

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 05/23/2019

SUBJECT: **General Plan Conformity GPC-1-19; General Plan Sierra Point SPC/R/O Subarea;** General Plan conformity review of the City of Brisbane's disposition of certain real property at the western edge of the Sierra Point Marina parking lot and vacating an adjacent portion of Sierra Point Parkway, totaling approximately 18,700 square feet.

Request: That the Planning Commission adopt the attached General Plan conformity resolution, indicating that pursuant to the terms of the development agreement between the City and HCP LS Brisbane LLC (HCP), the City's disposition of a portion of City owned, Sierra Point Marina property to HCP and the City's vacating of a portion of Sierra Point Parkway, also for purposes of transferring the vacated property to HCP, are in conformance with the City's General Plan.

Recommendation: Adopt General Plan Conformity Resolution No. GPC-1-19 (see attached).

Environmental Determination: A General Plan conformity finding as described above would not result in any new environmental impacts or more severe environmental impacts than those previously identified with the Environmental Impact Report when the development agreement between the City and HCP, for the biotech complex encompassing approximately 540,185 square feet, was executed and subsequently recorded on August 26th, 2008.

Applicable Code Sections: As provided in the State Streets and Highway Code, Government Code, Section 65402 (a), requires that before vacating a street, the City Council must submit the matter of the proposed vacation to the Planning Commission for a determination whether the vacation conforms to the General Plan. In addition, that same Government Code requires that before the City disposes of its property, the Commission is also to determine that the disposition conforms to the General Plan.

Background: In 2008, the City and HCP entered into a Development Agreement concerning development of their properties in the Sierra Point subarea, for research and development and retail purposes. These properties are referred to as 800 to 1800 Sierra Point Parkway (formerly known as 1000 to 3000 Sierra Point Parkway) and are located along the south side of Sierra Point Parkway, also being bordered by the City's Sierra Point Marina property to the east, Shoreline Court to the west and the San Francisco Bay to the south. The City owns the eastern Marina property (APN 007-165-060) and Sierra Point Parkway is a City street.

The Development Agreement provides that in order to facilitate the development, the City will vacate and transfer to HCP approximately 18,700 square feet of the City Property. This will

allow for the construction of the parking garage, with a retail liner, facing on to Sierra Point Parkway, which would otherwise extend onto Sierra Point Parkway public right-of-way and onto the Marina property (see the attached map, included as Exhibit A in the draft Resolution).

City staff discussed with HCP representatives the fair market value of the properties to be vacated/transferred and agreement was reached that the fair market value is \$200,000. The Brisbane City Council has recently approved an agreement with HCP by which the City will transfer the properties in question in exchange for \$200,000. This is provided in the attached, "Agreement for the Abandonment of Public Rights of Way and Transfer of Real Property".

As stated above, before that transfer can occur, the City must vacate a portion of Sierra Point Parkway, per the State Streets and Highway Code. However, that Code provides that before vacating a street, the City Council must submit the matter of the proposed vacation to the Planning Commission for a determination whether the vacation conforms to the General Plan, per Government Code, Section 65402 (a). In addition, that same Government Code section provides that before City property may be transferred, as is the case with the portion of the Marina parcel, the disposition of such property must also be submitted to, and reported on, by the Planning Commission as to conformity with the General Plan.

Discussion: As noted above, the City and HCP entered into a development agreement by which, in order to facilitate HCP's development of its properties, the City agreed to transfer to HCP approximately 18,700 square feet of its property and to transfer to HCP a vacated portion of Sierra Point Parkway. Approval of the development agreement and related Design Permit were found consistent with the General Plan.

These transactions will allow for the orderly development of the property for already approved research and development and retail purposes. Moreover, the City will receive \$200,000 as part of this transaction, which funds will be specifically earmarked for the planning and development of the public park/open space area immediately adjacent to the HCP's Properties.

Additionally, while HCP will have ownership of the strip of land immediately in front of the parking garage/retail liner, that space will serve as a public walkway to allow access to the structure as well as pedestrian access east and west-bound along the edge of Sierra Point Parkway.

These transactions facilitate development in Sierra Point in conformance with the City's General Plan Land Use Element which designates this property for commercial development. In addition, the land transactions conform to the following General Plan Land Use Element policies:

Policy 14: "Establish a mix of uses with a diversified base to maintain and increase tax revenues and contribute to the City's ability to provide services."

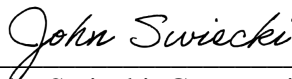
Policy 234: "Continue to have attractive and safe development on the solid waste landfill at Sierra Point."

Attachments:

- A. General Plan Map, with Site Location
- B. Draft - General Plan Conformity Resolution GPC-1-19
 - o With Exhibit A - Schematic Map Showing Area to be Transferred to HCP
- C. Agreement For Abandonment of Public Rights of Way and Transfer of Real Property



Ken Johnson, Senior Planner

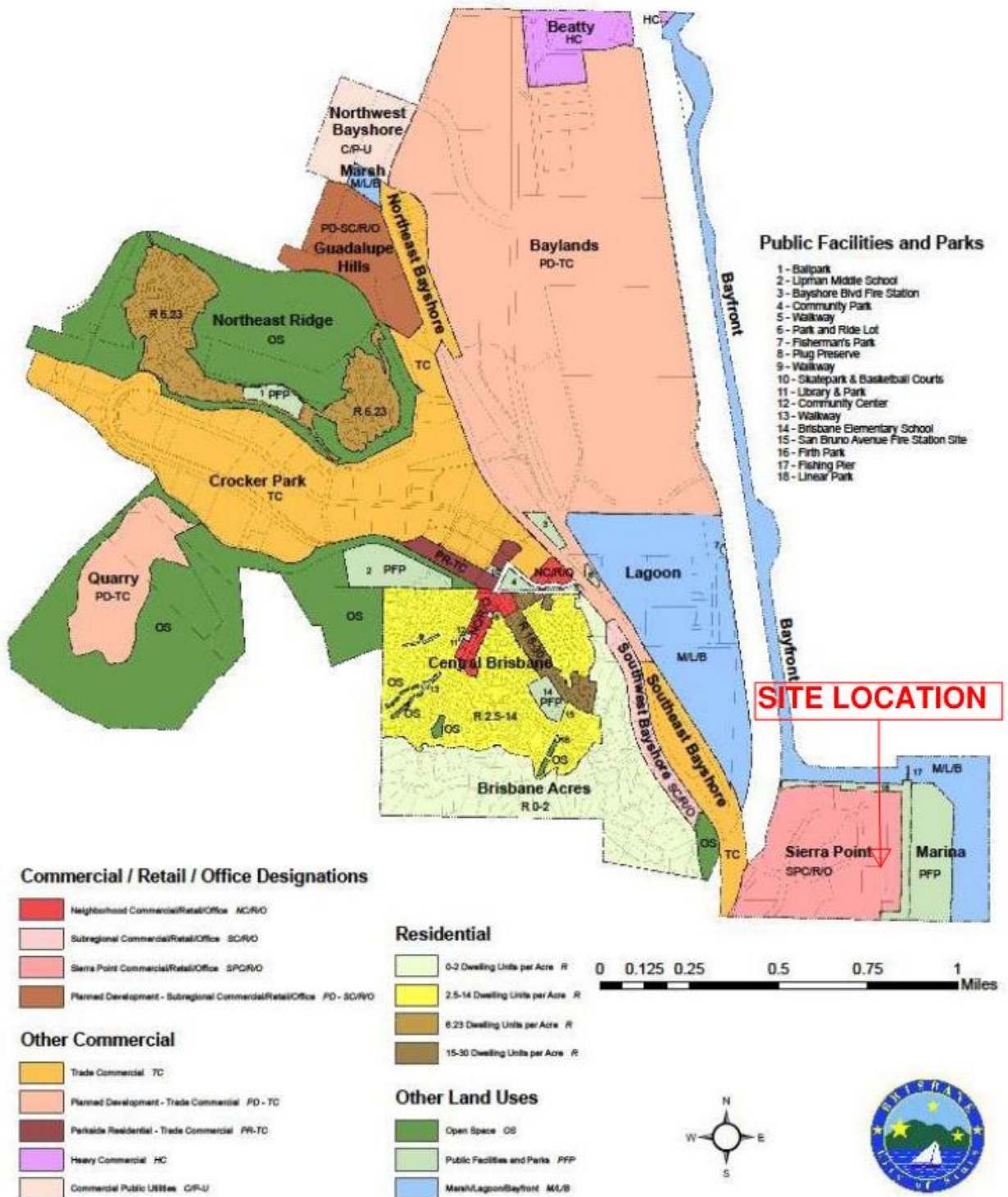


John Swiecki, Community Development Director

PAGE LEFT INTENTIONALLY
BLANK

General Plan Land Use Diagram

City of Brisbane



Updated 01/25/2016

PAGE LEFT INTENTIONALLY
BLANK

ATTACHMENT B

RESOLUTION NO. GPC-1-19

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE FINDING THE DISPOSITION OF CERTAIN REAL PROPERTY AND THE VACATION OF A PORTION OF SIERRA POINT PARKWAY TO IMPLEMENT THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BRISBANE AND HCP LS BRISBANE LLC CONFORMS TO THE CITY'S GENERAL PLAN

WHEREAS, City is the fee simple owner of the real property bearing Assessor's Parcel Number 007-165-060 ("Parcel 6") and of Sierra Point Parkway, which has been dedicated to the City for street and public service easement purposes; and

WHEREAS, City and HCP LS Brisbane, LLC ("HCP") have entered into a development agreement concerning certain properties owned by HCP in the Sierra Point area for purposes of the Sierra Point Biotech Project; and

WHEREAS, in part the development agreement provides that in order to facilitate development of HCP's properties, the City will transfer to HCP the City's fee interest in a portion of Parcel 6 and will vacate and then transfer to HCP a portion of Sierra Point Parkway, as shown on the schematic Exhibit A to this Resolution; and

WHEREAS, California Government Code, Section 65402(a) requires that before the City disposes of real property, and before the City vacates a public street, such disposition/vacation is to be submitted to, and reported on by, the Planning Commission as to conformity with the City's General Plan; and

WHEREAS, the Planning Commission has considered the agenda report and supporting documents concerning the proposed disposition of City property, including the vacation of a portion of Sierra Point Parkway; and

WHEREAS, such disposition and vacation are consistent with the City of Brisbane's General Plan, specifically with the land use element which designates this property for commercial development and with Local Economic Development Policy 14 and Sierra Point Subarea Policy 234, in that these policies refer to the establishment of a mix of uses with a diversified economic base to maintain and increase tax revenues and continue to have attractive and safe development on the solid waste landfill at Sierra Point.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission finds, in accordance with Government Code section 65402(a), that the location, purpose, and extent of the above-described disposition of real property, including the vacation of a portion Sierra Point Parkway, to implement the development agreement between the City and HCP conforms with the Brisbane General Plan.

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Planning Commission of the City of Brisbane during the Regular Meeting of the Planning Commission on the twenty-third day of May 2019, by the following vote to wit:

AYES:
NOES:
ABSENT:

PAMALA SAYASANE
Chairperson

ATTEST:

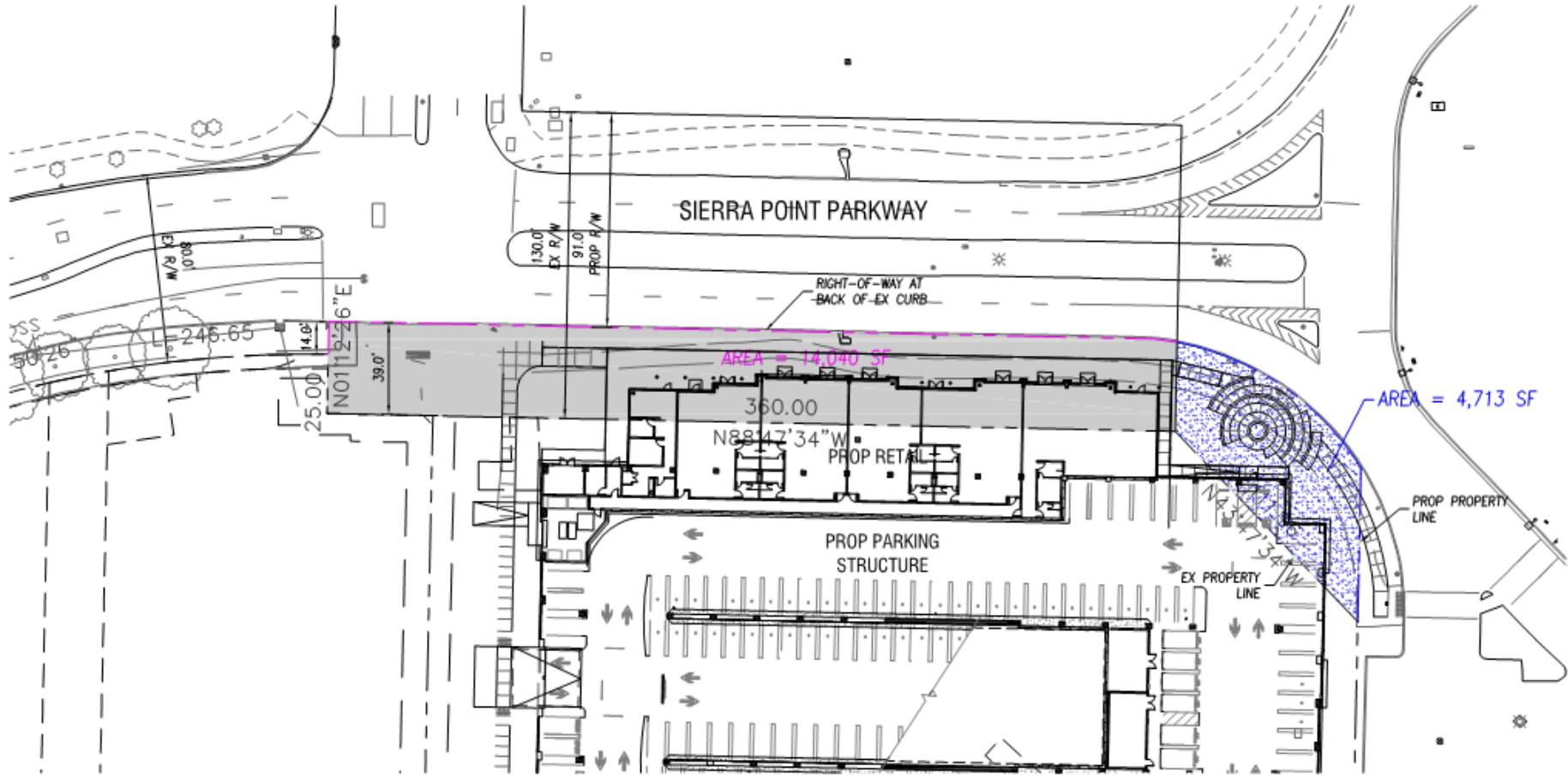
JOHN A. SWIECKI, Community Development Director

* * * * *

**RESOLUTION NO. GPC-1-19
EXHIBIT A**

**LAND TRANSFER AT SIERRA POINT BIOTECH
PROJECT**

1"=40' (at 11"x17")



PAGE LEFT INTENTIONALLY
BLANK

**AGREEMENT FOR ABANDONMENT OF PUBLIC RIGHTS-OF WAY AND
TRANSFER OF REAL PROPERTY**

THIS AGREEMENT ("Agreement") is made 4/18 2019 between the City of Brisbane, a Municipal Corporation, ("City) and HCP LS Brisbane, LLC, a Delaware limited liability company ("Owner"). City and Owner individually may be referred to as "Party" and collectively may be referred to as "Parties" in this Agreement.

Recitals

- A. City is the fee simple owner of the real property bearing Assessor Parcel Number 007-165-060 ("Parcel 6") and of the real property identified as "MARINA ENTRY RD." ("Marina Entry Road") on the Assessor Map, Book 7, page 16 as the successor agency of the Redevelopment Agency of the City of Brisbane.
- B. For purposes of this Agreement, Marina Entry Road includes the land described in the Offers of Dedication recorded on February 27, 1987 as Instrument Number 87-029876 in the Official Records of San Mateo County, California, pursuant to which it is subject to the dedication to the City "for street and public service easement purposes" ("Dedication").
- C. City and Owner have entered into a Development Agreement, dated June 16, 2008 and recorded August 26, 2008, Instrument No. 2008-097434, San Mateo County Records, ("the Development Agreement") concerning Owner's properties located at Assessor Parcel Numbers 007-165-080, 007-165-090, and 007-165-100, Brisbane, CA ("Owner's Properties").
- D. In part the Development Agreement provides that in order to facilitate development of Owner's Properties, the City will transfer to Owner the City's fee title in the portion of Parcel 6 and Marina Entry Road within the area identified in the schematic attached as Exhibit A ("Subject Property").
- E. In order to effectuate this transfer, it will be necessary for the City to vacate the public rights-of-way within the Subject Property including the Dedication ("Rights of Way"), which vacation the City is willing to do.
- F. As part of this transfer, City has discussed with Owner the fair market value of the Subject Property and Owner has informed the City that it is willing to pay fair market value for the Subject Property free and clear of the Rights of Way except as otherwise specified in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises expressed below, the Parties agree as follows:

- 1. Owner shall prepare and provide to the City a map and legal description of the Subject Property.
- 2. City shall undertake to vacate the Rights of Way within the Subject Property in accordance with the procedures set forth in the Streets and Highways Code.
- 3. If the City vacates the Rights of Way within the Subject Property, the City shall, upon its receipt from the Owner of the fair market value of the Subject Property (as set forth in paragraph 5 below), (a) record a resolution or resolutions vacating

the Rights of Way within the Subject Property and authorizing the transfer of the Subject Property to Owner but reserving within the Subject Property any necessary easements for public pedestrian access and public utility purposes, and (b) quitclaim to Owner any and all of the City's right, title and interest to the Subject Property subject to the reserved easements ("Quitclaim").

4. Owner and City shall process a lot line adjustment to encompass the Subject Property within the boundaries of Owner's Properties, Assessor Parcel Numbers 007-165-130 and 007-165-140, and the Quitclaim shall be recorded in connection with that lot line adjustment. City shall cooperate in the process of that lot line adjustment, in accordance with its normal procedures.
5. The fair market value of the Subject Property shall be \$200,000.
6. City shall use these funds toward the planning and development of the public park/open space area immediately adjacent to Owner's Properties.
7. If Owner or City fails to perform any obligation under this Agreement and fails to cure the default within 30 days after the other Party has notified it in writing of the alleged default, the non-breaching Party shall have the right to enforce this Agreement by bringing an action at law or in equity to compel the breaching Party's performance of its obligations under the Agreement, for damages, restitution and reimbursement and any other remedy as provided by law.
8. In any action to enforce this Agreement the prevailing Party shall be entitled to all costs and expenses of suit, including reasonable attorneys' fees. This paragraph shall be interpreted in accordance with California Civil Code section 1717 and judicial decisions interpreting that statute.
9. The obligations of this Agreement shall run with the land and be binding on the Parties, their successors and assigns.
10. Formal notices, demands and communications between the Parties shall be given by registered or certified mail, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the parties as follows:
 - City: City Manager, City of Brisbane, 50 Park Place, Brisbane, CA 94005
 - Owner: Scott Bohn, HCP LS Brisbane LLC, 950 Tower Lane #1650, Foster City, CA 94404
11. This Agreement shall be governed by the laws of the State of California. Venue for any action to enforce or interpret this Agreement shall be in the Superior Court of the State of California, County of San Mateo. Any ambiguity shall not be construed against one of the Parties in favor of another.
12. This Agreement constitutes the entire agreement between the Parties and supersedes and cancels any prior agreements or understandings, whether oral or written, regarding the subject matter of this Agreement.
13. This Agreement may be amended only by a written instrument executed by the Parties or their successors in title.
14. Any of the requirements of this Agreement may be expressly waived in writing by the Parties but no waiver of any requirement of this Agreement shall, or shall be deemed, to extend or effect any other provision of this Agreement.

15. If any provision of this Agreement is invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.
16. Each of the individuals executing this Agreement represents and warrants that he or she has been authorized to do so and has the power to bind the Party for whom they are signing.
17. This Agreement may be executed in counterparts. Each counterpart shall have the same force and effect as an original and shall together constitute an effective, binding agreement on each of the Parties. Electronic and facsimile signatures shall be deemed original signatures.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first written above.

CITY OF BRISBANE



Madison Davis, Mayor

HCP LS Brisbane, LLC



By:
Managing Partner

Attest:



Ingrid Padilla,
City Clerk

Approved as to form:



Thomas McMorrow
City Attorney

LAND TRANSFER AT SIERRA POINT BIOTECH PROJECT

1"=40' (at 11"x17")

