

# *City of Brisbane*

## *Agenda Report*

**TO:** Honorable Mayor and City Council

**FROM:** Community Development Director via City Manager

**SUBJECT:** **Proposed Baylands Draft Environmental Impact Report (DEIR) Review Process**

**DATE:** Meeting of December 17, 2012

### **City Council Goals:**

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

### **Purpose:**

To update the City Council regarding the proposed approach to facilitate public review of and public comment on the forthcoming Baylands Draft EIR.

### **Recommendation:**

That the City Council provide direction as it deems appropriate.

### **Background/Discussion:**

Work is progressing on the Baylands Draft EIR (DEIR) and publication of the document is projected for January 2013. While the City Council has directed that a 120-day public comment period be provided, a number of activities will occur within the comment period. It is important to make the review procedures as clear as possible in advance so the public has the opportunity to participate in the most effective and efficient manner possible. The purpose of this report is to outline the proposed public review process for the City Council's review and comment.

#### *Pre-DEIR Publication Activities*

As EIR preparation nears completion and the date of EIR publication is better defined, the City will publish a "save the date" notification through the blog and city webpage to provide the public and other interested parties with advance notice of the pending DEIR publication date. Additionally the CEQA training sessions on how to review an EIR

which were held in Summer and Fall 2012 will be rebroadcast. All these sessions are presently available for review on the City's website.

#### *EIR Notice of Availability*

On the date the DEIR is published a "Notice of EIR Availability" will be posted on the signboard and other typical posting locations in town as well as via email, the blog and the website. This notice will specify the start and end date of the public comment period and indicate where copies of the document can be found. The EIR will be posted on the City's website for review and/or download. Hard copies of the DEIR will be kept on file for public review at the library and City Hall. Disks and hard copies of the document will also be available for purchase at City Hall. The notice will further indicate both an email address and mailing address for the submission of written comments. The notice will also specify dates and times for all scheduled DEIR public meetings, including both informational sessions and meetings to receive public comments. Meeting scheduling and organization is discussed further below.

#### *Presenting the Draft EIR*

CEQA does not require public meetings or public hearings on the Draft EIR. However, the City Council has committed that the City will assist and facilitate the community's involvement in the EIR process by providing both informational meetings on the content of this lengthy technical document, and meetings as needed to accept public comment. In February 2012 the City Council directed that the Planning Commission serve as the "host" for these public sessions, even though they are not formal public hearings and the Planning Commission has no formal role in the review of the Draft EIR.

The City's EIR consultant (ESA) has prepared the attached memo outlining their proposed organization for presenting the DEIR to the public. Their proposed schedule includes a series of informational workshops held early in the public comment period to orient the public to the DEIR and help the public focus their review efforts. These informational meetings are organized around groups of topics. For reference purposes a draft Table of Contents for the forthcoming Draft EIR is attached.

Later in the public comment period the Planning Commission will hold one or more public meetings to allow for public comment on the DEIR. The attached memo also includes other considerations in regard to how these presentations will be organized. This memorandum was presented to the Planning Commission at their December 13, 2012 meeting, and the Planning Commission's feedback on the suggested approach will be reported to the City Council at tonight's meeting.

Once the presentation approach is finalized and EIR publication date is known, staff will work with the Planning Commission to establish a schedule of meeting dates.

#### *Roles of City Advisory Bodies in reviewing the DEIR*

The three formal city advisory bodies with a role in the EIR process are the Planning Commission, Open Space and Ecology Committee and Parks and Recreation Commission. The Planning Commission is like the City Council in that they have no formal role in the DEIR review process. Rather, their legal responsibility is in making

recommendations to the City Council regarding the Final EIR. As a reminder, the Final EIR consists of the DEIR, all comments received on the DEIR, the responses to those comments, and any changes made to the EIR resulting from the comments and responses. The attached memo from the City Attorney outlines the Planning Commission's role in the EIR review process.

In regard to the Parks and Recreation Commission and Open Space and Ecology Committee (OSEC) the City Council has previously directed those bodies to review the DEIR and offer comments on those topics within their areas of expertise. The formal written comments made by these advisory bodies will be submitted as comments on the DEIR, and the City will be required to formally respond in writing to these comments.

Based on the draft EIR Table of Contents, it is anticipated that the Parks and Recreation Commission review would be focused primarily on the environmental topics of cultural resources and recreational resources. The OSEC's areas of responsibility tend to be more expansive and less well-defined. At a minimum it is anticipated that OSEC would focus on Biological Resources, Greenhouse Gas Emissions, Hydrology and Water Quality, Energy Resources, and Sustainability. If the City Council wishes to provide further direction to either of these advisory bodies regarding the scope of their DEIR review it should consider doing so in advance of DEIR publication.

Any meetings held by OSEC and/or the Parks and Recreation Commission on the DEIR do not constitute formal opportunities for public comment on the DEIR. So while these advisory bodies may choose to accept public testimony at their meetings, any public testimony provided at these meetings does not constitute a formal comment on the DEIR requiring a written response. The meetings before the Planning Commission will provide the opportunity for formal public comments to be put into the record, and all such comments received at the Planning Commission meetings will be responded to in writing as part of the Final EIR.

In addition to these advisory bodies, the City Council has also established a Citizens Committee to review the Baylands DEIR. There is a companion staff report on tonight's agenda specifically addressing this Committee. Lastly, the Brisbane Baylands Community Advisory Group (BBCAG) formed under the auspices of the State Department of Toxic Substances Control will be reviewing the DEIR, and is expected to comment on multiple sections of the DEIR, including but not limited to Geology, Soils and Seismicity, Hazards and Hazardous Materials, and Hydrology and Water Quality. This is not a City-sponsored advisory body, but it includes members of various city bodies. All city representatives serving on the CAG are advised to ensure that any participation in the BBCAG DEIR review process does not conflict with their formal legal responsibilities in the overall EIR process.

**Fiscal Impact:**

An expanded EIR review process may result in EIR consultant costs not presently included within the budgeted scope of work. Any increases to the EIR consultant budget

required to accommodate the City's review process would be the obligation of the applicant (UPC).

**Measures of Success:**

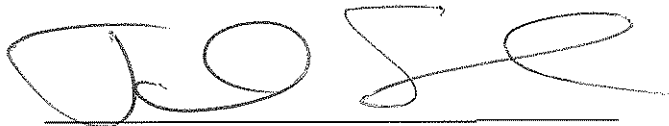
To implement an EIR review process which is thorough, timely, and efficient.

**Attachments:**

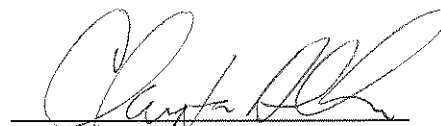
ESA memo dated December 6, 2012

Draft Table of Contents- Baylands DEIR

City Attorney Memo to Planning Commission dated September 10, 2012



John Swiecki, Community Development Director



Clay Holstine, City Manager



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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.

***DRAFT*** TABLE OF CONTENTS  
BRISBANE BAYLANDS ENVIRONMENTAL IMPACT REPORT

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    - B. Air Quality
    - C. Biological Resources
    - D. Cultural Resources
    - E. Geology, Soils and Seismicity
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    - H. Hydrology and Water Quality
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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

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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.