hon. Amarra A. Lee Grand Jury Water Provider Readiness response Page 2 of 2 08-01-06

following a catastrophic interruption in water distribution service.

City Response to F2:

The city partially disagrees with the finding for the reasons noted above. Additionally, the city notes that grand jury members were referred to the SFPUC emergency preparedness staff to request copies of documentation of past multi-agency annual exercises. The city is unaware if an inquiry was made to SFPUC to obtain the records kept by the entity conducting the exercise.

RECOMMENDATIONS

R1. The Grand Jury recommends that, by March 31, 2023, the water provider perform emergency preparedness exercises consistent with its emergency response plan.

City Response to R1:

The recommendation will not be implemented until such time as the city is required to and has developed a final ERP.

R2. The Grand Jury recommends that, by March 31, 2023, the water provider perform an analysis and document an After-Action Report consistent with its emergency response plan.

City Response to R2:

The recommendation will not be implemented until such time as the city is required to and has developed a final ERP.

Please call me at (415) 508-2131 if there are any questions regarding this matter.

Very truly yours,

Brent

Randy L. Breault, P.E. Director of Public Works/City Engineer

Cc: Grand Jury website (sent via email to <u>grandjury@sanmateocourt.org</u>) Brisbane City Clerk

File Attachments for Item:

G. Approve Findings and Recommendations for Grand Jury Report: A Delicate Balance between Knowledge and Power: Government Transparency and the Public's Right to Know



CITY COUNCIL AGENDA REPORT

Meeting Date: October 20, 2022

From: Ingrid Padilla, City Clerk

Subject: Grand Jury Report - "A Delicate Balance between Knowledge and Power: Government Transparency and the Public's Right to Know"

Purpose

G.

To give Council the opportunity to provide comments on the findings and recommendations of the Grand Jury report on The California Public Records Act.

Recommendation

Approve the draft comment letter prepared by staff and authorize the Mayor to sign it.

Background

No later than 90 days after the Grand Jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body. In August 2022, the City received a report from the San Mateo County civil Grand Jury concerning the public's ability to access public records under the Public Records Act in Brisbane.

Discussion

City staff has carefully considered the Grand Jury's report concerning the public rights under the Public Records Act and the public's current ability to access public records in Brisbane. Staff historically has provided public records to requestors in a timely fashion and staff is not aware that anyone has had issues about not being able to make public records requests. Nevertheless, the Grand Jury made certain findings and recommendations concerning the public's ability to access public records in Brisbane and staff has already undertaken efforts consistent with the Grand Jury's findings and recommendations. The attached letter reflects this. Council may, of course, provide additional comments on the letter before it is submitted.

Fiscal Impact

There is no direct fiscal impact to the city as a result of providing the required response.

Measure of Success

A response within the timeframe required by state law.

Attachments 1. Grand Jury Report letter dated August 9, 2022

2. Draft October 21, 2022 city response letter

Ingrid Padilla

Ingrid Padilla, City Clerk

Clay Holstine, City Manager

Clay Holstine



G.

A Delicate Balance between Knowledge and Power: Government Transparency and the Public's Right to Know

Release Date: August 9, 2022

Issue	Summary	Background	Discussion Findings Re		Recom	mendations	
Request fo	or Responses	Methodology	Bibliograp	hy	Арре	endices	Responses

ISSUE

The California Public Records Act requires that inspection or disclosure of governmental records be available to the public upon request. How do the cities in San Mateo County meet the requirements of this Act?

SUMMARY

The California Public Records Act (PRA) is an essential tool for the public to find out what their government agencies are doing. It's one of the freedom of information laws enacted in every state in the Union to ensure that the public can witness the actions of their governments. The PRA's purpose is to promote government transparency in California.

Fifteen years ago, the 2006-2007 San Mateo County Civil Grand Jury's report, "Electronic Communication Among City Officials: A Valuable Tool in Need of Careful Guidance," addressed the rise in local governments' use of electronic forms of communication between elected and appointed officials.¹ As it observed, these valuable and efficient tools can quickly disseminate information, and they can constitute public documents subject to public disclosure. Reviewing that Grand Jury's report alerted the 2021-2022 San Mateo County Civil Grand Jury to the potential that cities may be facing increased complexity and potential burdens in the processing of requests for public records.

The Grand Jury sought to understand how San Mateo County's 20 cities respond to PRA requests, including:

- Cities' policies and procedures for handling requests;
- The types of records requests they receive;
- The training of key employees, elected officials, and appointed officials about PRA-related matters; and
- How legal changes may impact cities with regard to fulfilling PRA requests.

¹ 2006-2007 San Mateo County Civil Grand Jury, Electronic Communication among City Officials: A Valuable Tool in Need of Careful Guidance

https://sanmateocourt.org/documents/grand_jury/2006/ElectronicCommunicationfinal.pdf, retrieved June 9, 2022.

While the PRA does not require cities to adopt a formal policy, the Grand Jury sought to identify the cities that have written policy or procedure documents and the methods cities use to process the public's requests. It also wanted to learn how key staff keep up to date with changes in PRA law. Failing to comply with these laws can subject a city to litigation and, more importantly, lead to erosion of the public's trust.

The Grand Jury recommends that city councils of the subject cities should:

- 1. Consider directing staff to create a written PRA procedures document for circulation to all relevant staff.
- 2. Consider directing staff to perform a cost/benefit analysis regarding the purchase of commercially available public records request software.
- 3. Consider directing staff to place information about how to access public records on the home page of their official website.
- 4. Consider directing staff to create a submittable online PRA request form.
- 5. Consider directing staff to review and consider adopting a records management practice analogous to the City of San Mateo's "Records Cleanup Day."

BACKGROUND

Two centuries ago, James Madison wrote these words:

"A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives."²

He further asserted, "Knowledge [is] the only Guardian of true liberty."³

John Moss, a California member of the U.S. House of Representatives, used Madison's quote to generate support for a bill he was introducing in Congress. In 1967, after a 12-year struggle, he was finally successful in passing the Federal Freedom of Information Act (FOIA). It served as the model for California's similar Public Records Act enacted one year later.

The California Public Records Act was signed into law by Governor Ronald Reagan in 1968 and acknowledges one simple concept – that secrecy is contrary to a democratic system of "government of the people, by the people, and for the people". Specifically, the PRA declares

2

² Letter from James Madison to W.T. Barry (August 4, 1822), in The Writings of James Madison (Gaillard Hunt ed.).

³ Letter from James Madison to George Thomson (June 30, 1825) (on file with The James Madison Papers at The Library of Congress).

that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state".⁴

Every state has some form of freedom of information law that governs public access to state and local government documents.⁵ In addition, every state has some form of a "Sunshine Law" or "Open Meetings" law that requires public access to meetings of public legislative bodies. California's Ralph M. Brown Act is such a Sunshine Law.⁶ Passed in 1953, it guarantees the public's right to attend and participate in meetings of local legislative bodies. The PRA and the Brown Act are California's primary laws intended to promote government transparency.

What are Public Records?

G.

The PRA defines the term "public records" as any "writing containing information relating to the conduct of the public's business that is prepared, owned, used, or retained by a state or local agency regardless of physical form or characteristics."⁷ Thus, a "writing" is not simply a hand-written or printed document; writings include an ever-broadening range of communications including audio and video recordings, emails, photos, drawings, computer data, and more.⁸

The agencies that hold these public records, and are subject to the PRA, include every county, city, town, school district, special district, police and fire department, commission, and board in California.⁹ Certain private entities that carry out public functions using funding from a local agency may also be subject to the PRA. The PRA applies to nearly every public agency one can imagine except for the Legislature and the courts.¹⁰

A public record refers to information that has been recorded or maintained by a public agency. Typical examples of records that the public might request include:

- Property records,
- Building permits,
- Business registrations
- Employee compensation information
- Financial documents
- Code enforcement records
- Public works documents, and
- Police records.

⁴ California Government Code, Section 6250 (2021).

⁵ FOIA Advocates, State Public Records Laws. http://www.foiadvocates.com/records.html Retrieved May 11, 2022 ⁶ CA Govt Code § 54950 et seq.

⁷ CA Govt Code § 6252(e).

⁸ CA Govt Code § 6252(g).

⁹ CA Govt Code § 6252(f). Excluded from the definition of state agency are those agencies provided for in article IV (except section 20(k)) and article VI of the Cal. Constitution.

¹⁰ The Legislature has its own sunshine law, Gov. Code, § 1070. Most court records are disclosable under a number of legal decisions and the First Amendment of the U.S. Constitution.

Merely addressing a question to a local agency official or employee is not sufficient to constitute a public records request under the PRA. "What time do the lights go off at the neighborhood park?" Or "Why are there so many potholes on my street?" are not public records requests. However, a request to see the contract for the vendor who installed the lights or paved the street would be a public records request.

The Form of PRA Request

G.

The PRA ensures that all persons must receive equal access to public records. "Persons" can be corporations, partnerships, homeowners' associations, and the media.¹¹ Simply put, every person has the right to inspect public records, and no one type of person has a greater right of access to public records than any other person.¹²

Because the intent of the law is to enable easy access to public records, it is expansive in the available ways requests may be made. The request can be made in writing or orally, by physical or electronic means, remotely or in person. Persons making a PRA request are not required to explain the reason for the request.¹³

Public records are to be open for inspection during office hours at the local agency. To preserve the orderly function of their offices, agencies may establish reasonable policies for the inspection and copying of records. If the request asks for copies of documents, the agency is required to respond within ten days to determine whether they have disclosable records in their possession and to notify the person making the request of that determination. The agency must then make the records "promptly" available.¹⁴

An agency may extend the normal ten-day requirement for responding whether it has any disclosable documents for up to 14 additional days under certain circumstances.¹⁵ For example, if the agency needs to search through and collect a voluminous number of records or to consult with another agency with an interest in the requested records, such an extension is available.

The agency is required to assist the requester who is having difficulty making a focused and effective PRA request.¹⁶ And while the request may be burdensome, that burden alone is not sufficient to justify noncompliance. However, the agency is also not required to perform a "needle in a haystack" search for records.¹⁷ Additionally, a PRA request only applies to records that exist at the time of the request, not for records to be created in the future.

¹¹ CA Govt Code § 6252(c); Connell v. Superior Court (Intersource, Inc.) (1997) 56 Cal.App.4th 601.

¹² CA Govt Code § 6252.5; Los Angeles Unified School Dist. v. Superior Court (2007) 151 Cal.App.4th 759; Dixon

v. Superior Court (2009) 170 Cal.App.4th 1271, 1279.

¹³ CA Govt Code § 6250; California. Constitution, Article. I, Section 3.

¹⁴ CA Govt Code § 6253(c).

¹⁵ CA Govt Code § 6253(c)(1-4).

¹⁶ CA Govt Code § 6253.1.

¹⁷ Cal. First Amend Coalition v. Superior Court (1998) 67 Cal. App. 4th 159, 166.

Widespread Use of Electronic Communications

The public's business increasingly relies on electronic communications. Email, social media postings, video and audio recordings, and the use of personal devices have created enormous volumes of public records for cities. In a case with broad consequences related to PRA requests, City of San Jose v. Superior Court of Santa Clara County (2017), the California Supreme Court ruled that communications carried out using a personal account or device were disclosable if the communication was related to the conduct of public business.¹⁸

For example, such a PRA request might be for all communications between city officials and a vendor that was granted a city-awarded contract. The search for responsive records could include reviewing all the emails, voice mails, and texts between the parties for relevant material, including on officials' personal devices. This can be problematic since this communication, especially if voluminous, could require attorneys to determine what might be non-disclosable for reasons of privacy or privilege. In Getz v County of El Dorado (2021), a California appeals court ruled that El Dorado County's unsubstantiated claim that a PRA request was overly broad and burdensome was not a valid reason for denial of records. The court explained that establishing that a request is overly burdensome requires more than the vague prospect of having to review lots of records. The County was ultimately compelled to produce over 40,000 email records.¹⁹

Law Enforcement Records

In recent years the most publicized form of an electronic record has been police body-cam footage. Landmark legislation has broadened PRA access to law enforcement records, including a limited subset of these audio and video recordings. On January 1, 2019, SB 1421 became law. Called the Peace Officers: Release of Records bill, it requires law enforcement agencies to make records (including body-cam footage) related to certain serious officer use of force incidents, sexual assault, and acts of dishonesty available under the PRA.²⁰ Police unions have filed multiple challenges to the law asserting concerns about officers' privacy, retroactivity of the law, and the cost of producing records.²¹ These challenges have been consistently denied by courts.²² And in January 2022, SB 16, became effective. This new law now requires additional police disciplinary records, involving allegations of discrimination, unlawful arrest, and cover-ups of excessive force by fellow officers, to be made available under the PRA.²³

¹⁸ Latham & Watkins, Client Alert Commentary, https://www.lw.com/thoughtLeadership/california-supreme-court-government-communications-on-private-accounts-are-public, retrieved May 11, 2022.

¹⁹ Getz v. The Superior Court, 72 Cal.App.5th 637, 287 Cal. Rptr. 3d 722 (Cal. Ct. App. 2021)

https://law.justia.com/cases/california/court-of-appeal/2021/c091337.html, retrieved June 1, 2022.

²⁰ CA Penal Code § 832.7 and § 832.8.

²¹ Voice of San Diego, A Brief History of Police Challenges. https://voiceofsandiego.org/2019/06/10/brief-history-of-police-challenges-and-losses-sb-1421/, retrieved March 18, 2022.

²² JD Supra, Another SB1421 Decision Against Law Enforcement. https://www.jdsupra.com/legalnews/another-sb-1421-decision-against-law-45114/, retrieved March 18, 2022.

²³ BBK Attorneys at Law, SB 16 Compliance Expanded Public Access. https://www.bbklaw.com/News-Events/Insights/2021/Legal-Alerts/12/SB-16-Compliance-Expanded-Public-Access-to-Law-Enf, retrieved March 18, 2022.

Methods of Handling Requests

The PRA does not mandate any specific method for agency handling of records requests. Some local agencies simply monitor the process manually using an internally created document. Many other agencies now use commercially available software that links to information on their public websites. Often marketed to city clerks through professional organizations, such as the City Clerks Association of California, these software applications offer solutions to manage large portions of the PRA request process.

These applications can:

- Manage intake of requests through a public portal;
- Provide an automated response of receipt to the person making a request;
- Alert agency staff to deadlines;
- Promote coordination across departments;
- Gather records and track their production to person making a request;
- Provide tools to redact information; and
- Display and store responsive records.

The software enables anyone making a PRA request to see the status of their request through a portal. It also enables cities to make both the request and the records responsive to the request visible to the public.

Fees

G.

An agency may charge a fee for costs of complying with the PRA, but only for the direct costs of making copies of responsive records – typically a nominal fee per page of paper copies. Since today most records are produced and delivered to the requester electronically, many responsive records are cost-free to the requesting party.

In National Lawyers Guild v. City of Hayward (2019), the California Supreme Court held that an effort by the city to charge \$3,000 for labor related to redacting requested bodycam footage was not permissible as a "data extraction" cost.²⁴ With this decision, the Court reaffirmed that local agencies may not charge for ancillary costs such as the labor required to retrieve documents or the inspection and handling of files.²⁵

Voter-approved Propositions Affecting the PRA

In 2004, voters overwhelmingly passed Proposition 59, the "Public Records, Open Meetings Legislative Constitutional Amendment." It essentially adds a "sunshine" amendment to the Declaration of Rights section of the California Constitution (similar to the U.S. Constitution's

²⁵ BBK Attorneys at Law, California Public Records Act Update.

²⁴ Reporters Committee, National Lawyers Guild v City of Hayward. https://www.rcfp.org/briefscomments/national-lawyers-guild-v-hayward-california-supreme-court, retrieved June 14, 2022.

https://www.bbklaw.com/news-events/insights/2021/legal-alerts/01/california-public-records-act-update, retrieved March 16, 2022.

Bill of Rights) stating, "The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."²⁶

Proposition 42, the "Public Records. Open Meetings. State Reimbursement to Local Agencies. Legislative Constitutional Amendment" was approved by voters in 2014. It was the result of a dispute over a controversial bill that would stop local governments from being required to follow key provisions of the PRA. The State legislature had considered the bill to be a budget move, since at that time it was required to reimburse local governments for complying with some aspects of records requests. The backlash over the signing of this bill caused the legislature to rescind it and put the matter before the voters as a constitutional amendment. When it passed, by a 62% yes vote, it required local governments to comply with the PRA without being reimbursed by the State for the cost of public access to records."²⁷ The full financial burden of compliance with the PRA now falls entirely on local governments.

Exemptions

While the PRA states that "the people" have the right to know what their government is doing, clearly circumstances arise where a balance must be achieved between the public interest and individual privacy rights. The PRA contains at least 76 express exemptions, for matters as diverse as library circulation records, copyright protected building plans, and medical and personnel records.²⁸ In some instances a public document may not be considered exempt but may contain private information such as social security numbers and home addresses. Those specific portions will be redacted before release to the public.

Government Code section 6254 specifies a large number of exemptions under the PRA. Several of the more notable exemptions are listed below:

• Records Not in Existence

The agency is under no obligation to create records where none exist; agencies are not required to provide records that may be produced in the future relevant to the original request.

• Disclosure of records exempted by Federal or other State law

Records shielded from disclosure by existing state or federal law, such as individual health records, are not accessible using the PRA.

Public Interest Test and Deliberative Process Privilege

Agencies may withhold certain records if they can demonstrate that the public interest served by not disclosing the record clearly outweighs the public interest served by its disclosure.

²⁶ Cal. Const., Art I, § 3, subd. (b)(1)

²⁷ Cal. Const., Art. I, § 3, subd. (b)(7)

²⁸ CA Govt Code § 6254

• Preliminary Drafts

G.

Preliminary drafts, notes, or memos not normally preserved in the course of business are exempt.

• Attorney Client Communications

Confidential communications between lawyers and clients, and attorney work product, are exempt from disclosure.

• Pending Litigation

Records pertaining to pending litigation or claims to which a public agency is a party until the litigation or claim has been finally adjudicated or otherwise settled.

• Personal Information

This exemption is intended to protect the confidentiality of personnel, medical or other similar files which would constitute an unwarranted invasion of personal privacy.

• Trade Secrets

Businesses engaged in public contracts are not required to disclose their trade secrets in response to a PRA request.

Recourse When Responsive Documents Are Not Produced

If a local agency has unlawfully refused to disclose a public record, a person may ask a judge to enforce their rights under the PRA. This enforcement is primarily through a special, expedited civil judicial process.²⁹ The PRA provides specific relief in the form of court costs and attorneys' fees when an agency unlawfully denies access or copies of public records.

Conversely, a local agency cannot bring an action for relief to determine its obligation to disclose records.³⁰ That would require the person requesting documents to defend a civil action and discourage them from requesting records in the first place. It would frustrate the central purpose of the act and the constitutional amendments specifically designed to provide access to information.

The PRA is an indispensable tool for the responsible exercise of democracy in California. Government transparency, accountability and effectiveness depend on how our local agencies handle the information they create and are entrusted with maintaining. A changing legal framework, the ubiquity of electronic records, new communications technologies and the treatment of their related records, and the public's demonstrated desire for "open government" present significant challenges to the efficient handling of PRA requests for the cities in our county.

²⁹ CA Govt Code § 6258 and 6259.

³⁰ Filarsky v. Superior Court (2002) 28 Cal.4th 419, 426.

DISCUSSION

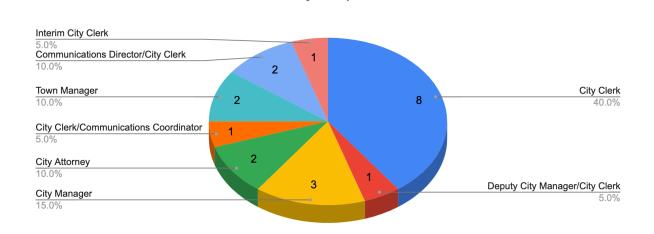
G.

As stated above, the PRA applies to all of the public agencies in San Mateo County. To narrow the focus of our investigation, the Grand Jury opted to concentrate on the 20 cities, including their police and other departments, and the committees and commissions formed by those cities.

Survey Respondents

The Grand Jury began by sending a survey to the 20 city managers in the County (a copy of the survey appears in Appendix A). It asked six questions related to the processing of public records requests, policies and procedures used, and the PRA training of staff and officials. In most cases (13 of 20) the responses came from city clerks who are responsible for maintaining a city's public records. Some of the clerks perform multiple roles for their cities, reflected in some cases (15%) by an additional job title. The following graphic illustrates the various job titles of survey respondents.

Count of Survey Respondent's Titles



In two cities, the city clerk position is determined by public election; in the remainder of the cities, clerks are appointed by the city manager. Our investigation found that the city clerk is typically the official primarily responsible for the acknowledging receipt of a PRA request, tracking it through the city's internal processes, and delivering correspondence and responsive records to the person submitting the request.³¹

The Grand Jury conducted follow-up interviews with representatives of all 20 cities, confirming their survey responses and gathering additional information. We asked the cities to provide written documentation of their PRA policies and procedures, if any exist. Fourteen cities replied that they had existing policies or procedures and supplied them to the Grand Jury. We also conducted in-depth interviews with five selected cities.³² These cities were chosen to give us a cross section sample based on city population, method of tracking, and volume of requests. The

³¹ In one city, the city attorney assumed most of this role, but even there the city clerk was involved in the process.

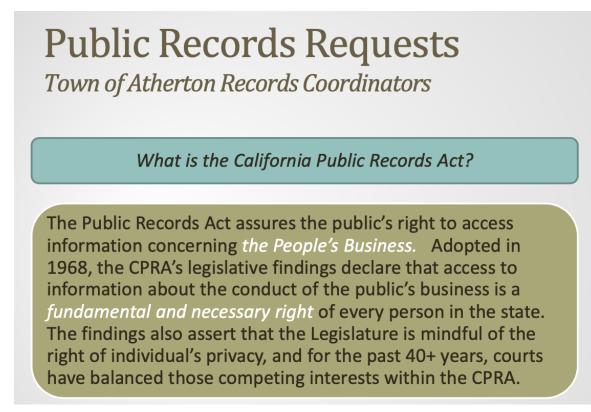
³² Belmont, Daly City, San Bruno, San Mateo, and South San Francisco

Grand Jury notes that respondents from all 20 cities were entirely cooperative and knowledgeable about their city's PRA request procedures.

Documentation of PRA Policies and Procedures

The PRA does not require local agencies to create policies or documentation of how they receive, route, track, and fulfill records requests. When the Grand Jury asked respondents and interviewees to provide documentation describing how they handled PRA requests, we learned that six cities had no such documentation.³³ In some cases, the documentation received from the remaining 14 cities was simply a description of the PRA's requirements (perhaps supplied to staff for training for information). The Grand Jury also received documents such as the city's internal procedures, as well as some that were formal policies signed and dated by the city manager. In interviews, all respondents could describe their processes.

The documentation received and reviewed by the Grand Jury varied widely. Atherton's document is a colorful presentation defining the PRA and describing what is and isn't a public record.



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³³ Grand Jury survey (December 2021) Belmont, Daly City, Half Moon Bay, Hillsborough, Menlo Park, and Woodside.

It generally outlines city staff's role in responding to a request. In contrast, Redwood City's document is an administrative policy detailing the purpose and scope of how they respond to PRA requests. It notes specific types of records such as political reform act records and requests for electronic communications. It also specifies that the document will be reviewed every two years. Copies of the PRA documentation provided by Atherton and Redwood City can be found in Appendix B.

The Grand Jury noted that some cities relied on an individual staff member (city clerk or city attorney) to respond to records requests. In the event of illness, vacation, resignation or other interruption of service, no documentation exists to guide replacement personnel.

Written PRA policies or procedures provided to the Grand Jury typically covered subjects such as:

- The purpose of the PRA;
- Resources for PRA training;
- The steps in processing a request; and
- Specific staff responsibilities.

Website Portals

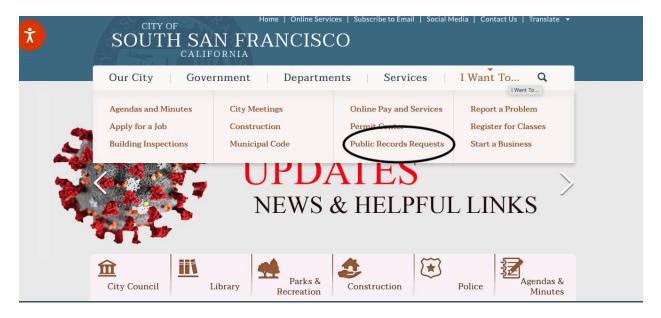
The Grand Jury found that while cities do receive PRA requests in various ways - submitted inperson at city offices, by telephone, and postal mail - they are most frequently submitted via email. We found that 16 of the 20 city websites included a portal containing a submittable form for the filing of a PRA request and four cities had no such form.³⁴

Every city website somewhere provides instructions on how to make a PRA request. Some have links to those instructions on the home page, but most require steps to navigate to it. In some cases, the Grand Jury found broken links indicating inconsistencies in the level of maintenance of the PRA related pages. Some city websites simply instruct the public to send a public records request to the city clerk and provide contact information including an email address, a phone number, or a physical address at which to file.

³⁴ Belmont, Brisbane, Hillsborough, and Portola Valley.

Example of Easy and Accessible PRA-Information on a City Website

The website for the City of South San Francisco provides easily accessible information regarding PRA requests. The home page includes a "Public Records Request" link.



Clicking on the link brings up a page full of useful titles including how to make a request, the city's PRA policy, who can make a request, and tips to expedite requests.



Clicking on "Public Records Request" takes the user to a third-party public records web application where they can search by request reference number, track the status of a previous request, view a public archive, and submit a new request.



Tracking a Public Records Request

G.

Since the PRA mandates specific deadlines for public agencies to respond to a public records request, the ability to track submissions is vital in order to ensure legal compliance.³⁵ All cities informed the Grand Jury that they track PRA requests, utilizing a variety of methods to do so. Regardless of the specific method used by a city, the workflow is generally as follows.

PRA Workflow

SUBMITTAL

The request for a public record is submitted through an on-line form, mail, an email, a phone call, or in person.

TRACKING

Begin tracking the request. Acknowledge its receipt.

VET

Evaluate request for fulfillment by clerk or other relevant department staff.

GATHER Search and collect responsive records

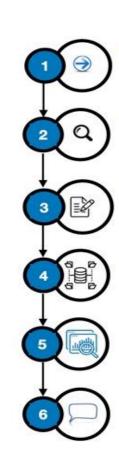
REVIEW

Review document(s) for exemptions and redactions

RESPOND

Deliver responsive records to requester

Ten cities, which were generally smaller and field fewer requests, reported that they track PRA requests manually using an Excel spreadsheet or similar internal document.³⁶ These documents



³⁵ CA Govt Code § 6253(c).

³⁶ Atherton, Brisbane, Burlingame, Colma, Daly City, East Palo Alto, Hillsborough, Portola Valley, San Bruno, and Woodside as of May 16, 2022.

require manual data entry and maintenance by staff. For example, see San Bruno's spreadsheet at Appendix C. While these cities indicated general satisfaction with their current methods of tracking, one city was actively seeking proposals from commercial software vendors and others were considering doing so. Appendix D shows such a vendor's proposal.

The ten other cities, including most of the larger ones, use third-party software that automates the handling of PRA requests.³⁷ These cities use one of two software applications.³⁸ In interviews, staff generally expressed satisfaction with both products, citing their effectiveness and efficiency. Pricing of these applications will vary based on the configuration and storage options selected. One city indicated a desire to purchase software but cited the city's budget constraints. Another city noted that the cost was prohibitive for a city of their size and volume of requests.

Volume of Requests

Thirteen cities reported receiving more than 100 PRA requests in the past year. Two cities reported receiving fewer than 50 requests, while one city indicated that it received more than 1,600 requests for records. Another city noted a 500% increase from the previous year. All cities reported significant increases in the volume of requests received since the outset of the Covid pandemic.

Subjects of Requested Records

All 20 cities reported that the majority of the PRA requests they received were for routine records such as property-related documents, police records, public works documents, and business registrations. For example, in San Mateo, the City Clerk's office recorded 1,695 PRA requests in the fiscal year ended June 30, 2021. The largest percentage (46%) were directed to the Community Development Department and typically asked for property records of some kind, including planning applications, building permits, blueprints, inspections, and code violations. Requests for police records (35%) were the next most frequently requested type of record. The clerk's office noted that the police department directly receives substantially more requests than come to the clerk through their PRA request software.

Time-Consuming Requests

The Grand Jury learned that a relatively small number of records requests are disproportionately time-consuming to fulfill. In particular, requests for communications records may fall into this category. The request may require a broad search of all relevant communications created and stored on electronic devices, including employees' cell phones and laptops. Recently, Portola Valley received what was characterized as a "massive" PRA request for "all town communications regarding the housing element since July 1, 2021, including communications among elected officials, staff, consultants or members of the committee, like emails and text

³⁷ Foster City, Half Moon Bay, Menlo Park, Millbrae, Pacifica, Redwood City, San Carlos, San Mateo, and South San Francisco as of May 16, 2022.

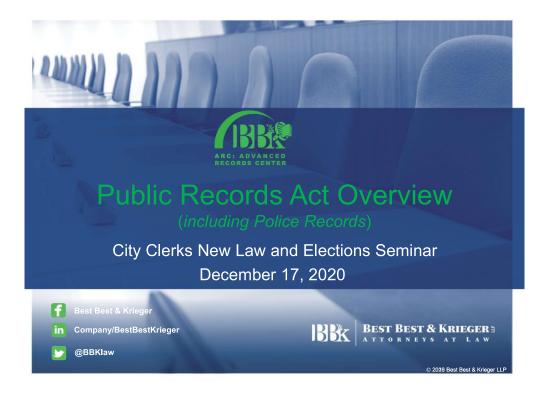
³⁸ GovQA, If You Have a Public Records Problem. https://www.govqa.com/solutions/public-records-software/ Retrieved May 16, 2022, and NextRequest, The All-In-One Open Records Request Platform. https://www.nextrequest.com/, retrieved May 16, 2022.

messages, including on personal devices."³⁹ The request was the result of a potential change to the town's zoning laws to allow for more dense housing in one residential neighborhood.

Several cities reported to the Grand Jury that on rare occasions a disgruntled citizen or exemployee has intentionally crafted a detailed records request intending to be time-consuming and annoying for the city. One respondent reported that the search and review of electronics communications in response to one request took months to complete, due to the number of responsive records and the broad search of multiple devices.

Training

State law does not mandate training for those implementing its provisions. City clerks often attend training through annual City Clerks Association of California conferences and other professional associations.



Half of the cities interviewed by the Grand Jury mandate formal PRA training for their key employees. Others offer training but do not mandate it, while some cities have no formal arrangements for PRA training at all.⁴⁰ Training, if offered, is conducted by the city attorney. In

³⁹ Angela Swartz, "'Massive' public records request escalates battle over Portola Valley's housing element," *Almanac*, March 21, 2022.

https://www.almanacnews.com/news/2022/03/21/massive-public-records-request-escalates-battle-over-portola-valleys-housing-element, retrieved June 9, 2022.

⁴⁰ Burlingame, Portola Valley, and Woodside.

our investigation, respondents agreed that formal training for key city employees would make the handling of records requests more efficient and consistent.

Twelve cities informed the Grand Jury that they provide PRA training for their appointed and elected officials. This training is also typically provided by the city attorney, sometimes with the assistance of the city clerk. Eight cities reported that they do not offer specific PRA training to such officials, but some noted that their training in Brown Act compliance includes PRA training content.⁴¹

While the PRA does not include criminal penalties for noncompliance with its provisions, civil actions, as described earlier, may be filed and cities can be liable for court costs and attorneys' fees.

Increasing Efficiency in Records Request Processing

Some cities have demonstrated how commonly requested records can be made available to the public without formal PRA requests.

Making public records available online is a convenient and efficient mechanism for both the requester and the municipality. Cities generally do this for many common records, such as meeting agendas for public meetings (which are legally required to be posted publicly).⁴² At the time of this investigation, some cities, such as San Carlos, also posted many records online. Using the search term "public records" on the San Carlos city website brings up "Records

⁴¹BBK, Attorneys at Law, Summary of the Major Provisions and Requirements of the Ralph M. Brown Act. https://www.bbklaw.com/bbk/media/library/pdf/major-provisions-and-requirements-of-the-brown-act.pdf, retrieved June 9, 2022.

⁴² CA Govt Code § 54954.2.

Available Online for Your Easy Access," which connects to records such as budgets, building permits, and public works documents.

Submit a Public Records Request

If you are unable to locate the records you want online, please submit a Public Records Request via our NextRequest portal:



Our goal is to provide you with timely access to the City's public records. All requests for documents will be reviewed and responded to within ten (10) days, in compliance with the California Public Records Act. Fees are charged according to our fee schedule, however, there is no charge to review records in person at City Hall.

Master fee schedule

Records Available Online for Your Easy Access

- Accounts payable cash disbursements journal
- <u>Active business registrations</u>
- <u>Budgets</u>
- Building Permits
- <u>City Council and Commission agendas, minutes and videos</u>
- <u>City Municipal Code</u>
- <u>Citywide Reports</u>
- Financial Reports and Documents
- Ordinances and Resolutions
- · Various Public Works Documents, including documents pertaining to sewers, streets, traffic, etc.

The Half Moon Bay website offered a "Document Center" containing more than 2,000 city documents going back a decade.

ADA / 504 Grievance Forms	H.	< 1 → H	Displaying items 1 - 5 of 5
BID/RFP Center		Display Name	Size (KB)
City Clerk			/
Cannabis Ballot Measures	⊳	IA_ManufacturingAdvisory	120
Manufacturing Mature Cultivation	⊳	Manufacturing_WEB-argument against mfg	100
Reputtals	⊳	Manufacturing WEB-argument for mfg	135
Retail			
Starts	⊳	Rebuttal to Argument Against Measure MM_mfg.WEB	148
- Tax	⊳	Rebuttal to Argument in Favor of Measure MM_mfg.WEB	148
City Council Committee Agend			
City Council Photos 2020			
Commissions/Committee Form			
Council Actions			
districting			
Future Leaders			
Smoking Ordinances			
City Manager			
City Projects			
Communications			
Community Development			
COVID Testing			
Emergency Prepardness			
Bineering			
Finance			
- Homeless			
Human Resources			
Newsletters			
Parklet Program			
Public Works			
Recreation			
Sheriffs			
Sidewalk R&R			

Several cities noted that they often receive requests for the same records repeatedly. For example, this can occur when a sought-after property is offered for sale and brokers, architects, attorneys, and potential buyers are doing their due diligence. Cities using commercially provided software applications, or that post public records as do San Carlos and Half Moon Bay, can reduce the number of such duplicative PRA requests.

Records Management

Proper records management policies and practices facilitate effective compliance with the PRA. Having better control of these records makes their timely and appropriate production more accurate and efficient. All cities in the County reported having records retention schedules that determine what documents must be retained and for how long. For example, in South San Francisco, leases for city owned properties must be kept in hard copy for the current year plus two-years. Board and commission resolutions must be kept permanently (a copy of the records retention schedule for South San Francisco is at Appendix E).

G.

The City of San Mateo reported a unique method for encouraging city staff in one element of the effective management of public records. There, the city clerk held a "Records Clean Up Day" (related materials are contained in Appendix F). During this event employees are tasked with:

- Reducing the number of duplicate records;
- Preparing records for off-site storage;
- Imaging and indexing electronic records; and
- Identifying electronic records eligible for destruction.

The retention life cycle of various records determined how different categories of documents are handled. The program was designed to create an enjoyable environment around these tedious tasks by employing a food truck, encouraging casual dress, creating contests with prizes, and printing T-shirts commemorating the day. The program included an on-site shred truck, and the city attorney was available for consultation.



In an email to the Grand Jury, a city staffer wrote, "In addition to elevating the employee understanding that these public records are an asset of the city (just like the vac truck, fleet, and streets) ...we have a duty to manage and maintain them well; reinforce the policy and procedures we have adopted; and let's face it, maintaining records can become back burner in the flurry of day-to-day needs and requests. Setting aside time to honor the need, accomplish an objective and then celebrate it – keeps it more in the forefront of the mind and honors the importance of the public's records." ⁴³

⁴³ Grand Jury correspondence April 26, 2022.

Law Enforcement Records

Some cities reported receiving significant numbers of requests for police records. All such requests were forwarded directly to city police departments or the County Sheriff's Office (for those cities contracting for police services).44 Law enforcement agencies typically employ a records manager tasked with responding to public records requests. In some cities the disposition of these requests was reported back to the city clerk for inclusion in their tracking systems; in others, the city clerk had no knowledge of the status of a police records request. The Grand Jury did not investigate how these requests for law enforcement records were handled in compliance with the PRA. It is of note that most law enforcement records are exempted from the Public Records Act pursuant to Government Code Section 6254(f).

FINDINGS

G.

- F1. The city has no written documentation of its PRA policy and internal procedures, making it more likely that requests could be handled inconsistently.
- F2. The city uses a commercially available software application that includes a web portal enabling the public to easily request records and track their disposition.
- F3. Information about how to access public records requires multiple clicks to find on the city's website, which hinders the public's access to public records.
- F4. The City of San Mateo implements a Records Cleanup Day with the purpose of increasing employee understanding of the need to effectively maintain public records, thereby improving PRA request responsiveness.
- F5. The city has no PRA request form online, making public access to public records less efficient.

RECOMMENDATIONS

- R1. The city council should direct city staff to consider and report back by June 30, 2023, on the creation of a written PRA policy or procedures document for circulation to all relevant staff.
- R2. The city council should direct city staff to consider performing a cost/benefit analysis and report back by September 1, 2023, on the purchase of commercially available public records request software.
- R3. By June 30, 2023, the city council should consider directing city staff to place information about how to access public records on the home page of the city's official website.
- R4. By June 30, 2023, the city council should direct city staff to review and consider adopting a records management practice analogous to the City of San Mateo's "Records Cleanup Day."
- R5. By June 30, 2023, the city council should direct city staff to create, on the city clerk's page of its website, a submittable PRA request form.

⁴⁴ Contracting cities are Half Moon Bay, Millbrae, San Carlos, Woodside, and Portola Valley.

REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses from the selected city and town councils as follows (x):

City	F1	F2	F3	F4	F5	R1	R2	R3	R4	R5
Atherton			x		x		х	x	x	
Belmont	X		x		x	Х	Х	x	x	х
Brisbane			x		x		х	x	х	х
Burlingame							Х		х	
Colma							Х		x	
Daly City	X	x				Х			х	
East Palo Alto							Х		Х	
Foster City		x							Х	
Half Moon Bay	Х	х				Х		X	Х	
Hillsborough	Х		X		X	Х	Х		X	х
Menlo Park	Х	х				Х		X	X	
Millbrae		х							Х	
Pacifica		х							X	
Portola Valley			x		х		х	х	х	х
Redwood City		х						х	х	
San Bruno			x		x		х	x	х	
San Carlos		x							X	
San Mateo		x		X						
South San Francisco		x							х	
Woodside	X				x	Х	Х		X	

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda, and open meeting requirements of the Brown Act.

RESPONSE REQUIREMENTS

California Penal Code Section 933.05, provides (emphasis added):

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall report one of the following:

(1) The respondent agrees with the finding.

(2) The respondent **disagrees** wholly or partially with the finding; in which case the response shall **specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor**.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

METHODOLOGY

Through examination of surveys, interviews, the documentation provided by the cities, a demonstration of third-party software, and a site visit, the Grand Jury studied how cities respond to public records requests, and how they keep up with changes in the law.

Survey

- The Grand Jury developed an online survey consisting of six questions and a request for copies of their PRA policies and procedures.
- The survey was sent to all 20 city managers in the County and various respondents completed the survey.
- We then followed up with a brief phone interview to confirm the responses received from those completing the survey, and to request written policy and procedures documents and records retention policies.

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Documents

The Grand Jury reviewed:

- Policy and procedure documents from all cities that indicated having them.
- Records retention policies from several cities.
- Proposals and contracts for third-party software received from various vendors
- Marketing material of third-party software vendors
- Research on best practices in records management

Site Tour

- GJ conducted a site visit to the San Bruno City Attorney's office.
- San Mateo conducted a virtual demonstration of their third-party software.

Interviews

• The Grand Jury conducted further interviews with city attorneys, city clerks and city managers based on those with written policies or procedures documents, training of key employees and elected and appointed officials (advisory bodies), number of public records requests received per year, and those with an elected city clerk.

Web Sites

• The official websites of the 20 cities in the County were reviewed to assess the ease in locating information relating to public records, the methods of submission of a public records request, as well as users' direct access to commonly requested public records.

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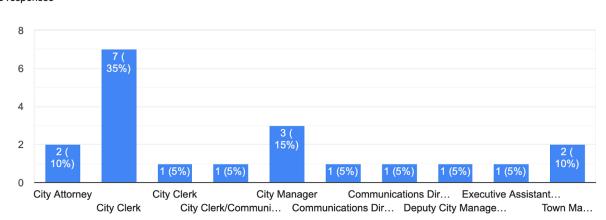
LIST OF APPENDICES

Appendix A – The Grand Jury Survey Results

- Appendix B PRA Policies and Procedures: Atherton and Redwood City
- Appendix C San Bruno PRA Request Log
- Appendix D GovQA Proposal for Services
- Appendix E South San Francisco Retention Schedule
- Appendix F City of San Mateo's Clean-Up Day Staff Plan and Flyer

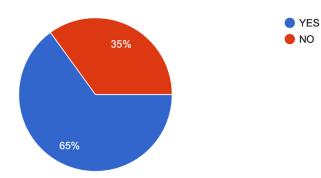
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APPENDIX A The Grand Jury Survey Results



What is your job title? 20 responses

 Have you established internal written procedures, or policies, for handling Public Records Act requests? If YES, please provide documentation to: rweiss@smcivilgrandjury.org.
 20 responses



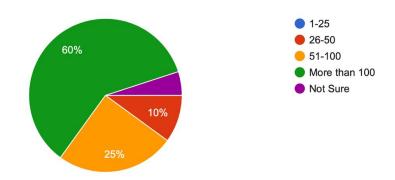
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YES NO 15 10 5 0 Manually Track Third-party Software Internally Developed Software

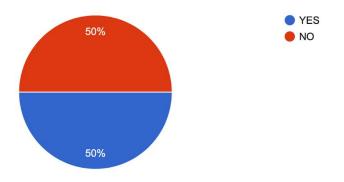
3. Please indicate if you use any of the following to track the status of each Public Records Act request.

4. How many requests do you receive per year?

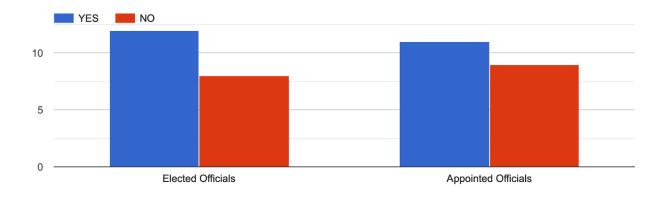
20 responses



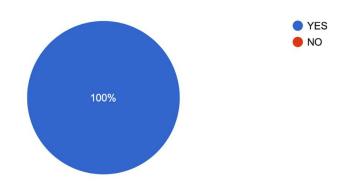
5. Does your city mandate formal Public Records Act training for key employees? 20 responses



6. Does your city offer Public Records Act training for elected and appointed officials (i.e. advisory boards, commissions, committees)?



7. Have you adopted a written document retention policy? 20 responses



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APPENDIX B

PRA Policies and Procedures: Atherton and Redwood City

Atherton: <u>https://www.sanmateocourt.org/documents/grand_jury/2021/Appendix B - PRA PAP</u> <u>Atherton.pdf</u>

Redwood City: <u>https://www.sanmateocourt.org/documents/grand_jury/2021/Appendix B - PRA</u> PAP Redwood City.pdf

#	PRA	<u>Sbpna</u>	Date of	Date	Requester Name	Description of Record(s)	Dept(s)	Response	Acknowledgment	Records Provided
1	х		07/01/21	07/01/21		June 2021 Building permits	CD	07/12/21	Emailed rsps on 07/08/21	07/08/21
2	х		07/01/21	07/01/21		Docs re CPUC approval of purchase of streetlights from	PW	07/12/21	Emailed rsps on 07/08/21	7/8/2021
3	x		07/07/21	07/07/21		Records involving code enforcement, utility shut offs, and fire damaged properties	CD/CE/FD/ Finance	07/19/21 08/18/21	req <u>30 day ext</u> - now due 08/18/21. Emailed <u>rsps</u> on 08/18/21	08/18/21
4	х		07/08/21	07/08/21		June 2021 Business licenses	Finance	07/19/21	Emailed report on 07/19/21	07/19/21
5	х		07/13/21	7/13/2021		June 2021 Building permits	CD	07/23/21	Emailed rsps on 07/13/21	7/13/2021
6	x		07/13/21	07/13/21		Records involving code enforcement, utility shut offs, and fire damaged properties	CD/CE/FD/ Finance	7/23/2021 08/23/21	07/23/21 req <u>30 day ext</u> - now due 08/23/21. Emailed <u>rsps</u> on 08/18/21.	08/18/21
7		х				Subpoena for records involving 692 Green Ave	CE/CD/ PW	07/19/21	Emailed rcds on 07/23/21	07/23/21
8	х		07/14/21	07/15/21		Oldest current standing houses in SB	CD??	07/26/21	Emailed rsps on 07/23/21	x
9	x		07/15/21	07/15/21		Private tows from 04/01/21 thru 06/30/21	PD	07/26/21	Emailed report on 07/26/21	07/26/21
10	x		07/17/21	07/19/21		Electronic copy of all payment transactions for fiscal year 2020	Finance	07/29/21	Emailed link to agenda packets on 07/29/21	7/29/2021
11	х		07/20/21	07/20/21		2020 Pension Benefit/Payout Report	Finance	07/30/21	Request was meant for City of Concord - withdrawn on 07/31/21	Withdrawn
12	Х		07/19/21	07/20/21		Uncashed checks	Finance	07/30/21	Emailoed link to website on 07/29/21	7/29/2021
13	х		07/22/21	07/22/21		Building & FD rcds for 787 E SB Ave	CD/FD	08/02/21	Emailed rcds on 08/02/21	8/2/2021
14	x		07/09/21	07/09/21		Firearm & Ammunition arrests & <u>related</u> demographic	PD	7/19/2021 08/18/21	req <u>30 day ext</u> - now due 08/18/21. Emailed <u>rsps</u> on 08/18/21	8/18/2021

APPENDIX C San Bruno PRA Request Log (sample page with requester names removed)

APPENDIX D GovQA Proposal for Services

GRANICUS

Order Form

PRICING SUMMARY

The pricing and terms within this Proposal are specific to the products and volumes contained within this Proposal.

Solution	Billing Frequency	Quantity/Unit	One-Time Fee
FOIA Platform Onboarding	Up Front	1 Each	\$0.0
Online Training – Administrator	Up Front	1 Each	\$0.0
Online Training – Users	Up Front	1 Each	\$0.0
		SUBTOTAL:	\$0.0
New Subscription Fees			
Solution	Billing Frequency	Quantity/Unit	Annual Fee
Essentials Package 3	Annual	1 Each	\$10,500.0
PST Email Extractor	Annual	1 Each	\$1,500.(
Payments Module	Annual	1 Each	\$0.
Hosted Data Storage (TB)	Annual	1 Each	\$0.
Invoicing Module	Annual	1 Each	\$0.
FOIA Module for Enterprise Sales	Annual	1 Each	\$0.
Redaction License (per named user)	Annual	3 Each	\$0.
ADFS/Single Sign-on Module	Annual	1 Each	\$0.
Advanced Email Tracking	Annual	1 Each	\$0.
		SUBTOTAL:	\$12,000.

33

FUTURE YEAR PRICING

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Solution(c)	Period of Performance				
Solution(s)	Year 2	Year 3			
Essentials Package 3	\$11,235.00	\$12,021.45			
PST Email Extractor	\$1,605.00	\$1,717.35			
Payments Module	\$0.00	\$0.00			
Hosted Data Storage (TB)	\$0.00	\$0.00			
Invoicing Module	\$0.00	\$0.00			
FOIA Module for Enterprise Sales	\$0.00	\$0.00			
Redaction License (per named user)	\$0.00	\$0.00			
ADFS/Single Sign-on Module	\$0.00	\$0.00			
Advanced Email Tracking	\$0.00	\$0.00			
SUBTOTAL:	\$12,840.00	\$13,738.80			

APPENDIX E South San Francisco Records Retention Schedule 2016

https://www.sanmateocourt.org/documents/grand_jury/2021/Appendix E - SSF Retention Schedule 2016.pdf

APPENDIX F City of San Mateo's Clean-Up Day Staff Plan and Flyer

San Mateo Records Clean-Up Day Staff Plan

Department/Location/Division: Your Name:	Date of Clean-Up: <u>May 05, 2022 Cinco De Mayo</u> This Form Due To Your Dept. Record Coordinator <u>4/28/22</u>
Goal(s) for clean-up day (select all that apply)	
Prepare paper records for destruction Dispose of duplicate records	Email clean-up (delete unnecessary emails. Move attachments that are records to the correct records repository e.g., One Drive, SharePoint, Laserfiche)
Prepare records for off-site storage	Identify electronic records that are eligible for destruction
Sort through off-site storage records	Focus on imaging, indexing electronic records
Develop file inventory	Other:

Key Activities and Strategies: What will you do to accomplish these goals? Be as specific as possible.

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Welcome Back San Mateo ANNUAL CINCO DE MAYO RECORDS CLEAN-UP DAY PICNIC

Let's Celebrate being together in person again with a picnic of specialty tacos in our backyard with your colleagues!

How to join the fun (and yes, records clean-up is fun!)

- Ask your Department's Records Coordinator for a records clean-up commitment form.
- 2. Choose from a list of clean-up activities or create your own

3. Sign the form and provide it to your Records Coordinator by April 28, 2022 - this is your RSVP for the luncheon. Sorry: No form - no tacos.
4. On or before 5/5/22 clean-up, purge, & organize those records!

Questions? Talk to your Records Coordinator or Alesha Boyd in the City Clerk's Office

Join us here!



Join us for Tacos in City Hall Backyard 11:00 am - 12:30 pm

Courtesy of the Clerks for anyone who committed to Records Clean-up

Salad

- Tacos Grilled Chicken, Steak, Carnitas
- Veggie Spanish Rice and Veggie Beans
- Grilled Veggies
- Guacamole, sour cream and cheese fixins
- Corn tortillas
- Chips and Salsa
- Churros for dessert! Yum!

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ATTACHMENT 2

October 21, 2022

Honorable Amara A. Lee Judge of the Superior Court c/o Jenarda Dubois Hall of Justice 400 County Center; 2nd Floor Redwood City, CA 94063-1655

Re: Grand Jury Report - "A Delicate Balance between Knowledge and Power: Government Transparency and the Public's Right to Know"

Honorable Judge Lee,

Thank you for the opportunity to review and comment on the above referenced Grand Jury Report issued on August 9, 2022. Please find the City of Brisbane's response to both the findings and recommendations below. This response to the Grand Jury was approved by the City of Brisbane's City Council at a public meeting on October 20, 2022.

FINDINGS:

F3. Information about how to access public records requires multiple clicks to find on the city's website, which hinders the public's access to public records.

Response: The respondent agrees with the finding. This information is currently located within one click from the City Clerk's page but not the homepage. Subsequent to receiving the August 9, 2022 Grand Jury Report, the City Clerk and Communications Staff have worked on providing more information about how to access public records on the City's website, which work should be completed by November 1, 2022. Public access to public records will accessible via multiple channels through the website:

- Via the City Clerk webpage under the sub-heading "Public Records Request"
- Via the "Online Services..." icon listed on the home page under the sub-heading "Public Records Request"
- Via the Government Tab on the homepage under the sub-heading "Public Records Request"

F5. The city has no PRA request form online, making public access to public records less efficient.

Response: Respondent agrees with the finding. A general contact form was available to the public to make public records request on the City's website. Subsequent to receiving the August 9, 2022 Grand Jury Report, the City Clerk and Communications Staff have worked on creating and posting a fillable PRA-

specific request online form on the City's website, which form should be available by November 1, 2022. The form will be accessible via multiple channels through the website:

- Via the City Clerk webpage under the sub-heading "Public Records Request"
- Via the "Online Services..." icon listed on the home page under the sub-heading "Public Records Request"
- Via the Government Tab under the sub-heading "Public Records Request"

RECOMMENDATIONS:

R2. The city council should direct city staff to consider performing a cost/benefit analysis and report back by September 1, 2023, on the purchase of commercially available public records request software.

Response: The recommendation has not been implemented but will be implemented in the future. The City Clerk will be researching various vendors of records request software for potential use. The current FY2022-23 budget does not include funds for this software but may be included in future. Staff intends to have quotes for services from vendors by early 2023, discuss the issue with City departments and make a recommendation as to whether to include it in the FT 23/24 budget based on its cost and its usefulness to the City.

R3. By June 30, 2023, the city council should consider directing city staff to place information about how to access public records on the home page of the city's official website.

Response: As indicated in Finding 3, this recommendation will be implemented by November 1, 2022.

R4. By June 30, 2023, the city council should direct city staff to review and consider adopting a records management practice analogous to the City of San Mateo's "Records Cleanup Day."

Response: This recommendation has not been implemented but will be implemented in the future. Staff has worked with records management vendors to routinely do annual public record "cleanups" in the summer where public records which are due for destruction are identified. City Clerk and staff will work with City Departments to hold more "records clean up days" throughout the year. By June 30, 2023, the City Clerk will also explore ways to increase staff capacity and technological resources dedicated to supporting "Records Clean Up Day".

R5. By June 30, 2023, the city council should direct city staff to create, on the city clerk's page of its website, a submittable PRA request form.

Response: As indicated in Finding 5, this recommendation will be implemented by November 1, 2023.

Respectfully,

Coleen Mackin Mayor fity of Brisbane

File Attachments for Item:

H. Approve Memorandum of Understanding with the County of San Mateo to Carry Out Goals and Mission of the Gun Relinquishment Task Force and Authorize the City Manager to sign the MOU



CITY COUNCIL AGENDA REPORT

Meeting Date: October 20, 2022

From: Lisa Macias, Police Chief

Subject: Memorandum of Understanding Between the County of San

Mateo and the City of Brisbane to Carry Out the Goals and Mission of the Gun Relinquishment Task Force

COMMUNITY GOAL RESULTS

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

RECOMMENDATION

Approve the attached Memorandum of Understanding between the County of San Mateo and the City of Brisbane and authorize the City Manager to sign the MOU.

BACKGROUND

From time to time, persons in the City may be prohibited from possessing firearms. For example, a person may have been determined to be a danger to him/herself or to family members, or there may be a domestic violence situation where a firearm was used. In such cases, there are statutes that prohibit possession and/or ownership of a firearm if an individual has been charged and prosecuted for certain crimes. A person may voluntarily surrender their firearm(s) to the police department, where they will be stored, pending further court proceedings. Or there are other times, where a court order must be issued in order for law enforcement to enter into a person's home to seize their firearms. Currently, there is no county wide system in place to coordinate and share resources among the law enforcement agencies in the County to enforce unlawful firearm possession laws and orders.

Recently, the County and the District Attorney's Office have created a San Mateo County Gun Relinquishment Task Force ("GRTF") which would be a unit within the District Attorney's Office composed of law enforcement officers from the County and cities in the County. Cities in the County have been asked to enter into a Memorandum of Understanding in order to be a part of the GRTF. The proposed MOU is attached.

DISCUSSION

The MOU outlines the responsibilities of the County and of the member cities in order to carry out the purposes of the GRTF. For example, as part of its responsibilities the County will identify and confirm through various law enforcement systems, such as the Armed and Prohibited Persons System or the Firearm Dealer Acquisition System, persons prohibited from possessing firearms. The County will coordinate with the law enforcement agency having primary jurisdiction over the prohibited person's residence or location, obtain any legal proceedings necessary to conduct the seizure of the prohibited firearm, and coordinate with

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the law enforcement agency to effectuate the seizure. The City's responsibilities include the overall planning and coordination of personnel related to the firearm seizure, and collecting and storing seized firearms.

For a small city such as Brisbane, this type of County wide assistance will be of great benefit should the need arise. There is no cost to the City for being a part of this effort. The MOU has a two year term but may be terminated for any reason with 30 days notice. As is typical in these types of County/City agreements, there are cross indemnification provisions.

Attachment: Memorandum of Understanding re: Gun Relinquishment Task Force

Lisa Macias

Clayton L. Holstins

Lisa Macias, Police Chief

Clay Holstine, City Manager

MEMORANDUM OF UNDERSTANDING AND AGREEMENT

BETWEEN THE COUNTY OF SAN MATEO AND THE CITY OF BRISBANE FOR THE PURPOSES OF CARRYING OUT THE GOALS AND MISSION OF THE GUN RELINQUISHMENT TASK FORCE

This Memorandum of Understanding and Agreement ("MOU") outlines the agreed upon responsibilities of the County of San Mateo ("County") and the City of Brisbane (" Venue Agency" and, together with the County, the "Parties") for carrying out the goals and initiatives of the San Mateo County Gun Relinquishment Task Force ("GRTF").

WHEREAS, the GRTF is a unit within the San Mateo County District Attorney's Office, led by the District Attorney Chief Inspector or Senior Inspector ("DA Inspector") composed of law enforcement officers from the County and its cities and towns; and

WHEREAS, the purpose of the GRTF is to coordinate and share resources among the law enforcement agencies in the County to more effectively enforce unlawful firearm possession laws, in the interest of promoting safety and reducing gun violence in the County; and

WHEREAS, the Parties have a collective goal of enabling the GRTF to carry out its County-wide efforts, and from time this may require the Parties to cooperate for operational, promotional, and advocacy purposes.

Therefore, the Parties agree as follows:

Responsibilities of County:

- Receive Court Orders from The Superior Court of California, County of San Mateo, the San Mateo County Sheriff's Office and other sources as appropriate.
- Run reports through the California Law Enforcement Website (CLEW) Armed and Prohibited Persons System (APPS) and Firearms Dealer Acquisition System (FDAS)
- Identify and confirm prohibited person(s) and firearms through research utilizing law enforcement and publicly available databases.
- Deconflict with the California Department of Justice and other law enforcement agencies.
- Coordinate with the venue law enforcement agency having primary jurisdiction over the prohibited person's residence or location ("Venue Agency").
- Obtain any legal process necessary to conduct the seizure, e.g., warrants.
- Coordinate with Venue Agency to effectuate seizures.
- Coordinate with the Venue Agency regarding storage of seized firearms.
- Write reports related to firearm seizures and/or attempts to seize firearms for criminal filing and informational purposes.
- Return and file all necessary search and/or arrest warrants to The Superior Court of California, County of San Mateo.

- Provide training to Venue Agency related to gun confiscation.
 - Track statistics related to referrals, seizure attempts, firearms confiscated, and arrests related to firearm seizures.

Responsibilities of Venue Agency:

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- Coordinate with the GRTF members when contacted about prohibited person(s) within the venue jurisdiction.
- Responsible for the overall planning and coordination of personnel related to any firearm seizure attempt in the venue jurisdiction. The Venue Agency will ultimately decide if and when seizure attempts will occur and supply the number of officers necessary to safely effectuate the seizure.
- Responsible for the collection and evidence storage of all seized firearms.
- Responsible for firearm entries into California Law Enforcement Telecommunications System (CLETS), Automated Firearm System (AFS), and any other related databases or systems.
- Responsible for report writing and case submissions for criminal charges unrelated to firearm violations and seizures (e.g., narcotics located during the firearm seizure process)

Term of MOU: The term of this MOU shall be for two years, from November 1, 2022 to October 31, 2024, but may be terminated by either party without a requirement of good cause on 30 days written notice.

Hold Harmless:

Venue Agency shall defend, hold harmless and indemnify both (1) the County of San Mateo and its officers, agents, and/or employees and (2) any other City and its officers, agents, and/or employees that executes an agreement in substantially the same form as set forth herein that mutually indemnifies Venue Agency in the same manner as set forth in this paragraph; from any and all claims for injuries to persons and/or damage to property, which both arise out of this Agreement and are caused by or are alleged to be caused by the acts or omissions of Venue Agency, its officers, agents and/or employees including, but not limited to claims alleging negligence, excessive force, or violations of state or federal civil rights laws, except to the extent such claims arise out of acts performed by the County, its officers, agents and/or employees or another cities' officers, agents and/or employees.

County shall defend, hold harmless and indemnify Venue Agency, its officers, agents and/or employees from any and all claims for injuries to persons and/or damage to property, which both arise out of this Agreement and are caused by or are alleged to be caused by the acts or omissions of County, its officers, agents and/or employees including, but not limited to claims alleging negligence, excessive force, or violations of state or federal civil rights laws, except to the extent such claims arise out of acts performed by the Venue Agency, its officers, agents and/or employees or another cities' officers, agents and/or employees.

In the event of the concurrent negligence of Venue Agency, its officers, agents and/or employees, and the County or another City providing mutual indemnity pursuant to paragraph 1 of this section, their officers, agents and/or employees, then the liability for any and all claims for injuries or damages which arise out of H. s Agreement shall be apportioned under California's theory of comparative fault as presently established or as may be hereafter modified.

Venue Agency will be responsible for the defense of any of its employees in any lawsuit filed against that employee, regardless of the allegations.

The parties understand and agree that because all officer/employees performing work pursuant to this MOU will be deemed to be continuing under the employment of the Venue Agency, any damage, injury, disability, or death incurred by the officer/employee while working with the GRTF shall be deemed to have arisen out of and to have been sustained in the course of the officer/employee's employment with Venue Agency. Any officer/employee who sustains any damage or injury arising out of and in the course of their work with the GRTF shall be accorded by Venue Agency all of the same benefits, including Workers Compensation Benefits, which they would have received if they had been acting under the sole direction of Venue Agency. If the officer/employee, or anyone on the officer/employee's behalf or based on officer/employee's injury, files a claim for Workers' Compensation or claims tort violation of any labor or employment laws against the County or claim for any other wrongful act or omission, for any damage or injury claimed to have been sustained in relation to the officer/employee's work with the GRTF, Venue Agency shall indemnify, defend, and hold the County, its officers, agents and employees harmless.

Relationship between the Parties: Venue Agency agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of the County and that neither Venue Agency nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

Compliance with Laws: In performance of this MOU, both Parties shall observe and comply with all federal, state, and local laws, ordinances, and regulations.

Agreement of parties:	
County of San Mateo	
Name:	
Title:	
Date:	

Venue Agency

Name: Clay Holstine

Title: City Manager

Date: October 20, 2022

File Attachments for Item:

I. Approve Open Space Plan Amendment

(It is being recommended to Amend the 2001 Open Space Plan (Plan) to expand the Priority Preservation Area (PPA) of the Brisbane Acres to include six additional lots and modify the criteria that establishes priority)



CITY COUNCIL AGENDA REPORT

Meeting Date:October 20, 2022From:Karen Kinser, Deputy Director of Public WorksSubject:Open Space Plan Amendment

Community Goal/Result

Ecological Sustainability - Brisbane will be a leader in setting policies and practicing service delivery innovations that promote ecological sustainability

Purpose

To preserve significant natural and open space resources.

Recommendation

Amend the 2001 Open Space Plan (Plan) to expand the Priority Preservation Area (PPA) of the Brisbane Acres to include six additional lots and modify the criteria that establishes priority.

Background

The city developed the Plan to evaluate open space land acquisition opportunities relative to their value. The plan prioritized properties in five subareas based on criteria that determined the most significant natural and open space resources in the city. The Open Space and Ecology Committee (OSEC) recently requested the support of staff to review the Plan with respect to the Brisbane Acres, as General Plan references to open space acquisition, mapping and reporting mention an annual process.

For the Acres, five original criteria that were chosen related to natural resources, and the sixth, a negative factor, disallowed inclusion in the PPA if a property "adjoins developed land on more than one side". While data on three further criteria was collected, it was not used to evaluate properties.

Discussion

In 2001, when the Plan was adopted, the city had already purchased 13 "Acres", or lots of approximately an acre in size. The Plan prioritized another 54 Acres. As of now, the city has acquired a total 48 Acres, and only 19 remain in the hands of private owners, excluding remnant parcels (paper streets). With the city having acquired 72% of the original PPA, the committee felt that six additional Acres should be added to the PPA to establish a buffer of sorts between developed areas and the already acquired property in the PPA. In other words, if the city does not acquire the proposed properties to serve as a buffer, then the lower properties within the PPA could end up with homes next to them and would possibly then only serve as a buffer themselves. See Attachment 1, a map identifying the current PPA and city-

owned properties within it, developed properties, and the six Acres recommended to be added to the PPA.

OSEC specifically wished to revise the "negative" criteria excluding parcels that adjoin developed land on more than one side, since with oddly shaped Acres, adjoining development on two short sides could be less impactful than it seems. Their recommendation is to revise this criterion to include properties that adjoin open space on one or more sides. The committee further recommends changing the three "secondary" criteria, evaluated but not used in the original Plan, to primary criteria, changing the total criteria used from six to nine. (See Attachment 2, Original and Proposed Criteria list).

The six Acres proposed to be added to the PPA were evaluated relative to all nine criteria, and were found to qualify for priority preservation, if the negative criteria not allowing the Acre to adjoin developed parcels on more than one side were modified as described above. (See Attachment 3, Information regarding the six Acres).

Fiscal Impact

None. This action would expand the PPA but is not a directive to purchase these six Acres. Purchase of any available PPA Acres would be brought to the Council separately for consideration.

Measure of Success

Expansion of the Priority Preservation area of the Brisbane Acres Subarea of the Open Space Plan to create a buffer zone between Acres already acquired and developed lots.

Attachments

- 1. Map of the Brisbane Acres Priority Preservation Area
- 2. Criteria list
- 3. Information regarding Six Acres to be added to PPA

Karen Kinser, Deputy Director of Public Works

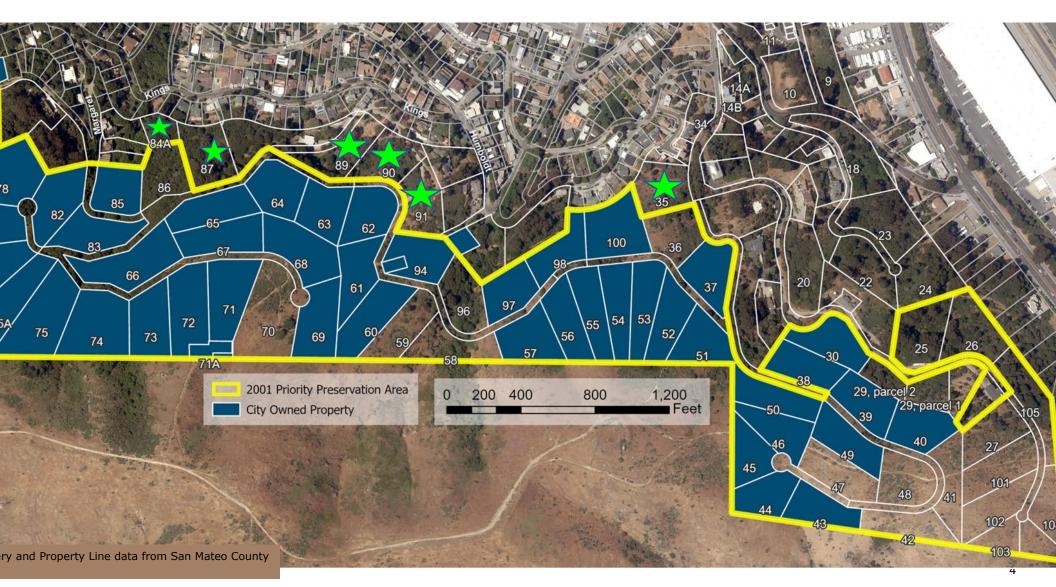
) Brent

Randy Breault, Director of Public Works

Clayton L. Holstins Clay Holstine, City Manager

Attachment 1 - Parcels recommended to be added to Brisbane Acres PPA





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Attachment 2

2001 Open Space Plan Brisbane Acres Priority Preservation Area Criteria

The chosen criteria for selection of an Acre to be included in the Priority Preservation Area. Acre was required to meet at least one or more of these criteria:

- Contiguous with San Bruno Mountain State and County Park
- Contains intact native vegetation
- Contains endangered butterfly habitat
- Contains permanent or semi-permanent wetlands
- Forms a portion of a significant watercourse
- Adjoins developed parcels on more than one side (negative factor: its presence makes a parcel less desirable as open space)

Original studied criteria also included the following, which were deemed relatively less important:

- Potential trail corridors and access points
- Forms a portion of a significant ridgeline
- Falls within the central Brisbane viewshed

Recommended new Brisbane Acres Priority Preservation Area Criteria

- Contiguous with San Bruno Mountain State and County Park
- Contains intact native vegetation
- Contains endangered butterfly habitat
- Contains permanent or semi-permanent wetlands
- Forms a portion of a significant watercourse
- Adjoins open space on one or more sides (revised from original)
- Potential trail corridors and access points
- Forms a portion of a significant ridgeline
- Falls within the central Brisbane viewshed

Attachment 3 – Information regarding six Acres to be added to PPA, evaluated with new criteria

Lot #	Contiguous with County Park	Native	Endangered Butterfly	Permanent of	of a Significant Watercourse	Parcel adjoins open space on one or more sides	Potential Trail Corridor - TO BE INCLUDED	BE INCLUDED	Falls within the Central Brisbane Viewshed - TO BE INCLUDED
35	no	yes	yes	no	no	yes*	yes	yes	yes
84 A	no	yes	no	no	yes	yes*	no	no	yes
87	no	yes	no	no	yes	yes*	yes	no	yes
89	no	yes	no	no	no	yes*	yes	no	yes
90	no	yes	no	no	no	yes*	yes	yes	yes
91	no	yes	yes	no	no	yes*	yes	no	yes

- Lots 35 & 91 Acre meets five criteria
- Lot 84A Acre meets three criteria
- Lot 87 Acre meets four criteria
- Lot 89 Acre meets three criteria
- Lot 90 Acre meets four criteria
- * Criteria "Parcel adjoins open space on one or more sides" new criteria language

Ι.