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City of Brisbane

Re: Brisbane Baylands
Draft Environmental Impact Report
State Clearinghouse #2006022136

John Swiecki, AICP
Community Development Director
City of Brisbane
50 Park Place
Brisbane, CA 94005

cc. Brisbane City Council

Dear Mr. Swiecki,

I have restricted my comments below to the format and issues raised regarding the DEIR submitted and circulated as a "Program DEIR" for the Baylands subarea. I recommend that the City Council submit my comments to the City Attorney for consideration and advice.

CEQA Guidelines 15168. Program EIR-An EIR that may be prepared on a series of actions that can be characterized as one large project and are related either geographically, or are "logical parts in the chain of contemplated action, or are in connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or as individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways."

Compare this to the definition of a "Project EIR."

CEQA Guidelines 15161. The most common type of EIR examines the environmental impacts of a specific development project. This type of EIR should focus primarily on the changes in the environment that would result from the development project. The EIR shall examine all phases of the project including planning, construction and operation.

A program DEIR typically generates controversy because it anticipates future submissions and because each time a subsequent submission is made for a project in the program, or the program or project is changed, one or more of the former environmental determinations gets reconsidered at length or should be reconsidered. But CEQA requires that a strong case must be made that a substantial increase in impacts over that identified in the program DEIR must occur in order to have the matter reexamined.

CEQA Guidelines 15162. Where an EIR or Negative Declaration has been prepared it is not necessary to prepare an additional EIR or Negative Declaration unless substantial changes occur with respect to the circumstances under which the project is undertaken, and these changes will require important revisions in the previous EIR or Negative Declaration due to the involvement of new significant environmental impacts not covered in a previous document.

Therefore, citizens and City officials should not be lulled into certifying a DEIR based on a promise that future environmental reviews will be forthcoming on one or more projects or individual factors.

CHAPTER I introduces the DEIR as a “program environmental impact report.” The argument for the appropriateness of this level of analysis is presented on page 1-7. It is based on the assumed ability of the DEIR to assess future impacts based on the current level of analysis. I recommend that the City be very conservative in this regard, given the number of sensitive and severe constraints on this site.

The “Project Site” encompasses 733 acres primarily within the Brisbane city limits. A portion is within the limits of the City and County of San Francisco.

The Brisbane General Plan requires that a Concept Plan for the entire property be submitted to the City prior to any development within the property. The intent of this requirement is to assure that the City understands the proposed future of the entire property so that it not be developed piecemeal without consideration of matters that would affect other portions of the property or the property as a whole. This is critical because the site has no infrastructure or services.

Two “Developer-Sponsored” Concept Plans have been submitted to the City. The First (DSP), according to the DEIR, was defined in the February 2011 Draft Baylands Specific Plan , which includes only the 684-acre portion within the City limits. It proposes 7 million square feet of office/retail /industrial /institutional uses, 4,434 residential units, and 135.6 acres of “lagoon” generating 12.1 million square feet of development. The second Developer-Sponsored Plan is an “Entertainment Variant” (DSP-V) which replaces the retail and office/research and development uses with entertainment-oriented uses, including a 17,000 to 20,000 seat sports arena, a 5,500 seat concert theater, a multiple-screen cinema, conference/exhibition space and hotel rooms and 4,434 residential units generating 12.0 million square feet.

Table 1-1 lists the “Project Components” included in both concept plans and analyzed in the DEIR. These are described in more detail in Chapter Three. The Components listed in the Table are: Concept Plan, General Plan Amendments, Specific Plan, Site-Specific Development, Site Remediation, Importation of Water Supply and Onsite Recycled Water Plant. The Table has an important footnote explaining that the requirement for a Specific Plan would require preparation of a future environmental analysis. However, this is not supported in the text. What is included in the text is that the analysis contained in this DEIR will be reviewed to see if additional environmental review is required for subsequent City actions. It also says that the City would expect to use the information in this DEIR to support any future environmental review. This is a critical assumption.

I am sure that all reviewers would say that it is a struggle to understand what is covered in this DEIR. The difficulty comes because the document is massive and

combines a Program DEIR with Project analyses. There is no clear separation of the two. So reviewers must always ask themselves whether a proposal is at the programmatic level or is actually a project and, if a project, is the description and the analysis sufficient to evaluate the environmental impacts. Are the mitigations identified truly pertinent to the project or are they part of a laundry list of potential impacts and mitigations that may or may not apply. Are the mitigations real actions or simply platitudes? Two small examples of the difficulties follow.

Example #1: Aesthetics and Visual Resources. The DEIR suggests a number of aesthetic mitigations for the impacts of the project/program on aesthetics and visual resources, including one that requires “variations in building height.” The analysis does not include hard information on how the building height would be measured from grade and which grade. The final grade of the site could well be 30 feet or more above the “ground” given the interest in using fill in any remediation plan and this could well be ten or more feet above Tunnel Road. So certainly more specific information regarding final grade of the fill and how drainage will be handled in regard to Tunnel Road should be available before “variations in building height” could be considered as a mitigation.

Example #2: Lighting Impacts. The project area is directly downslope from a small-scale residential area. It is within the visual corridor of a State and County Park with endangered species and directly adjacent to a lagoon with tidal action. The factor analysis says that a number of typical mitigations (cobra-head lights, restrictions on decorative lighting etc.) reduce the impacts to less than significant. The typical mitigations listed are banal (does anyone use cobra-heads in new development now and will they in 20 years?), do not address the types of lighting that would be required for DSP-V, which includes a sports arena, multiple screen multiplex etc. which would certainly result in discomfort for residents and perhaps adversely affect biological resources.

Those examples aside, another concern that the City should consider is that this project is expected to develop over at least 20 years, during which time additional technical information and new technologies and understanding of the issues will no doubt become available, not only in regard to construction practices, but especially in regard to toxic substances and remediation. See the text on page 1-8, 5th paragraph, which assumes no further environmental consideration once the DEIR is certified. Should the City approve mitigation measures that stretch over such a long term without an ability to reevaluate or intervene with different or additional measures if necessary?


In regard to the Section on Alternatives Intended to Avoid Significant Impacts of the Proposed Project, since the DEIR covers General Plan Amendments and describes them as projects, I would like to see a clear and detailed analysis comparing the proposals for the full project and “reduced intensity” to the existing 1994 General Plan EIR analysis in terms of traffic (trips per type of use and square footage), water

use, intersection analysis and air quality, so the changes proposed and their impacts can be clearly understood.

Another concern: Because of the potential for argument in terms of subsequent determinations of impacts and mitigations, pertinent hard data should be included in the DEIR which should be as precise as possible. Do not leave the pertinent data in the appendixes which tend to disappear over the years. Thresholds should be identified.

In conclusion, I raise concerns about whether it is a responsible action to certify a DEIR with unclear proposals, lack of analysis, unresponsive mitigation measures etc. Can the City identify issues and actions that must be deferred until there is more information so that additional environmental review is guaranteed? This is a legal matter.

Thank you for your attention to my comments.


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