City of Brisbane
Planning Commission

TO: Planning Commission For the Meeting of July 7, 2016

FROM: John Swiecki, Community Development Director

SUBJECT: Brisbane Baylands Deliberation Meeting #9 - Final EIR for the Brisbane Baylands

Background:

EIR-related issues were the subject of the Planning Commission's deliberations of June 23, 2016. The matter has been placed on this agenda to allow the Commission to further deliberate upon their preliminary recommendation related to the Baylands Final EIR prior to the upcoming July 28 public hearing. The June 23, 2106 staff report is attached for reference purposes along with a summary of the Planning Commission's preliminary recommendations to date.

Attachments:

1. Planning Commission Staff Report of June 23, 2016
2. Planning Commission Interim Direction through the June 23 Deliberations Meeting

City of Brisbane
Planning Commission

TO: Planning Commission For the Meeting of June 23, 2016

FROM: John Swiecki, Community Development Director

SUBJECT: Brisbane Baylands Deliberation Meeting #8 - Final EIR for the Brisbane Baylands

Background:

To date, the Planning Commission has conducted:

- Two workshops on the proposed development for the Brisbane Baylands and the accompanying Final EIR in September 2015.
- Ten public hearings between October and December 2015 to (1) consider proposed Baylands development, including four Concept Plans and a Specific Plan submitted by applicant Universal Paragon Corporation (UPC), and (2) to address the full array of issues being considered as part of the Commission's Baylands recommendations, including formal presentations from the applicant and various community groups. The public hearings included in-depth review, discussion, and testimony regarding the Final EIR prepared to evaluate the environmental impacts of Baylands development.
- Seven deliberations meetings starting in January 2016, during which the Commission developed a land use recommendation for the Baylands based on staff presentations, Commission discussion, and public input.

In its deliberations meetings to date, the Planning Commission has identified key principles for future development, land uses to be considered in development of the Baylands, and key Baylands features that define the site's open space network and developable areas. The Commission has also further provided direction as to how land uses should be distributed across the Baylands site, along with direction regarding appropriate development intensity for the Baylands.

As discussed at the Commission's June 9 deliberations meeting, this evening's task is for the Commission to consider the Baylands EIR in relation to its interim land use recommendation (see Attachment 1).

As has been made clear throughout the deliberations process, any decisions or determinations reached this evening are subject to reconsideration and modification by the Commission prior to the Commission's final recommendation.

Discussion:

General Standards for EIR Adequacy

An EIR should, when looked at as a whole, provide a reasonable, good faith disclosure and analysis of environmental impacts. (*Laurel Heights Improvement Ass'n v Regents of Univ. of Cal.* (1988) 47 Cal.3d 376.) When evaluating EIR adequacy, courts frequently consider the following principles, which are reflected in CEQA Guidelines:

- EIRs should "provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences;"
- The evaluation of impacts need not be exhaustive;
- The sufficiency of the EIR's analysis must be reviewed in light of what is reasonably feasible;
- A court should look for adequacy and completeness in an EIR, not for perfection;
- EIRs need not be delayed to include studies in progress that may contain additional information;
- Agencies can make reasonable forecasts in completing the impact analysis; and
- Disagreements among experts do not invalidate an EIR. (CEQA Guidelines §§ 15144-15145, 15151.)

Case law interpreting CEQA has provided additional guidance on standards for EIR preparation. As a general principle, an EIR should make a good faith effort to find out and disclose what it reasonably can. CEQA gives lead agencies the discretion to design an EIR for a given project, and does not require them to conduct every recommended test or perform all requested research for an EIR to be deemed "adequate."

An EIR is required to evaluate environmental impacts only to the extent that it is reasonably feasible to do so; it is not required to address all variations of the issues presented, nor to analyze every permutation of the data. CEQA does not demand what is not realistically possible, given limitations on time, energy, and funds. An EIR is also not required to predict or speculate regarding future environmental consequences when future development is unspecified and uncertain. Lead agencies are not required to "foresee the unforeseeable." (CEQA Guidelines § 15144.) "Crystal ball" evaluation of events that may or may not occur is not required.

The Commission may make a Land Use Recommendation that Differs from the Scenarios and Alternatives Contained in the EIR

CEQA requires that an EIR provide sufficient information to allow decision-makers and the public to understand the environmental consequences of the project. Neither CEQA nor state planning law require a lead agency to consider approval only of the project specifically described in the EIR's project description or alternatives section. Lead agencies are, in fact, encouraged to consider modifications to the project as it was originally proposed, where such modifications would (1) reduce or eliminate significant environmental effects, or (2) achieve better planning results. Thus, the Planning Commission is not limited in its discretion to recommend approval only of the

applicant's request or the development scenarios and alternatives specifically described in the EIR. If the Commission wishes to approve land uses or development intensities that differ from the scenarios and alternatives specifically contained in the EIR, the Commission can do so (and still recommend certification of the EIR) if it finds that its recommended land uses and development intensity fall within the *range* of scenarios and alternatives analyzed in the EIR.

The Baylands EIR analyzes four Concept Plan scenarios, two lower intensity alternatives, the Renewable Energy Generation Alternative, and two "no project" alternatives. These scenarios and alternatives ranging in size from a high of approximately 12 million square feet of building area (including 4,434 dwelling units) to approximately 1.0 million square feet of building area (with no residential development). If the Commission determines that its desired land use recommendation for the Baylands falls within the range of development intensities that have been analyzed in the EIR, it may recommend certification of the Baylands EIR, even if the land use development and intensity it is recommending to the City Council was not specifically analyzed.

Options the Commission has in Relation to its Recommendation on the Baylands EIR

CEQA does not require certification of an EIR if the lead agency declines to approve the project. EIR certification is only required if the lead agency chooses to approve the project or an alternative to the project in some form. Therefore, if the Commission wishes to recommend that the City Council deny the applicant's General Plan Amendment and specific plan requests, and does not wish to make any other land use recommendation for the Baylands, no action on the EIR would be required.

Should the Commission wish to forward a land use recommendation for the Baylands to the Council (other than denial of the applicant's General Plan Amendment and specific plan requests), the Commission should recommend that the City Council take one of the following actions in relation to the EIR:

1. Certify the Final EIR for the Brisbane Baylands as meeting the requirements of CEQA;

or

2. Certify the Final EIR for the Brisbane Baylands as meeting the requirements of CEQA for the level of development recommended by the Planning Commission. The Planning Commission could further recommend that any increase in the Commission's development recommendation (a 1-2 million square foot net increase in the Baylands' existing building area[1]) would necessitate additional study prior to certification of the Final EIR;

or

[1] Existing building area within the Baylands is estimated to be 639,900 square feet, including:

- Recology: 260,000 s.f.
- Industrial Way: 231,400 s.f.
- Lumber Yards: 142,500 s.f.
- Misc. smaller buildings: 6,000 s.f.

3. Undertake additional studies prior to certification of the Final EIR in relation to any Baylands development.

Should the Commission wish to pursue either CEQA option 2 or 3, above, it should identify the list of studies the Commission recommends be undertaken as part of its recommendation to the City Council.

Implications of Commission CEQA Recommendation on Planning Decisions

CEQA options 2 or 3, above, would require that the Final EIR be certified by the City Council, and that the Council makes written findings to the effect that either:

- The project as approved will not have a significant effect on the environment; or
- The City as lead agency has eliminated or substantially lessened all significant effects on the environment when feasible, and has determined that any remaining significant effects are acceptable when balanced again the project's benefits.

The same requirements described above would apply should the City Council consider approval of the applicant's specific plan, either with or without modifications.

Should the Commission recommend CEQA option 3 as described above and the City Council concur, there would be a number of procedural and substantive issues to be determined by the City Council to allow the CEQA process to move forward.

As noted above, should the Planning Commission choose not to recommend any land use program or changes to the General Plan, then no EIR recommendation is required.

Discussion for this Evening and Next Steps

This evening, the Commission should consider the CEQA recommendation it wishes to make to the City Council to accompany its land use recommendation. Following this evening's meeting, staff will compile the Commission's previous discussions and the interim land use recommendation set forth in Attachment 1, along with the interim CEQA recommendation it discusses this evening, and bring a formal resolution and findings back to the Commission for consideration at a July 28, 2016 public hearing, at which time the Commission would consider the draft recommendation along with the applicant's specific plan application.

Attachments:

1. Planning Commission Interim Direction through the June 9 Deliberations Meeting

Interim Direction of the Planning Commission as of June 23, 2016

Land Use and Development

1. Select Exhibit 1 as the Concept Plan for the Baylands (see page 4).
2. Modify the General Plan Land Use map to merge the Beatty and Northeast Bayshore subareas into the Baylands Subarea.
3. Modify the existing Baylands Subarea General Plan text to:
    a. Incorporate the applicable provisions of the Sustainability Framework into the General Plan.
    b. Provide for a maximum 1-2 million square foot net increase in existing building area, and require specific plan(s) for the Baylands to distribute the maximum allowable development intensity to planning subareas within the Baylands. Existing building area within the Baylands is estimated to be 639,900 square feet, including:
        i. Recology: 260,000 s.f.
        ii. Industrial Way: 231,400 s.f.
        iii. Lumber Yards: 142,500 s.f.
        iv. Misc. smaller buildings: 6,000 s.f.
    c. Describe the mix of land uses identified in Exhibit 1.
    d. Incorporate the following principles into the General Plan text for the Baylands Subarea:
        i. Preserve large unbroken blocks of open space that provide for restoration of wetland areas and provide continuity and flow of open space throughout the Baylands.
            - "Open space," as used in these principles means:
                - Lands for the provision of active and passive recreation;
                - Lands for the protection of resources (e.g., sensitive habitat areas); and
                - Lands for the protection of public health.
            - Site-specific developments will be provided with independent open space areas.
        ii. Protect key habitat areas, including the Brisbane Lagoon and potential habitat areas adjacent to it, Icehouse Hill, and wetlands.
            - Water-based recreational use of the lagoon or other uses that would disturb aquatic habitats are not to be permitted.
        iii. Restore the Roundhouse, provide opportunities for rail-related and educational uses at the Roundhouse, and maintain compatible development adjacent to it.
        iv. Maintain a transit orientation for new development, including use of the Baylands to enhance access from Central Brisbane to the Bayshore Caltrain Station and other transit services within the Baylands.

v. Ensure that the site is safe for the future uses approved for development by the City in relation to:

- Site remediation and Title 27 landfill closure;
- Seismic and geologic hazards;
- Flooding, including hazards related to sea level rise;
- Traffic safety and emergency response; and
- Provision of public safety services.

vi. Natural solutions to protect development within the Baylands from the effects of sea level rise are to be give priority of manufactured solutions.

e. Specify the relationship between the City's planning review, and the remediation review being undertaken by RWQCB and DTSC for the Baylands as summarized below.

v. **Complete plans for Title 27 landfill closure and Remedial Action Plans for OU-1 and OU-2.** Based on the Concept Plan and policies set forth in the General Plan for the Baylands, Remedial Action Plans and Title 27 landfill closure plans shall be completed by the applicant, and submitted to the RWQCB and DTSC as applicable. Review by those regulatory agencies would then be undertaken and the plans revised as need to the satisfaction of the RWQCB and DTSC, including environmental documentation under CEQA. The City of Brisbane shall actively partipate in the regulatory and CEQA processes undertaken by DTSC and RWQCB to ensure that the City's interests in protecting public health are addressed.

vi. **Prepare and adopt development regulations for the Baylands (Specific Plan); CEQA documentation.** Following completion of the Title 27 landfill closure and remedial action plans for OU-1 and OU-2, the City would consider adoption of a specific plan for the Baylands. Subsequent environmental documentation under CEQA would be required for adoption of a specific plan by the City Following completion of project level CEQA documentation and review, approval of d specific plan(s) could occur.

vii. **Undertake Title 27 landfill closure and remediation of OU-1 and OU-2.** Following completion of CEQA documentation and approval of landfill closure and remedial action plans, physical remediation of the Baylands could be undertaken.

viii. **Site-specific development plans and development within the Baylands.** Remedial actions required for the former Brisbane Landfill, OU-1 and OU-2 must be completed prior to grading and site development as follows:

- Remedial actions required for the former Brisbane Landfill must be completed prior to grading or development within the area of the former landfill. If the RWQCB and the San Mateo County Environmental Health Division determine that phased closure and remediation of the former landfill would be protective of workers and the public and permit phased closure and remediation, phased grading and development of the former landfill may be permitted on areas where closure and remediation has been completed to the satisfaction of the RWQCB and the San Mateo County Environmental Health Division.

- Remedial actions within OU-1 must be completed to the satisfaction of DTSC prior to initiation of any grading or development within OU-1.
- Remedial actions within OU-2 must be completed to the satisfaction of the RWQCB prior to initiation of any grading or development within OU-2.

f. Specify the relationship between the City's proposed water supply agreement and its development planning and review for the Baylands as summarized below.

v. Based on the level of development set forth in the General Plan for the Baylands, undertake needed operations studies and complete project-level environmental analysis of proposed Water Supply and Conveyance Agreements.

vi. Following completion of project-level environmental analysis of proposed Water Supply and Conveyance Agreements, consideration of specific plan approval for Baylands development may occur.

vii. Complete final Water Supply and Conveyance Agreements between Brisbane and OID, between OID and MID, and between Brisbane and the SFPUC for individual portions of the proposed water transfer.

viii. Prior to approval of site-specific development within the Baylands, final Water Supply and Conveyance Agreements between Brisbane and OID, between OID and MID, and between Brisbane and the SFPUC for individual portions of the proposed water transfer shall be approved by all parties.

ix. Prior to issuance of certificates of occupancy within the Baylands, physical water supply pursuant to final Water Supply and Conveyance Agreements shall be available to the Baylands.

g. Provide appropriate infrastructure and site amenities for each increment of development within the Baylands.

v. Each increment of development must be provided with appropriate infrastructure, services and facilities, and site amenities.

vi. Development phasing shall include specific milestones for development in relation to provision of:

- Environmental site mitigation (e.g., open space dedication, habitat restoration, trails).
- Roadway improvements, including the Geneva Avenue extension and Candlestick interchange, as well as description of allowable development patterns prior to the Geneva Avenue extension.
- Transit improvements.
- Other infrastructure (e.g., water, sewer, water recycling plant, drainage improvements; police and fire services and facilities).

h. Recognize the potential use of a portion of the Baylands for a high speed rail maintenance yard, and identify City expectations for such a use within the Baylands, including:

v. Mitigation of the maintenance yard's environmental impacts.

vi. Provision of community benefits.

vii. Offset loss of existing and anticipated revenues to the City of Brisbane.

Environmental Impact Report

1. Prior to certification of the Final EIR for the Brisbane Baylands, the following modifications to the Brisbane Baylands should be undertaken:
    a. A provision should be added requiring biological resources surveys to be undertaken during the Spring prior to site remediation and grading to update existing conditions information. Such updated information would be used by the City to update mitigation requirements as necessary to recognize that disturbance of the Baylands due to site remediation and grading may not occur until several years after EIR certification.
    b. EIR mitigation measures and the Mitigation Monitoring and Reporting program should be revised to reflect the decreased level of development recommended by the Planning Commission.
2. Certify the Final EIR for the Brisbane Baylands as meeting the requirements of CEQA for the level of development recommended by the Planning Commission; however, should the City Council consider any increase in the Commission's development recommendation (1-2 million square foot net increase in the Baylands' existing building area), the following additional studies should be completed prior to certification of the Final EIR:
    a. Analyses should be undertaken to define additional methods of avoiding pile driving.
    b. Additional analyses of soils and geologic conditions should be undertaken to better define site-specific conditions for future development.
    c. The traffic study should be supplemented to:
        i. Expand mitigation measures to improve future cumulative with project roadway levels of service;
        ii. Provide a method of ensuring that the roadway and transit improvements assumed to be provided by others under future cumulative traffic conditions will, in fact occur or provide additional analyses and mitigation measures addressing requirements should such roadway and transit improvements not be provided; and
        iii. Confirm conclusions regarding internal capture of trips within the Baylands and mode split between vehicular travel and use of transit.

Exhibit 1: Concept Plan for the Baylands

Brisbane Baylands

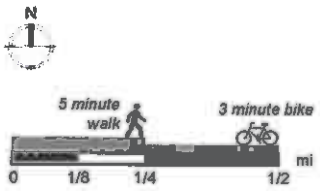
Open Space and Pedestrian and Bicycle Circulation

- Planning Area
- Caltrain Station
- Caltrain Line
- Off-Street Pedestrian, Bicycle and Electric Cart Path (20'+)
- On-Street Protected Bike Lane (6'+ with planted divider)
- New Traffic Circle
- Potential Locations for Caltrain Station Parking

Key Open Spaces

- Ⓐ Lagoon-Adjacent Habitat Area
- Ⓑ Icehouse Hill
- Ⓒ Visitacion Creek Corridor
- Ⓓ Brisbane Bayview Park
- Ⓔ Active Open Space
- Ⓕ Community Garden





Land Use Framework



- **Area 1: Recology Area North of Geneva Avenue Extension, East of Caltrain (59.7 ac.)**
  - **Light Industrial**

    This area would will permit new light industrial uses in the area between the existing Recology facility and the Geneva Avenue Extension should the facility not expand, and would provide for the Recology facility to expand without requiring an amendment to the General Plan should the City approve expansion in the future.

- **Area 2: Between Geneva Avenue Extension and Visitacion Creek, East of Caltrain (85.5 ac.)**
  - **Renewable Energy Generation**

    The primary purpose of this area would be for the generation of renewable energy such that development of the Baylands is net energy positive.

- **Area 3: South of Visitacion Creek, East of Caltrain (63.3 ac)**
  - **Open Space**

    Commercial recreation uses may also be considered within this area.

- **Area 4: South of Visitacion Creek, West of Caltrain (27.5 ac.)**
  - **Light Industrial**

    Service and light industrial uses within the Industrial Way industrial park would be permitted to continue. However, existing buildings would be replaced with new, well-designed buildings over time.

- **Area 5: Roundhouse Area (27.1 ac.)**
  - **Retail**

    The Roundhouse and Lazzarri Fuel Building would be restored. Uses in this area would consists of a combination of retail, restaurant, and small shops. Small office uses could also be permitted.

- **Area 6: Transit Oriented Development Area (67.7 ac.)**
  - **Research and Development/Tech Campus**

    This area would provide for research and development uses in the form of an office campus with supporting commercial uses. The desired primary users of this area would be high-tech firms that are on the cutting edge of new technology, as well as consumer good companies engaged in the development of new products and improvement of established products.

- **Area 7: Machinery & Equipment Building Area (15.8 ac.)**
  - **Community Gardens; Open Space**

    The existing use of the Machinery and Equipment building would continue. The surround lands would be used as open space, including providing for community gardens, as well as a potential permanent location for the existing nursery on

Icehouse Hill. At some future time, the ideal would be to restore the Machinery and Equipment building for community use in conjunction with the community gardens.

- **Area 8: Kinder Morgan Tank Farm (22.8 ac.)**
  - **Industrial**

    The tank farm would continue in its existing use. Buffers would be developed adjacent to the tank farm by realigning Tunnel Avenue to the east, along with open space areas to the north (Visitacion Creek), west (Icehouse Hill and community gardens), and south (lagoon-adjacent habitat area).

- **Area 9: West of Tunnel Avenue between Geneva Extension and Visitacion Creek (25.4 ac.)**
  - **Light Industrial**

    This area would provide for the relocation of the existing lumberyard, as well as parking for Caltrain, should the existing Bayshore Station be moved to the south.

- **Area 10: Caltrain Parking Area (3.7 ac.)**
  - **Caltrain Parking**

    This area would provide for parking for the Caltrain Bayshore Station.