Making San Francisco Bay Better

November 21, 2012

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

SUBJECT: BCDC Inquiry File No. SM.BR.6609.1, Revised Notice of Preparation of an Environmental Impact Report for the Brisbane Baylands Project, SCH# 2006022136.

Dear Mr. Swiecki:

Thank you for the opportunity to comment on the Revised Notice of Preparation (NOP) for a Draft Environmental Impact Report (EIR) for the Brisbane Baylands Project. The NOP is dated October 2012 and was received in our office on October 22, 2012. The Commission has not reviewed the NOP, so the following staff comments are based on the *San Francisco Bay Plan* (Bay Plan) and the McAteer-Petris Act and staff review of the NOP.

Jurisdiction. The NOP accurately describes the Commission's jurisdiction in the project site as including the lagoon and Visitacion Creek as well as the 100-foot shoreline band around these features.

McAteer-Petris Act. Section 66605 of the McAteer-Petris Act states, in part, that "further filling of San Francisco Bay…should be authorized only when public benefits from fill clearly exceed public detriment from the loss of the water areas and should be limited to water-oriented uses (such as ports, water-related industry, airports, bridges, wildlife refuges, water-oriented recreation and public assembly)… or minor fill for improving shoreline appearance or public access to the Bay… that fill in the Bay… for any purpose should be authorized only when no alternative upland location is available for such purposes… that the water area authorized to be filled should be the minimum necessary to achieve the purpose of the fill… that the nature, location and extent of any fill should be such that it will minimize harmful effects to the Bay Area, such as, the reduction or impairment of the volume surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources, or other conditions impacting the environment, as defined in Section 21060.5 of the Public Resources Code. That fill should be authorized when the filling would, to the maximum extent feasible, establish a permanent shoreline…"

This authority limits the uses for which the Commission can authorize fills and requires that when fill is authorized, the amount is limited to the minimum amount necessary. While the NOP does not specify plans to place fill in the Bay, the CPP & CPP-V Concept Plan maps both appear to replace part of the northern portion and the southern tip of the lagoon with wetlands and open space, resulting in a smaller lagoon than currently exists. The EIR should clarify whether fill would be placed in the lagoon in any of the project plans, and if so, whether the fill would be for a water-oriented use identified in the McAteer-Petris Act and whether it would be

the minimum necessary, minimize harmful effects to the Bay, and establish a permanent shoreline. Any areas of the Bay in the project area that were filled subsequent to 1969 are still within the Commission's Bay jurisdiction.

Bay Plan Policies on Climate Change. Any development in the portions of the project area that are within BCDC's jurisdiction would be subject to the Climate Change policies of the Bay Plan. These policies state, in part, that: "When planning shoreline areas or designing larger shoreline project, a risk assessment should be prepared by a qualified engineer and should be based on the estimated 100-year flood elevation that takes into account the best estimates of future sea level rise and current flood protection and planned flood protection that will be funded and constructed when needed to provide protection for the proposed project or shoreline area… To protect public safety and ecosystem services, within areas that a risk assessment determines are vulnerable to future shoreline flooding that threatens public safety, all projects – other than repairs of existing facilities, small projects that do not increase risks to public safety, interim projects and infill projects within existing urbanized areas – should be designed to be resilient to a mid-century sea level rise projection… undeveloped areas that are both vulnerable to future flooding and currently sustain significant habitats or species… should be given special consideration for preservation and habitat enhancement and should be encouraged to be used for those purposes."

The NOP refers to sea level rise in its topic summary: "Greenhouse Gas Emissions: the analysis will discuss Greenhouse Gas Emissions impacts… It will further address potential climate change adaptation impacts, such as sea level rise, in relation to other topics such as hydrology, utilities, and biological resources." The EIR should include a discussion of the potential vulnerability of the proposed project to projected sea level rise. It should also discuss the best estimates of future sea level rise that would be used to assess risks for large projects within BCDC's jurisdiction and whether any improvements would be consistent with the Bay Plan Climate Change policies. As a planning tool, the preparers of the EIR may wish to refer to the Sea Level Rise and Coastal Flooding Impacts Viewer developed by NOAA Coastal Services Center in collaboration with a number of other agencies and organizations. The viewer is available at: http://www.csc.noaa.gov/digitalcoast/tools/slrviewer/.

Bay Plan Policies on Transportation. The Bay Plan Policies on Transportation state, in part, that "Transportation projects… should include pedestrian and bicycle paths that will either be a part of the Bay Trail or connect the Bay Trail with other regional and community trails." The NOP states that for all four Concept Plan scenarios, "The Project Site would be traversed by a network of pedestrian trails, including a new section of the San Francisco Bay Trail." The EIR should discuss this network and how it will be integrated with existing Bay Trail and other regional and community trails.

Bay Plan Policies on Recreation. The Bay Plan policies on recreation state, in part, that "Diverse and accessible water-oriented recreational facilities, such as marinas, launch ramps, beaches, and fishing piers, should be provided to meet the needs of a growing and diversifying population, and should be well distributed around the Bay and improved to accommodate a broad range of water-oriented recreational activities for people of all races, cultures, ages and income levels… and Waterfront land needed for parks and beaches to meet future needs should be reserved now."

The Bay Plan includes priority land use designations for certain areas around the Bay to ensure that sufficient lands are reserved for important water-oriented uses, such as wildlife refuges, waterfront parks or beaches, water-related industry, ports, or airports. Projects inconsistent with these designations may not be approved by the Commission, or may require an amendment to the Bay Plan. The Commission uses its Bay Plan recreation policies to review proposed development within waterfront park priority use areas. The Bay Plan Map No. 5 shows that the area surrounding the lagoon on all sides is designated as a waterfront park or

beach priority use area. In the maps provided in the NOP, this area is labeled "open space" or "public/open space." The EIR should further explain the plans for these open spaces and indicate how the proposed use aligns with the priority use area designation, and how the project will provide diverse, accessible, water-oriented recreational opportunities consistent with the Bay Plan recreation policies.

Bay Plan Policies on Public Access. The Bay Plan policies on public access state, in part, that "in addition to the public access to the Bay provided by waterfront parks, beaches, marinas, and fishing piers, maximum feasible access to and along the waterfront and on any permitted fills should be provided in and through every new development in the Bay or on the shoreline… Whenever public access to the Bay is provided as a condition of development, on fill or on the shoreline, the access should be permanently guaranteed… Public access improvements provided as a condition of any approval should be consistent with the project and the physical environment, including protection of natural resources, and provide for the public's safety and convenience. The improvements should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline, should permit barrier-free access for the physically handicapped to the maximum feasible extent, should include an ongoing maintenance program, and should be identified with appropriate signs… Access to the waterfront should be provided by walkways, trails, or other appropriate means and connect to the nearest public thoroughfare where convenient parking or public transportation may be available…"

The EIR should discuss whether the project would provide the maximum feasible public access consistent with the project, based on the public access policies in the Bay Plan.

Bay Plan Policies on Appearance, Design, and Scenic Views. The Bay Plan Policies on Appearance, Design, and Scenic Views state, in part, that "all bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay. Maximum efforts should be made to provide, enhance or preserve views of the Bay and shoreline, especially from public areas… Shoreline developments should be built in clusters, leaving open area around them to permit more frequent views of the Bay… Views of the Bay from… roads should be maintained by appropriate arrangements and heights of all developments and landscaping between the view areas and the water."

The EIR should discuss the effect, if any, that the project would have on public views of the Bay.

We appreciate the opportunity to comment on the Revised NOP for the EIR for the Brisbane Baylands Project. If you have any comments or questions regarding this matter, please do not hesitate to contact me at (415) 352-3643 or by email at lindseyf@bcdc.ca.gov.

Sincerely,

LINDSEY FRANSEN
Coastal Planner