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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.