



MEMORANDUM

DATE: 13 December 2012

TO: Planning Commission

FROM: John Swiecki 
Community Development Director

SUBJECT: Discussion of Baylands Draft EIR Presentation Schedule

As the publication of the Baylands Draft EIR approaches, it would be appropriate for the Planning Commission to discuss how the draft EIR will be presented for public review. The City's EIR consultant (ESA) has prepared the attached memo suggesting a proposed approach and describing some issues to consider. Lloyd Zola of ESA will be attending the December 13 meeting to participate in this discussion. Also attached for reference purposes is the memorandum prepared by the City Attorney outlining the Planning Commission's role in the EIR process.

As a matter of information, this matter is also scheduled for consideration by the City Council at its December 17 meeting. The Planning Commission's comments from tonight's meeting will be relayed to the City Council for consideration at their upcoming meeting.

Attachments

ESA Memorandum

City Attorney Memorandum



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memorandum

date December 6, 2012
to John Swiecki
from Lloyd Zola
subject Strategy for Public Presentation of the Baylands DEIR

Preparation of the Baylands Draft EIR (DEIR) is proceeding. It is expected that the DEIR will be released to public agencies and the public in January for a 120-day public review period as directed by the Brisbane City Council. To assist the community in their review of the DEIR, it is recommended that a series of workshops be held early during the public review period to present information from the DEIR. A total of five meetings are recommended, four presenting specific sections of the EIR and a fifth meeting for questions and comments, as follows:

1. Presentation of DEIR Introduction, Project Description, Land Use section, Alternatives.
2. Presentation of DEIR Traffic, Air Quality, GHG, Noise sections.
3. Presentation of DEIR Water Supply, Public Services and Facilities, Recreation, Utilities, Energy sections.
4. Presentation of DEIR Hazards/Remediation, Biological Resources, Historical and Cultural Resources sections, as well as Other EIR Issues.
5. Meeting to receive public comments on the DEIR.

Ideally, the first four public informational meetings would be held over a two week period with presentations given on successive nights in each week early in the public review period, with workshop #5 held later in the public comment period.

Basic considerations as to the format of these meetings include:

- While the opportunities for comments/questions on the evenings we are presenting specific sections of the EIR will be provided, the first four informational meetings should be focused primarily on assisting the public and Commission members understand the content and conclusions of the EIR. Members of the public are not expected to receive a presentation on any particular issue and provide substantive comments in the same evening.

- The purpose of the workshops is to present information contained in the Draft EIR. They are not intended as a forum to discuss the adequacy of the EIR or debate the merits of the project. Since the first four informational workshops will be held relatively early in the public review period, they are not anticipated to provide a venue for providing detailed verbal comments. The primary mission of the four informational workshops is to follow up on previous CEQA informational workshops by providing information on the specific methodologies and conclusions of the DEIR to facilitate people's ability to understand and comment on the DEIR.

Recognizing the project's high profile and the extent to which Brisbane residents anticipate extensive and open public discussion of community issues, it is recommended that the fifth evening meeting focus on receiving public comments on the DEIR. CEQA will require written responses to all relevant comments on the DEIR provided at that meeting be included in the Response to Comments portion of the Final EIR.

At each of the four initial presentation meetings, it is recommended that the City's EIR consultant reinforce the informational purpose of the presentation and encourage that the question/comment portion of the session be focused on questions clarifying the information presented in the workshop. The EIR consultant will further emphasize the specific opportunities available for public comment, including written comments on the Draft EIR, the public meeting to be held at a later time in the DEIR public review period, and ultimately public hearings on the project itself. These opportunities afford the public additional time to absorb and review the information from the presentation and full EIR text and organize their comments.

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MEMORANDUM

TO: Brisbane Planning Commission
FROM: Hal Toppel, City Attorney
RE: Role of the Planning Commission in the Environmental Review and Planning Process for the proposed Brisbane Baylands Project
DATE: September 10, 2012

The City of Brisbane is currently preparing a draft environmental impact report ("Draft EIR") for the proposed development of the Brisbane Baylands pursuant to the California Environmental Quality Act ("CEQA", Public Resources Code § 21000 et seq.). When the Draft EIR is complete, it will be circulated for public review and comment for a minimum of 45 days. After the close of the public comment period, the City will prepare a Final EIR that responds to all significant environmental points raised in the review and consultation process. (14 Cal. Code Regs. § 15132.) The City Council is charged with certifying the legal adequacy of the Final EIR prior to its consideration of the proposed Brisbane Baylands project.

The Planning Commission is a critical part of the both the planning and environmental review process in the City of Brisbane. It is responsible for, among other things, providing a recommendation on the proposed Brisbane Baylands project to the City Council. (Gov. Code §§ 65453, 65354.) As part of its recommendation, the Planning Commission must consider the Final EIR. ("[W]hen an advisory board such as a planning commission is required to make a recommendation on a project to the decision making body, the advisory body shall also review and consider" the environmental document. (14 Cal. Code Regs. § 15025(c).)

The public is also an important part of the planning and environmental review process. CEQA recognizes that public participation is essential, and mandates "wide public involvement, formal and informal . . . in order to receive and evaluate public reactions to environmental issues" related to a proposed project. (14 Cal. Code Regs. § 15201.) As the court noted in *Barthelemy v. Chino Basin Mun. Water Dist.*, the environmental review process is intended to facilitate "informed decisionmaking and public participation." (*Barthelemy v. Chino Basin Mun. Water Dist.* (1995) 38 Cal.App.4th 1609, 1617.)

Likewise, the legislature has "recognized the importance of public participation at every level of the planning process." (Gov. Code § 65033.) This includes activities of the

Planning Commission, which must promote "public interest in, comment on, and understanding of the general plan, and regulations relating to it." (Gov. Code § 65103.)

A. Planning Commission's Role During Public Review of the Draft EIR on the Proposed Baylands Project

While a significant importance is placed on public participation, CEQA does not require a public meeting before the Planning Commission on the *Draft* EIR. Nevertheless, the City recognizes the value of extensive public participation at the Draft EIR stage. Once the Draft EIR is published, the City will hold a series of public meetings to present the Draft EIR to the community and accept public comment on the Draft EIR. While the City Council will ultimately establish a Draft EIR review schedule, it is anticipated that the Planning Commission will serve as the City body to accept verbal and/or written public comments on the Draft EIR. The purpose of this hearing is to *receive* public comments only, and there is no expectation or obligation for the Planning Commission to *respond* to these comments or for the Commissioners to offer any comments of their own. In fact, it is strongly advised that the Planning Commission not comment on and/or respond to public comments. The Planning Commission has an important formal role in the review of the *Final* EIR. However, the *Draft* EIR review process is the public's opportunity to provide input. If the Commission were to engage extensively in the Draft EIR review, the Commission's participation might significantly diminish the level of public participation, influence the nature and scope of public comments, or jeopardize the impartiality of the Commission.

Importantly, a Commissioner is not precluded from commenting on the Draft EIR in a non-official, individual capacity. Like all members of the public, a Commissioner has a personal right to comment. However, the right should be exercised judiciously. A Commissioner choosing to comment as a private citizen should ensure that the comment clearly reflects that it was not made by the Commissioner in his or her capacity as a member of the Planning Commission. Therefore, all non-official comments should be in writing and should be submitted without the use of official resources provided by the City, e.g., letterhead, email addresses, etc.

B. Planning Commission's Role in Considering the Final EIR and Proposed Baylands Project

Prior to making its recommendation to the City Council, the Planning Commission must hold a formal public hearing on the Final EIR and proposed Brisbane Baylands project. (Gov. Code §§ 65435, 65354.) The public hearing, which will take place after receipt and consideration of all written and oral public testimony, will provide the Commission a substantial opportunity to comment on, propose revisions to, and make recommendations regarding the Final EIR and proposed Brisbane Baylands project. The public hearing serves as an important part of the environmental review and planning process.

As the Planning Commission is expected to receive public comment and provide comments at the public hearing and recommendation phase, this is the appropriate time for official observations and commentary, including advocating for approval, approval with modification, denial, or adoption of a project alternative. Moreover, because the official

CEQA comment period has closed, any official comments will not unduly influence public comments, will not jeopardize the public participation process, and will facilitate informed decision-making.