

CALIFORNIA STATE LANDS COMMISSION

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Established in 1938

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March 20, 2020

File Ref: SCH # 2006022136

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

VIA ELECTRONIC MAIL ONLY (baylands@brisbaneca.org)

Subject: Notice of Preparation (NOP) for a Draft Environmental Impact Report (EIR) for the Brisbane Baylands Specific Plan, City of Brisbane, San Mateo County

Dear Mr. Swiecki:

The California State Lands Commission (Commission) staff has reviewed the subject NOP for a Draft EIR for the Brisbane Baylands Specific Plan (Plan), which is being prepared by the City of Brisbane (City). The City is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The Commission is a trustee agency for projects that could directly or indirectly affect State sovereign land and their accompanying Public Trust resources or uses. Additionally, since the proposed Plan potentially involves work on State sovereign land, the Commission will act as a responsible agency (Cal. Code Regs., tit. 14, § 15386).

Commission Jurisdiction and Public Trust Lands

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 6301; 6306). All tidelands and submerged lands granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the Common Law Public Trust.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its

admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On navigable non-tidal waterways, including lakes and rivers, the State holds fee ownership of the bed of the waterway landward to the ordinary low water mark and a Public Trust easement landward to the ordinary high-water mark, except where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

Based on Commission staff's review of the NOP, information provided by the City, and in-house records, it appears that the Plan would occupy:

- Filled or partially filled and sold Board of Tideland Commissioners (BTLC) lots;
- Lands the State did not acquire, patented as Swamp and Overflow (S&O) Survey 28;
- Lands within Rancho Canada De Guadalupe Visitacion y Rodeo Viejo;
- Lands within Rancho Canada De Guadalupe y Rodeo Viejo; and
- Ungranted sovereign lands within the Guadalupe Canal.

Portions of the Plan appear to occupy filled and unfilled tidelands and submerged lands sold into private ownership by the State by the BTLC. Pursuant to the Court's holding in City of Berkeley v. Superior Court, 26 Cal. 3d 515, any such lands which remained submerged or subject to tidal action as of February 22, 1980, are subject to a Public Trust easement retained by the State. A lease from the Commission is not required for use of lands underlying the State's Public Trust easement. However, it has been determined that any portion of the proposed Plan located within the Guadalupe Canal would require a lease from the Commission. Please be aware that residential development or use of sovereign lands or lands subject to a Public Trust easement is inconsistent with the Public Trust. Accordingly, the Plan must be developed to ensure that there is no residential use planned on sovereign lands or within the Public Trust easement.

Project Description

The Plan proposes the development of 2,200 residential units and 7 million square feet of commercial use. Pursuant to the requirements of General Plan Amendment GP-1-18 and Measure JJ, residential uses would be limited to the northwestern portion of the site. Three residential development types are proposed which meet the objectives of the Plan:

- High-density residential uses, which would consist of multi-family residential and mixed-use buildings that are generally 4 to 6 stories in height, with buildings up to 8 stories in specific locations to be identified in the Specific Plan.
- Medium-density residential uses, which would consist of townhomes 2 to 3 stories in height with rooftop decks.

- Low-density residential uses, which would consist of larger 3-story townhouse units.

Three types of commercial uses are proposed:

- High-Tech Commercial would be the densest commercial use, with buildings up that range from 6 to 10 stories in height with floor plates appropriate for high-end office usage.
- Biotech Commercial would cater to companies looking to set up small campuses for their practices. This commercial type would include buildings that are 3 to 5 stories in height in height and provide adequate space for the various requirements of the biotech industry.
- Campus Commercial would consist of large, single-tenant parcels catering to tech companies that want to invest in larger office campuses. This commercial type would be characterized by buildings 1 to 2 stories in height.

A 4.6-acre elementary school site is proposed adjacent to the historic Roundhouse, which would be restored. The City proposes the Roundhouse will be included as a mix of retail, office, restaurant uses, along with public gathering and activity space.

Environmental Review

Commission staff requests that the City consider the following comments when preparing the Draft EIR, to ensure that impacts to Public Trust resources and State sovereign land are adequately analyzed.

General Comments

1. **Project Description:** A thorough and complete Project Description should be included in the Draft EIR in order to facilitate meaningful environmental review of potential impacts, mitigation measures, and alternatives. The Project Description should be as precise as possible in describing the details of all allowable activities (e.g., types of equipment or methods that may be used, seasonal work windows, locations for material disposal, staging and lay-down areas, as well as timing and length of activities, etc.). In addition, the Draft EIR should include the maximum area of impact, including loss of land and habitat due to flooding and the volume of sediment and vegetation removed or disturbed, inclusive of impacts not previously analyzed.

The Draft EIR should also include figures illustrating the total footprint of the preferred and alternative projects (preferably aerial overlays), so that public agencies and the public can visualize the proposed Plan effects on existing land uses. In addition, the Draft EIR should include engineering plans and a detailed written description of activities. Thorough descriptions will facilitate a more robust analysis of the work that may be performed and minimize the potential for subsequent environmental analysis to be required.

Biological Resources

2. The Draft EIR should disclose and analyze all potentially significant effects on sensitive species and habitats in and around the Plan area, and if appropriate, identify feasible mitigation measures to reduce those impacts. Sensitive species include special-status wildlife, fish, and plants which will be present within the proposed Plan footprint. These species include: Alameda song sparrow (*Melospiza melodic pusillula*), California Ridgway's rail (*Rallus obsoletus obsoletus*), Burrowing owl (*Athene cunicularia*), Longfin smelt (*Spirinchus thaleichthys*), Northern harrier (*Circus cyaneus*), Pallid bat (*Antrozous pallidus*), Sacramento river winter-run, Central Valley spring-run, and Central Valley fall/late fall-run Chinook salmon (*Oncorhynchus tshawytscha*), Salt-marsh common yellowthroat (*Geothlypis trichas sinuosa*), San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), Townsend's Pacific big-eared bat (*Corynorhinus townsendii*). The City should conduct queries of the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database and U.S. Fish and Wildlife Service's (USFWS) Special Status Species Database to identify any special-status plant or wildlife species that may occur in the Plan area. Identification of rare and sensitive plant species should be reviewed with various California Native Plant Society databases and information sources. The Draft EIR should also include a discussion of consultation with CDFW, USFWS, and National Marine Fisheries Service (NMFS) as applicable, including any recommended mitigation measures and potentially required permits identified by these agencies.
3. Invasive Species: One of the major stressors in California waterways is introduced species. Therefore, the Draft EIR should consider the Plan's potential to encourage the establishment or proliferation of aquatic invasive species (AIS) such as the quagga mussel, or other nonindigenous, invasive species including aquatic and terrestrial plants. For example, construction equipment brought in from long stays at distant projects may transport new species to the Plan area via hull biofouling or found in soil transport of work and hauling vehicles. Marine and aquatic organisms attach to and accumulate on the hull and other submerged parts of a vessel. Plant invaders may disperse seeds from one area to another via dried mud/soils attached to vehicles from previous work areas. If the analysis in the Draft EIR finds potentially significant AIS and plant impacts, possible mitigation could include contracting vessels from nearby, or requiring contractors to perform a certain degree of hull and vehicle-cleaning. The CDFW's Invasive Species Program could assist with this analysis as well as with the development of appropriate mitigation (information at <https://www.wildlife.ca.gov/Conservation/Invasives>).
4. Construction Noise: The Draft EIR should also evaluate noise and vibration impacts on wildlife and birds from construction. Mitigation measures could include species-specific work windows as defined by CDFW, USFWS, and NMFS. Staff recommends early consultation with these agencies to minimize the impacts of the Plan on sensitive species.

Climate Change

5. Commission staff recognizes the importance of California's transition from traditional energy generation to renewable energy generation, consistent with the state's bold target of 100 percent "zero-carbon" energy procurement by 2045 (Senate Bill 100, statutes of 2018). Nonetheless, construction could potentially result in significant impacts due to greenhouse gases (GHGs) produced during construction. Therefore, the City should ensure a GHG emissions analysis consistent with the California Global Warming Solutions Act (Assembly Bill [AB] 32) and required by the State CEQA Guidelines is included in the Draft EIR. This analysis should identify a threshold for significance for GHG emissions, calculate the level of GHGs that will be emitted as a result of construction and ultimate build-out of the Plan, determine the significance of the impacts of those emissions, and, if impacts are significant, identify mitigation measures that would reduce them to the extent feasible.

Cultural Resources

6. The NOP indicates that the Plan may affect Cultural and Tribal properties within the proposed Plan footprint. Commission staff suggest that Tribal outreach be implemented as soon as possible with representatives from Tribal groups identified by the Native American Heritage Commission as having cultural or geographic affiliation in the Plan area. Commission staff notes that even if none of the affiliated Tribes has requested notification of CEQA projects, the AB 52 provisions in CEQA require lead agencies to evaluate the potential for the project to impact Tribal cultural resources and avoid such impacts to the extent feasible. Details of Tribal Consultation and outreach, and any mitigation measures agreed to as a result of such Consultation and outreach, should be included in the Draft EIR.

Tribal Cultural Resources.

7. *Tribal Engagement and Consideration of Tribal Cultural Resources.* Commission staff recommends that the City expand the discussion of Tribal engagement and consideration of Tribal Cultural Resources in order to demonstrate compliance with AB 52 (Gatto; Stats. 2014, ch. 532), which applies to all CEQA projects initiated after July 1, 2015.¹ Commission staff notes that the NOP does not contain sufficient information as to how the City will comply with AB 52 provisions, which provide procedural and substantive requirements for lead agency consultation with California Native American Tribes, consideration of effects on Tribal Cultural Resources (as defined in Pub. Resources Code, § 21074), and examples of mitigation measures to avoid or minimize impacts to these resources. Even if no Tribe has submitted a consultation notification request for the Plan area covered by the NOP, the City should conduct the following:
 - Contact the Native American Heritage Commission to obtain a general list of interested Tribes for the Plan area

¹ Sections 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2, and 21084.3 were added to CEQA pursuant to AB 52.

- Include the results of this inquiry within the Draft EIR
- Disclose and analyze potentially significant effects to Tribal Cultural Resources and avoid impacts when feasible

Since the NOP does not disclose if notification or outreach to interested Tribes has occurred and does not document their response, Commission staff recommends that the City include this information in the Draft EIR to maintain a clear record of the City's efforts to comply with AB 52.

Recreation

8. A thorough impact analysis should be included in the Draft EIR to evaluate impacts to proposed Plan footprint during construction. Commission staff encourages a robust analysis of potential impacts to public access sites within the footprint of the proposed Plan and any future maintenance requirements with the below surface contamination or ongoing monitoring requirements. The analysis should consider how the public may be affected by the proposed Plan as a result of any ground disturbance activities and any mitigation improvements within the proposed Plan.

Mitigation and Alternatives

9. Deferred Mitigation: In order to avoid the improper deferral of mitigation, mitigation measures must be specific, feasible, and fully enforceable to minimize significant adverse impacts from a project, and "shall not be deferred until some future time." (State CEQA Guidelines, §15126.4, subd. (a)). All identified mitigation measures included in the Draft EIR should comply with State CEQA Guidelines.
10. Alternatives: The Draft EIR should evaluate any and all possible alternatives to reduce temporary and permanent impacts as a result of the proposed construction. A description of the Preferred Project as well as the environmentally superior alternative should be clearly identified and evaluated with mitigation to reduce significant impacts to the lowest possible level.

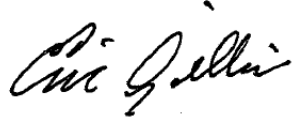
Environmental Justice

11. The NOP does not state whether the City intends to discuss and analyze potential environmental justice related issues, including an assessment of public access and equity implications and who would bear the burdens or benefits from the proposed Plan. Commission staff believes the Draft EIR, as an informational public document, is an appropriate vehicle to disclose and discuss how the proposed Plan would attain or be consistent with the City's equity goals and statewide policy direction.

Thank you for the opportunity to comment on the NOP for the Plan. As a responsible agency, Commission staff requests that you keep us advised of changes to the Plan and all other important developments. Please send additional information on the Plan to the Commission staff listed below as the Draft EIR is being prepared.

Please refer questions concerning environmental review to Christopher Huitt, Senior Environmental Scientist, at (916) 574-2080 or christopher.huitt@slc.ca.gov. For questions concerning Commission leasing jurisdiction, please contact Marlene Schroeder, Public Land Management Specialist, at (916) 574-2320 or marlene.schroeder@slc.ca.gov. For questions concerning archaeological or historic resources under Commission jurisdiction, please contact Staff Attorney Jamie Garrett, at (916) 574-0398 or jamie.garrett@slc.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Gillies".

Eric Gillies, Acting Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
J. Garrett, Commission
C. Huitt, Commission
M. Schroeder, Commission
P. Huber, Commission