

San Francisco Bay Conservation and Development Commission

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March 20, 2020

Mr. John Swiecki, Planning Director
City of Brisbane, Brisbane Baylands Specific Plan
50 Park Place
Brisbane, CA 94005

SUBJECT: BCDC comments for the Brisbane Baylands Specific Plan Notice of Preparation for the Draft Environmental Impact Report; State Clearinghouse No. 2006022136, BCDC Inquiry File No. SM.BR.6609.1)

Dear Mr. Swiecki:

Thank you for the opportunity to comment on the Notice of Preparation (NOP) for the Brisbane Baylands Specific Plan (Specific Plan) Draft Environmental Impact Report (EIR). The NOP is dated February 24, 2020 by the State Clearinghouse and was received in our office on March 6, 2020. The Commission has not reviewed the NOP; therefore, 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.

The proposed project would include development of up to 2,200 residential units and 7 million square feet of commercial use, along with acquisition of an annual water supply of 2,400 acre-feet from the Oakdale Irrigation District, and would require a permit from BCDC, as described in the NOP. The permit process will include a more detailed analysis of all applicable BCDC policies. The objective of this letter is to give you an overview of potential applicable policies and considerations. BCDC submitted a comment letter in 2012 for the Program EIR, which is attached for reference.

Jurisdiction and Land Use

As a permitting authority along the San Francisco Bay shoreline, BCDC is responsible for granting or denying permits for any proposed fill (earth or any other substance or material, including pilings or structures placed on pilings, and floating structures moored for extended periods); extraction of materials; or change in use of any water, land, or structure within the Commission's jurisdiction. Generally, BCDC's jurisdiction over San Francisco Bay extends over Bay tidal areas up to the mean high tide level, including all sloughs, and in marshlands up to five feet above mean sea level; a shoreline band consisting of territory located between the shoreline of the Bay and 100 feet landward and parallel to the shoreline; salt ponds; managed wetlands; certain waterways tributary to the Bay, and includes Priority Use Areas (PUA) which



may extend beyond the shoreline band in areas reserved for uses specific to limited bay resources. If a project is proposed within the Commission's jurisdiction, it must be authorized by the Commission pursuant to a BCDC permit, and the Commission will use the policies of the McAteer-Petris Act and the Bay Plan to evaluate the project.

The map provided with the NOP shows the project area of the Specific Plan as located within BCDC's Bay jurisdiction, shoreline band jurisdiction, and includes areas within a Waterfront Park, Beach PUA designation and three map policies in the project vicinity, which state "provide safe, accessible pedestrian access across freeway," "no roadway in Bay east of U.S. 101. U.S. 101 Causeway," and "develop scenic frontage road and turnouts for fishing and viewing, and protect shellfish beds offshore."

Specifically, all of the lagoon is in BCDC Bay jurisdiction, as well as the length of Visitacion Creek and another tidally influenced creek to the north side of the lagoon. The BCDC shoreline band jurisdiction extends 100 feet from Bay jurisdiction around the entirety of the lagoon and along both sides of Visitacion Creek and the tidally influenced creek to the north of the lagoon. Development proposed in Waterfront Park, Beach Priority Use Areas must be consistent with Bay Plan recreation policies, which state "Interim use of a waterfront park priority use area prior to its development as a park should be permitted, unless the use would prevent the site from being converted to park use or would involve investment in improvements that would preclude the future use of the site as a park." Thus, development which would prevent the site from being converted to park use would not be consistent and may require an application for a Bay Plan amendment for the Commission to consider the removal of the Waterfront Park, Beach priority use area designation. Please analyze whether the proposed development in the PUA is consistent with Bay Plan recreation policies and if not, please describe the need for a Bay Plan amendment in the Draft EIR.

Bay Fill

Section 66605 of the McAteer-Petris Act states that fill in San Francisco Bay should "only be authorized when": (1) the public benefits from the fill clearly exceed the public detriment from the loss of water area 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; (2) no upland alternative location is available for the project purpose; (3) the fill is the minimum amount necessary to achieve the purpose of the fill; (4) the nature, location and extent of any fill will minimize harmful effects to the Bay; and (5) the fill should be constructed in accordance with sound safety standards. If the proposed project would involve fill in the Bay, the project proponent will need to show that fill associated with the project meets all of the above listed criteria. While the NOP does not specify plans to place fill in the Bay, we ask that the Draft EIR evaluate any proposed fill in light of the Commission's law and policies.

Climate Change

Any larger shoreline projects that are within BCDC's jurisdiction would be subject to the Climate Change policies of the Bay Plan. Bay Plan Climate Change Policy 2 states that: "When planning shoreline areas or designing larger shoreline projects, 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. A range of sea level rise projections for mid-century and end of century based on the best scientific data available should be used in the risk assessment. Inundation maps used for the risk assessment should be prepared under the direction of a qualified engineer. The risk assessment should identify all types of potential flooding, degrees of uncertainty, consequences of defense failure, and risks to existing habitat from proposed flood protection devices." The Draft EIR should include an analysis of how an increase in sea level under multiple sea level rise scenarios could impact low-lying shoreline areas. This should include information on (1) current shoreline elevations and vertical land motion (e.g., subsidence or uplift); (2) current rates of sedimentation, if known; (3) projected impacts of the project on Bay ecosystems given sea level rise; (4) projected impacts of the project that would result in a change in tidal heights, duration of ponding, drainage, erosion, or sedimentation; and (5) the condition of existing shoreline protection. If the project proposes new shoreline protection, Bay Plan Shoreline Protection policies would apply and should be analyzed in the Draft EIR.

Public Access

Section 66602 of the McAteer-Petris Act states, in part, that "existing public access to the shoreline and waters of the San Francisco Bay is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided." Furthermore, the McAteer-Petris Act authorizes the placement of fill in the Bay only for water-oriented uses or minor fill for improving shoreline appearance or public access.

The Draft EIR should analyze BCDC's public access requirements which state, "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..."

All efforts to increase or include public access must be compatible with the wildlife and habitats of the area. As such, the policies further state that, “public access to some natural areas should be provided to permit study and enjoyment of these areas. However, some wildlife are sensitive to human intrusion ... public access should be sited, designed and managed to prevent significant adverse effects on wildlife...”. The Draft EIR should include an analysis of the impacts on public access and evaluate maximum feasible public access that could be provided as part of the project to be consistent with the Commission's policies on public access. Additionally, the Draft EIR should evaluate the potential impacts of any proposed public access on sensitive wildlife species and habitats.

Finally, Bay Plan Public Access Policy 5 states “public access that substantially changes the use or character of the site should be sited, designed, and managed based on meaningful community involvement to create public access that is inclusive and welcoming to all and embraces local multicultural and indigenous history and presence. In particular, vulnerable, disadvantaged, and/or underrepresented communities should be involved. If such previous outreach and engagement did not occur, further outreach and engagement should be conducted prior to Commission action.” The Draft EIR should also analyze consistency with Bay Plan map policies pertaining to public access as described above.

Recreation

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 Draft EIR should discuss whether the proposed recreational uses or projects within the Commission’s jurisdiction are consistent with the applicable Bay Plan and McAteer-Petris Act policies.

Transportation, and the Bay Trail

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 proposed project contains sections of Bay Trail. The Draft EIR should discuss how this network of existing trails could be connected and integrated with the further development of trails, parks, and open space within the proposed project area.

Water Quality

Bay Plan policies on water quality state that, "new projects should be sited, designed, constructed and maintained to prevent, or if prevention is infeasible, to minimize the discharge of pollutants to the Bay " Additionally, in order to protect the Bay from the water quality impacts of nonpoint source pollution, "new development should be sited and designed

consistent with standards in municipal storm water permits and state and regional storm water management guidelines To offset the impacts from increased impervious areas and land disturbances, vegetated swales, permeable pavement materials, preservation of existing trees and vegetation, planting native vegetation and other appropriate measures should be evaluated and implemented where appropriate...." The Draft EIR should evaluate the potential impacts of the proposed projects to be included in the Specific Plan on the water quality of the Bay and should propose best management practices and mitigation measures to minimize adverse impacts to water quality.

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

Environmental Justice and Social Equity

BCDC recently amended the Bay Plan to address environmental justice and social equity concerns across the region. To assist with the transition to these new policies staff has put together this FAQ page, <https://www.bcdc.ca.gov/ejwg/BPAEJSEFaq.html>. Bay Plan Environmental Justice and Social Equity Policy 2 states that "Since addressing issues of environmental justice and social equity should begin as early as possible in the project planning process, the Commission should support, encourage, and request local governments to include environmental justice and social equity in their general plans, zoning ordinances, and in their discretionary approval processes. Additionally, the Commission should provide leadership in collaborating transparently with other agencies on issues related to environmental justice and social equity that may affect the Commission's authority or jurisdiction." Thus, BCDC encourages the City of Brisbane to analyze the potential impacts of the proposed project related to environmental justice and social equity. Specifically, the Draft EIR should include identification of any nearby vulnerable, disadvantaged and/or underrepresented communities.

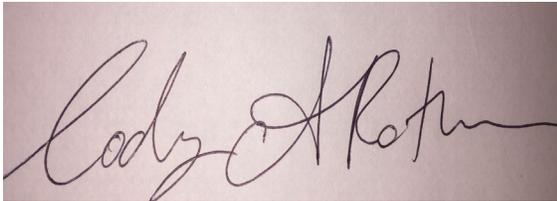
Bay Plan Environmental Justice and Social Equity Policy 3 states "Equitable, culturally-relevant community outreach and engagement should be conducted by local governments and project applicants to meaningfully involve potentially impacted communities for major projects and appropriate minor projects in underrepresented and/or identified vulnerable and/or disadvantaged communities, and such outreach and engagement should continue throughout the Commission review and permitting processes. Evidence of how community concerns were addressed should be provided. If such previous outreach and engagement did not occur, further outreach and engagement should be conducted prior to Commission action." Thus, the project proponents should also strive to provide opportunities for meaningful community involvement.

Bay Plan Environmental Justice and Social Equity Policy 4 states “If a project is proposed within an underrepresented and/or identified vulnerable and/or disadvantaged community, potential disproportionate impacts should be identified in collaboration with the potentially impacted communities. Local governments and the Commission should take measures through environmental review and permitting processes, within the scope of their respective authorities, to require mitigation for disproportionate adverse project impacts on the identified vulnerable or disadvantaged communities in which the project is proposed.” Thus, the Draft EIR should also analyze whether the proposed projects would result in disproportionate adverse impacts for these communities. BCDC is developing a new tool to help assess community vulnerability around the region which can be found here:

<https://www.bcdc.ca.gov/data/community.html>.

We appreciate the opportunity to comment on the NOP for the EIR for the Brisbane Baylands Specific Plan. If you have any questions or concerns regarding this matter, please do not hesitate to contact me at (415)352-3641 or by email at cody.achele@bcdc.ca.gov.

Sincerely,

A photograph of a handwritten signature in black ink on a light-colored background. The signature is written in a cursive style and reads "Cody Aichele-Rothman".

CODY AICHELE-ROTHMAN
Coastal Planner

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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@bcdca.gov.

Sincerely,



LINDSEY FRANSEN
Coastal Planner