

# *City of Brisbane*

## *Agenda Report*

**TO:** Honorable Mayor and City Council

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

**SUBJECT:** **Brisbane Baylands Planning Applications (Concept Plans, Specific Plan Case SP-01-06, General Plan Amendment Cases GP-01-06/GP-01-10) and related Final Environmental Impact Report (SCH #2006022136)**

**DATE:** Meeting of January 16, 2018

### **Introduction:**

In August 2016, the Brisbane Planning Commission completed its deliberations on a developer proposed land use plan for the Baylands. The Commission adopted a resolution recommending the City Council approve alternative land use plans for the Baylands. The Commission's alternative recommendations did not propose residential development on the property.

Over the course of eight months in 2017, the City Council conducted numerous public hearings, and deliberations on the Baylands. The public comment on the Planning Commission's recommendations and the developer's proposal reflected significant disagreement whether housing should be built on the Baylands.

By mid-summer, it appeared that, based on City Council discussion and deliberations, staff was prepared to request that the City Council provide direction concerning the Final Environmental Impact Report, the applicant's proposed land use plan, and the Planning Commission's recommendation. Staff, however, did not make that request due to external related events.

During the summer of 2017, the State Legislature and the Governor's Office were working on a legislative package to change State law to expedite local approval of residential development projects, to approve new funding sources for affordable housing, and to increase the role of State departments in overseeing – and to some extent compelling local decision making for residential development projects. Some or all of the bills in the package were expected to include “urgency clauses”. The potential that legislation could be signed into law and immediately limit the City's control over local land use decisions took priority over specific development projects, including the Baylands. The City instead joined with other localities in the effort to maintain local control over land use determinations in local jurisdictions.

While focusing on protecting local control over land use, the City became aware of an effort by a group of policy makers to include legislation in the housing package to substitute the Legislature's judgment for that of the City Council in deciding the future of residential development on the Baylands. As we understand it, the proposal essentially was for the Legislature to approve the developer's land use plan for the Baylands and limit City authority over implementing the plan.

This legislative proposal seemed to parallel media interest critical of local land use decision making processes in the Bay Area. Several such reports highlighted the Baylands as the last large undeveloped parcel in San Mateo County, its convenience to San Francisco, Silicon Valley, and mass transportation, suggested it was the City of Brisbane standing in the way of building new homes on the tract. Few such reports, however, detailed the factors that complicate any consideration of residential development on the Baylands.

Upon becoming aware of the possibility of the 2017 legislation, the City focused its efforts on educating policy makers about the very real, significant and difficult issues the City was working through in reviewing the developer's Baylands proposal, including the fundamental need for comprehensive environmental site remediation, significant infrastructure improvements and securing scarce water rights, as well as the lack of a financing plan from the landowner.

The legislative housing package passed in September and did not include a bill to force residential development on the Baylands. But our lobbyists report that the threat of such legislative action remains for 2018.

In order to begin to address this threat, the City Council formed an ad hoc committee of Council Members Conway and Davis – now Mayor Conway and Mayor Pro Tem Davis – to meet with the City's State representatives to continue discussions about the issues associated with the potential development of the Baylands. City staff and the City's lobbyists supported the work of the committee and attended the meetings.

Based on these meetings, it is clear that our State legislators believe a 2017 bill requiring that housing be built on the Baylands consistent with the developer's current proposal would have passed the Legislature last September and been signed into law by Governor Brown absent Brisbane's educational efforts. It is also clear the City's State representatives anticipate the Legislature will enact such a bill in 2018 if the City does not take action publicly in early 2018 to signal that it is open to a reasonable amount of residential development on the Baylands, subject to the developer satisfying City-specified siting and other appropriate and responsible conditions and enforceable guarantees.

The City and its lobbyists are working hard to prevent any legislation in 2018 that would eliminate or materially limit the City's control over land use approvals on the Baylands. We would hope and expect to be joined in these efforts by the League of California Cities, as well as by individual cities.

The City also recognizes that if any legislation is enacted that limits its current authority over local land use approvals, including with respect to the Baylands, the City will have little choice

but to challenge that legislation through the courts. However, even if such legal efforts were successful, it would not prevent the Legislature from considering another version of a bill to impose its will, rather than Brisbane's vision, on the Baylands. And, the effort to challenge legislation in the courts could potentially cost the City millions of dollars.

**Discussion:**

If the City Council wishes to consider allowing some amount of residential development within the Baylands to maintain local land use control in the face of anticipated adverse State legislative action, there are legal and fiscal factors the Council should take into consideration. Existing General Plan Policy 330.1 prohibits residential development within the Baylands. This policy would need to be amended or deleted to allow residential development within the Baylands. Additionally, one of the goals of the 1994 General Plan is to ensure "sufficient revenues for necessary City services." To that end, General Plan Program 8a calls for assessing service costs and revenues associated with proposed developments on a short and long-term basis.

Historically, in California residential uses do not pay for themselves, and the costs to a city of providing ongoing services to residences exceed the revenues to the city generated by residential uses. The net costs associated with cities' residential sectors are typically offset by non-residential uses, particularly those that generate sales tax. Many cities also require new residential developments to pay for some of their own service costs through the use of assessment districts for various maintenance functions (e.g., landscape and lighting districts).

We recommend that the City Council direct staff and its consultant team to undertake a fiscal analysis of potential development scenarios that include varying amounts of housing. It should help the City Council to better understand how potential development scenarios of the Baylands including a residential component could maintain fiscal neutrality to the City (i.e., ensuring that the costs to the City of providing services and maintaining public facilities and infrastructure for any project are offset by the revenues to the City generated by the project). The analysis would consider residential with accompanying non-residential components for the Baylands to address how development could be managed such that the Baylands generates marginally more revenue than costs for the City, and how individual increments of development (including those that proposed for residential use) can be managed to be, at a minimum, revenue-neutral for the City.

If the City Council concurs that such an analysis should be performed, the analysis should help inform the City Council's decision making process going forward as to what different development scenarios (each with varying ranges of residential and nonresidential development) would mean for the City. This analysis could be brought back to the City Council for consideration at its March 1 meeting.



John Swiecki, Community Development Director



Clay Holstine, City Manager



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