

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Community Development Director via City Manager

SUBJECT: **Baylands Draft Environmental Impact Report (DEIR) Comment
Deadline Extension Request**

DATE: Meeting of November 18, 2013

City Council Goals:

To provide for effective and efficient delivery of City services (Goal #1)
To encourage community involvement and participation. (Goal #15)

Purpose:

For the City Council to consider a request to extend the deadline for submitting comments on the Baylands Draft EIR from the current November 22, 2013 deadline to March 22, 2014.

Recommendation:

That the City Council provide direction consistent with CEQA Guidelines for the comment period on a Draft EIR and the grounds for extending the comment period past the maximum recommended period in the CEQA Guidelines.

Background:

The Baylands Draft EIR was published on June 11, 2013. The California Environmental Quality Act states that “the public review period for a draft EIR shall not be less than 30 days nor should it be longer than 60 days except under unusual circumstances.” In recognition of the “unusual circumstances” of the complexity of the draft EIR and importance of the Baylands to the future of the entire community, the City Council extended the standard 60 day comment period and established a 120-day public comment period closing on October 8, 2013. At the request of citizen groups reviewing the Draft EIR, the Council extended the comment period an additional 45 days to November 22, 2013. The current comment period as extended is 165 days.

The Baylands DEIR Citizens Committee has requested that the deadline be extended an additional 120 days from November 22, 2013 to Saturday March 22, 2014. Their written request is attached.

Discussion:

The CEQA Guidelines provide for circulation and a review period for a Draft EIR of 30 to 60 days, with a 45 day minimum comment period for EIRs submitted to the State Clearinghouse. The CEQA Guidelines provide that the review period should not be more than 60 days, **except in unusual circumstances**. The leading CEQA reference manual, Practice Under the California Environmental Quality Act, states that “lead agencies rarely approve extensions beyond the 60-day maximums set forth in the Guidelines.”

The comment period as presently established is 165 days. An additional 120- day extension as requested would lengthen the comment period to 285 days, almost five times the maximum recommended in State law. In reviewing recent records from the State Clearinghouse, staff was unable to identify any EIRs statewide with a comment period approaching 165 days.

As discussed above, the 120-day comment period and 45-day extension were granted based on unusual circumstances related to the length and complexity of the Draft EIR. If the City Council is considering granting any further extensions, it should identify new unusual circumstances which have arisen since the last extension. In addition, in the event an extension is granted it should be for the shortest time the Council considers acceptable, given the fact that the current comment period is approximately three times the standard Draft EIR comment period.

It is also important to recognize that the close of the Draft EIR comment period **does not limit the public’s ability to continue reviewing the Draft EIR and to provide written comments after the close of the comment period**. The distinction is that comments received before the close of the comment period will receive a formal written response and be included in the Final EIR. Any written comments received following the close of the comment period will not be included in the Final EIR, but are still part of the administrative record and will be forwarded to the Planning Commission and City Council as they consider the Final EIR. Public hearings on the Final EIR will provide another opportunity for the public to offer testimony on any aspect of the Final EIR, which includes the Draft EIR, comments on the draft EIR and written responses to the comments.

Fiscal Impact:

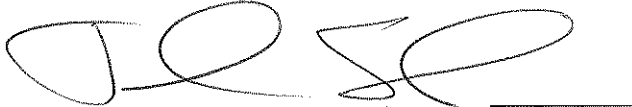
None. All EIR processing and consultant costs are borne by the applicant (UPC).

Measures of Success:

To comply with CEQA Guidelines and to establish a final Draft EIR comment deadline.

Attachments:

Citizens Committee Extension Request

Handwritten signature of John Swiecki in black ink, consisting of stylized initials and a surname.

John Swiecki, Community Development Director

Handwritten signature of Clay Holstine in black ink, featuring a large initial 'C' and a surname.

Clay Holstine, City Manager

October 29, 2013

TO: Honorable Mayor and City Council

FROM: Citizens Committee on the Baylands DEIR

RE: Request for Extension of Comment Deadline

At your meeting on October 21, 2013, you kindly allocated funds for assistance to our Baylands DEIR Citizens Committee by Antero Rivasplata, the consultant who previously conducted training sessions to educate our community about this highly complex DEIR process. You agreed that he should review our comments and make suggestions. We appreciate your consideration.

After meeting with Mr. Rivasplata last night the Committee decided that in order to effectively utilize his expertise and advice we need additional time beyond the November 22, 2013 deadline for comments. As it is, the DEIR sections on Traffic, Biological Resources, and Hazards will require more study than we will be able to do by the current deadline. Added to this would be the time required to consider and react to the consultant's suggestions. Clearly the time before the current deadline is insufficient for us to provide a thorough, informed and unified report.

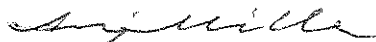
For the past several months, our committee members have spent countless hours diligently reviewing the massive DEIR and relevant other resources, which together consist of thousands of pages. We have written and discussed hundreds of comments individually, within subcommittees, and in full committee sessions. When finished, we expect to have produced nearly 200 pages of carefully researched and crafted comments.

You could compare the time reasonably expected to produce this volume of factual writing, for instance, with the time it has taken the committee assigned to write and revise the second volume of Brisbane's history – at least 2 years.

We understand that our comments form part of the important legal basis for your future decision-making related to the Baylands. Thus it is crucial that the Committee be given enough time to perform its assigned duty, both to your Council and the community at large. A lot is at stake. Our fellow citizens are counting on us as well as on you.

Taking into account, as you routinely do in scheduling your own work, the reality that hardly any volunteer work of this type would occur during the Thanksgiving-to-New Year's period, we appeal to you to use your prerogative, as allowed by CEQA, to grant an extension of the comment deadline to and including March 22, 2014.

Thank you,



Anja Miller
Chair

Memo

To: Brisbane City Council

From: Open Space & Ecology Committee

Date: November 14, 2013

Re Extending the Review Period for the Draft Environmental Report for the Baylands until January 22, 2014

The Open Space and Ecology Committee is appreciative that the City Council approved The Open Space and Ecology Committee's request to use outside expertise to review our comments prior to submitting them to the City's EIR consultant. Since none of us are experts in writing effective comments of this nature, Terry Rivas-Plata's review is very helpful.

We have met almost weekly since Lloyd Zola finished his overviews of the DEIR and the release of the DEIR. We finished our initial review of the document on November 6th. Our first 20 pages of comments have been sent to Terry and we reviewed his most of his comments on November 13th. Another 20 pages of comments have been sent to him on November 13 and we anticipate reviewing these at our November 20th meeting. There are still additional comments which staff is reviewing and writing up that need to be sent to Terry. We believe we can be done reviewing comments and have them in final form to be submitted by January 22, 2014.

We recognize the time that the City Council has provided for the review of the document is longer than standard for a CEQA DEIR review period, but due to its complexity, interconnectedness between chapters, the number of project alternatives being studied and its sheer length, this is an unusual DEIR. To ensure that the DEIR was appropriately studied to the best of our ability and understood by our committee, we have spent many hours at Committee meetings and individually to review it. Our goal has always been to make the final product the best and most complete that it could be especially in light of the importance the final Environmental Impact Report will have on the future of the Baylands and Brisbane. We would appreciate this additional time to ensure that the comments we make are appropriate and provide the City Council with the information it needs to make a decision on the final EIR.

Thank you for your consideration.