

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission

For the Meeting of 07/09/2020

SUBJECT: **General Plan Conformity GPC-1-20; General Plan Crocker Park TC Subarea;** General Plan conformity review of the City of Brisbane's disposition of certain real property at the western edge of the Crocker Park subarea, totaling approximately 28,000 square feet.

SUPPLEMENTAL REPORT

BACKGROUND: The Planning Commission considered GPC-1-20 at the regular meeting of June 11, 2020. Because written comments (Attachment C) provided by a Brisbane resident were not made available to the Commissioners in advance of the meeting, the matter was continued so the Commission could consider the written correspondence before taking action.

Discussion:

The June 11, 2020 Planning Commission agenda report provides a detailed analysis of the General Plan Conformity of the proposed land transfer (Attachment B). Staff conclusions and recommendation contained in the June 11 staff report still apply.

RECOMMENDATION: Adopt General Plan Conformity Resolution GPC-1-20. (Attachment A)

ATTACHMENTS:

- A. Draft General Plan Conformity Resolution GPC-1-20
- B. June 11, 2020 Planning Commission agenda report and meeting minutes
- C. Written Correspondence



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John Swiecki, Community Development Director

ATTACHMENT A
DRAFT RESOLUTION GPC-1-20 WITH EXHIBIT A,
SCHEMATIC MAP SHOWING AREA TO BE CONVEYED TO FLS

DRAFT
RESOLUTION GPC-1-20

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE
FINDING THE DISPOSITION OF CERTAIN REAL PROPERTY PURSUANT TO THE PSA
BETWEEN THE CITY OF BRISBANE AND FRITO-LAYS SALES INC.
CONFORMS TO THE CITY'S GENERAL PLAN

WHEREAS, City is the fee simple owner of the real property bearing Assessor's Parcel Number 005-300-999 ("City Parcel"); and

WHEREAS, Frito-Lays Sales Inc., ("FLS") is the fee simple owner of the real property bearing Assessor's Parcel Number 005-300-140 ("FLS Parcel"); and

WHEREAS, City and FLS have entered into a Purchase and Sale Agreement ("PSA") concerning the above-mentioned properties owned by the City and FLS; and

WHEREAS, the PSA provides that the City will convey to FLS the City's fee interest in all of City Parcel, as shown on the schematic Exhibit A to this Resolution; and

WHEREAS, the PSA provides that FLS will deed to the City an access easement in a portion of both City Parcel and FLS Parcel, 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 such disposition 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; and

WHEREAS, such disposition is consistent with the City of Brisbane's General Plan, specifically with the land use element which designates this property for trade commercial development and with Local Economic Development Policy 8 and Crocker Park Subarea Policy CP.3 in that these policies refer to maintaining a diverse tax base and uses in the Crocker Park subarea that provide jobs, city revenues, and benefits to the community.

WHEREAS, such disposition is furthermore consistent with Land Use Policy LU.4, Circulation Policy C.34, Open Space Policy 86, and Crocker Park Subarea Policy CP.10 in that these policies refer to providing pedestrian access to natural areas such as San Bruno Mountain State and County Park; and

WHEREAS The proposed resolution is exempt from California Environmental Quality Act (CEQA), pursuant to Section 15312 of the CEQA Guidelines, Surplus Government Property Sales. The exceptions to this categorical exemption referenced in Section 15300.2 do not apply.

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 between the City of Brisbane and FLS conforms to 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 ninth day of July 2020, by the following vote to wit:

AYES:
NOES:
ABSENT:

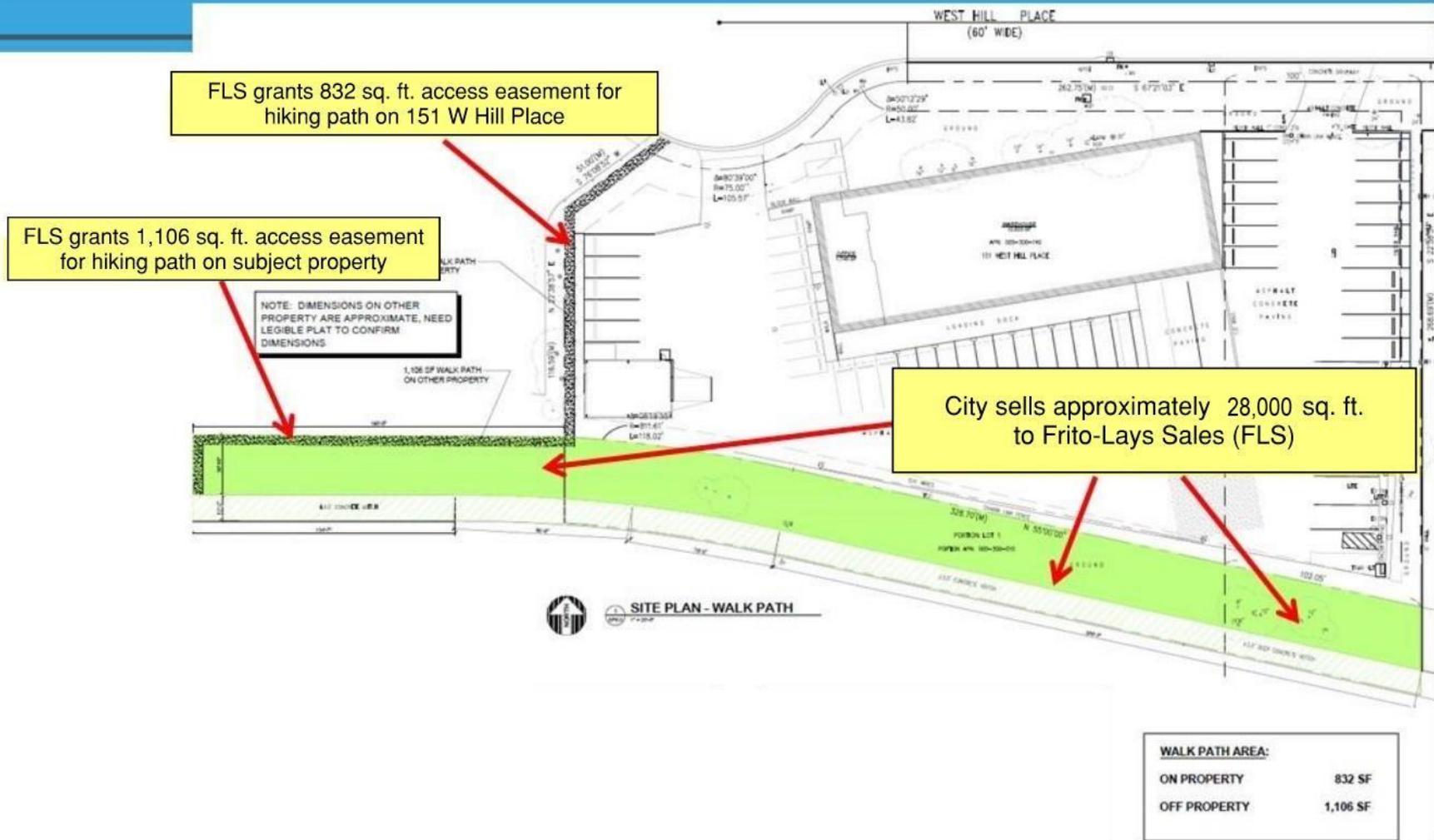
PAMALA SAYASANE
Chairperson

ATTEST:

JOHN A. SWIECKI, Community Development Director

* * * *

Brisbane, CA - PSA Concept



ATTACHMENT B
JUNE 11, 2020 PLANNING COMMISSION
AGENDA REPORT AND MEETING MINUTES

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 06/11/2020

SUBJECT: **General Plan Conformity GPC-1-20; General Plan Crocker Park TC Subarea;** General Plan conformity review of the City of Brisbane's disposition of certain real property at the western edge of the Crocker Park subarea, totaling approximately 28,000 square feet.

REQUEST: That the Planning Commission adopt the attached General Plan conformity resolution, pursuant to the terms of the purchase and sale agreement (PSA) between the City and Frito-Lays Sales, Inc., (FLS) declaring that the City's disposition of City-owned property to FLS is in conformance with the City's General Plan.

RECOMMENDATION: Adopt General Plan Conformity Resolution GPC-1-20. (Attachment A)

ENVIRONMENTAL DETERMINATION: The project is categorically exempt from the provisions of the California Environmental Quality Act per Section 15312 of the CEQA Guidelines, Surplus Government Property Sales. The exceptions to this categorical exemption referenced in Section 15300.2 do not apply.

APPLICABLE CODE SECTIONS: As required in the State Government Code Section [65402\(a\)](#), before the City may sell City real property, the Planning Commission must make a finding that the location, extent and purpose of the sale of subject property conforms to the General Plan prior to disposition by the City.

Background:

Last year, in response to an inquiry from FLS, City Council provided direction to staff negotiate a potential land sale regarding the subject property. Those negotiations have resulted in a draft PSA between the City and FLS that the Council will consider at a public meeting later this year. State Government Code Section 65402(a) states that prior to the conveyance of real property by a government agency, the local planning agency must first make the finding that the location, extent and purpose of such conveyance is in conformance with the General Plan (see Attachment C). Accordingly, the only item before the Planning Commission is whether the sale, if it is approved by the City Council, is in conformance with the General Plan.

The subject City-owned property (APN 005-300-999) is a vacant, narrow parcel located at the western edge of the Crocker Park subarea. The subject property has no direct access to a public street and abuts 151 West Hill Place and 180 West Hill Place to the north and northwest, 211 West Hill Place to the east, and the San Bruno Mountain State and County Park to the south. (See Attachment B.)

The subject property and the adjacent parcels within the limits of the City of Brisbane have a General Plan land use designation of TC Trade Commercial.

FLS, owner of 151 West Hill Place, approached the City with an offer to purchase the subject property. The proposed PSA, subject to review and approval by the City Council, would result in the disposition of approximately 28,000 square feet of the subject property to FLS on the condition that FLS grant the City an access easement and construct a hiking path on 1,106 square feet of the subject property and on 832 square feet of 151 West Hill Place. The future pathway would lead from West Hill Place to the boundary of the San Bruno Mountain State and County Park and existing trail(s) (see Exhibit A of Attachment A).

Discussion:

As noted above, per Government Code Section 65402(a), the disposition of real property owned by the City must be submitted to, and reported on, by the Planning Commission with regards to conformity with the General Plan. The transaction would provide FLS the flexibility for orderly expansion of its property at 151 West Hill Place in conformance with the City's General Plan Land Use Element, which designates this property for commercial development, while establishing a dedicated and direct link to the San Bruno Mountain State and County Park from which Brisbane residents may utilize and benefit. Any potential expansion or development on the subject property would not extend beyond that of adjacent properties, nor encroach into the San Bruno Mountain State and County Park or boundary of the San Bruno Mountain Habitat Conservation Plan. Any potential expansion or development on the subject property would also be subject to design review and City approval.

Based on the above analysis, the proposed sale of the property would conform to the General Plan, specifically in regards to the following policies:

- Policy 8 of Chapter IV, Local Economic Development states, "Maintain and diversify the City's tax base, consistent with community character, in order to generate adequate revenues for City Government and sustain a healthy local economy." This transaction will provide FLS the ability to potentially expand its business at 151 West Hill Place, contributing to a healthy and diverse tax base.
- Policy LU.4 of Chapter V, Land Use states: "Integrate physical, social, environmental and financial elements of the community for the benefit of current and future residents." This transaction grants an access easement to the City that will allow a new hiking path to be established between the San Bruno Mountain State and County Park and the City that will benefit current and future residents.
- Policy C.34 of Chapter VI, Circulation states: "Maximize safe pedestrian facilities and access to all areas of the City, as reasonable and feasible." Program C.34.b provides the City should consider opportunities to enhance and expand pedestrian access to regional destinations. This transaction will provide an easement for a dedicated pathway to provide safe access to the San Bruno Mountain State and County Park, a regional destination, from West Hill Place.

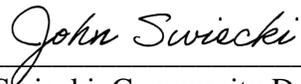
- Policy 86 of Chapter VII, Open Space states: “Provide access to natural areas consistent with the nature of the resource.” Program 86a states the City shall develop a network of trails and pathways throughout the City to provide access to open space and to link City trails with County and regional trail systems. This transaction would provide a direct link to the San Bruno Mountain State and County Park and its trail system and is approximately 1,000 feet from the City’s Crocker Park Recreation Trail.
- Policy CP.3 of Chapter XII, Policies and Programs by Subarea states: “Encourage uses that benefit the community, providing jobs, revenues and services.” This transaction will provide FLS the means to potentially expand and continue to provide jobs and revenues that benefit the City.
- Policy CP.10 of Chapter XII, Policies and Programs by Subarea states: “Connect Crocker Park to the rest of the City and the San Bruno Mountain State and County Park through pedestrian and vehicular circulation improvements.” This transaction will provide for an easement that will allow for pedestrian circulation improvements that connect the Crocker Park subarea to the San Bruno Mountain State and County Park.

ATTACHMENTS:

1. ~~Draft General Plan Conformity Resolution GPC-1-20~~
2. Aerial map of subject property
3. General Plan Map, with Site Location
4. [Hyperlink to Government Code Section 65402\(a\), relating to disposition of City property](#)



Jeremiah Robbins, Associate Planner



John Swiecki, Community Development Director

**ATTACHMENT 2
AERIAL MAP OF SUBJECT PROPERTY**

ATTACHMENT B
ATTACHMENT 2

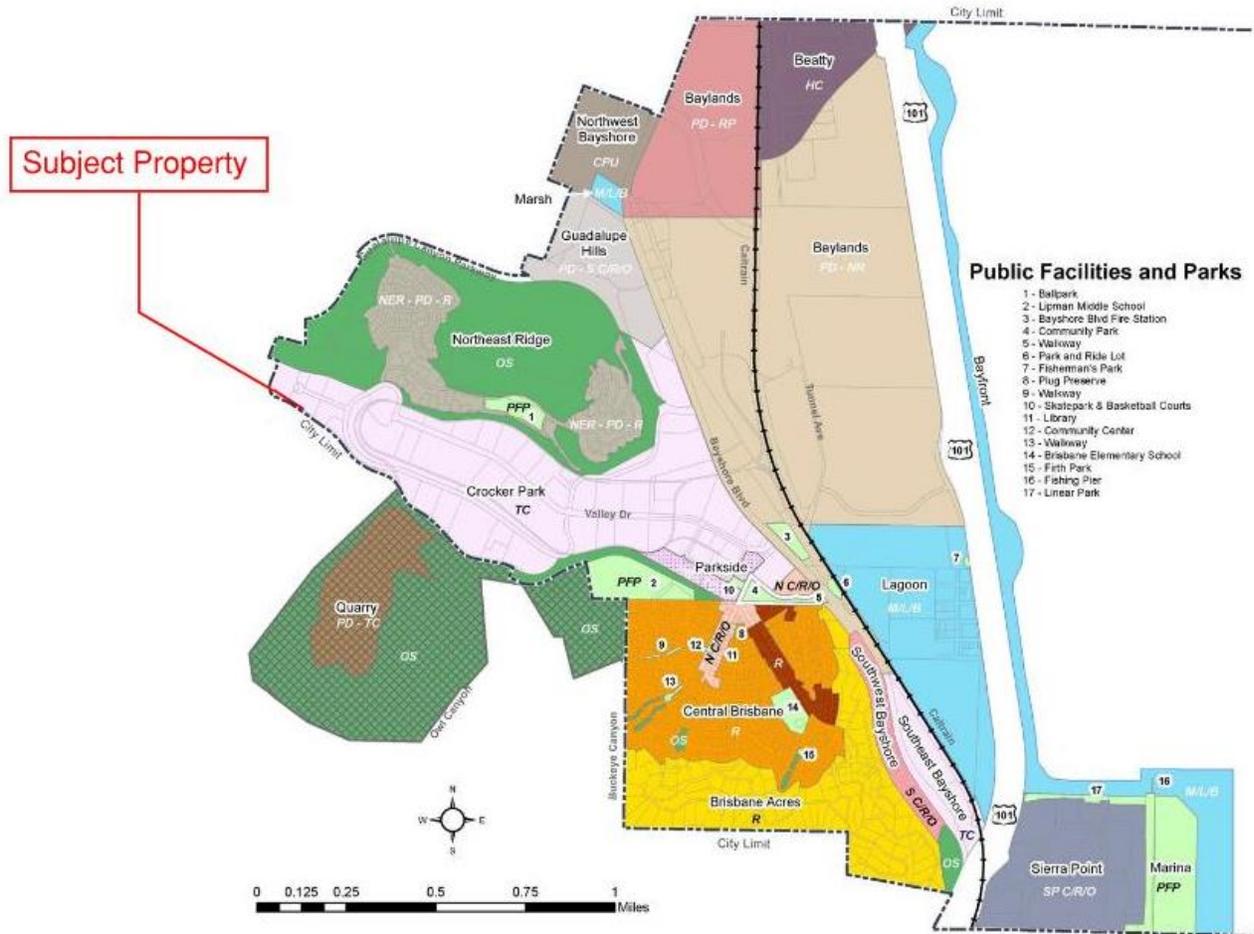


City Boundary

Subject Property

**ATTACHMENT 3
GENERAL PLAN MAP WITH SITE LOCATION**

Figure LU - 1: Land Use Diagram



- Residential**
 - Brisbane Acres Residential (0-2 DU/Acre) *R*
 - Central Brisbane Residential (2.5-14 DU/Acre) *R*
 - Central Brisbane Residential (15-30 DU/Acre) *R*
- Mixed Use**
 - Neighborhood Commercial/Retail/Office *N C/R/O*
 - Parkside Residential - Trade Commercial (20-28 DU/Acre)* *PR - TC*
 - Subregional Commercial/Retail/Office *S C/R/O*
- Planned Development**
 - Quarry Planned Development - Trade Commercial *PD - TC*
 - Guadalupe Hills Planned Development - Subregional Commercial/Retail/Office *PD-S C/R/O*
 - Baylands Planned Development - NonResidential *PD - NR*
 - Baylands Planned Development - Residential Permitted *PD - RP*
 - Northeast Ridge Planned Development - Residential** *NER - PD - R* (Landmark: 5 DU/Acre, Viewpoint: 10 DU/Acre, Altamar: 15 DU/Acre)
- Commercial**
 - Sierra Point Commercial/Retail/Office *SP C/R/O*
 - Trade Commercial *TC*
 - Heavy Commercial *HC*
- Other**
 - Commercial Public Utilities *CPU*
 - Public Facilities and Parks *PFP*
 - Open Space *OS*
 - Marsh/Lagoon/Bayfront *M/L/B*
- City Limits:** Dashed line boundary
- Sphere of Influence:** Outside Brisbane City Limit

* Parkside residential density is by Precise Plan, as an overlay district within Crocker Park.
 ** Northeast Ridge residential density is as established in the Planned Development Permit
 DU/Acre = Dwelling Units per Acre



ATTACHMENT 4

[Hyperlink to Government Code Section 65402\(a\), relating to disposition of City property](#)

DRAFT
BRISBANE PLANNING COMMISSION
Action Minutes of June 11, 2020
Virtual Regular Meeting

CALL TO ORDER

Chairperson Sayasane called the meeting to order at 7:30 p.m.

ROLL CALL

Present: Commissioners, Gomez, Gooding, Mackin, Patel and Sayasane.
Absent: None.
Staff Present: Community Development Director Swiecki, Senior Planner Ayres, Associate Planner Robbins

ADOPTION OF AGENDA

Commissioner Mackin moved adoption of the agenda. Commissioner Gomez seconded the motion and it was approved 5-0.

CONSENT CALENDAR

Commissioner Gooding moved adoption of the consent calendar (agenda item A). Commissioner Patel seconded the motion and it was approved 5-0.

ORAL COMMUNICATIONS

There were no oral communications.

WRITTEN COMMUNICATIONS

There were no written communications.

NEW BUSINESS

B. General Plan Conformity GPC-1-20; General Plan Crocker Park TC Subarea; General Plan conformity review of the City of Brisbane's disposition of certain real property at the western edge of the Crocker Park subarea, totaling approximately 28,000 square feet.

Associate Planner Robbins gave the staff report.

Chairperson Sayasane invited public comment.

Danny Ames, Brisbane resident, spoke against disposition of city-owned property.

Director Swiecki announced that a member of the public had provided information for the Commission's consideration before the meeting that had not been distributed to the Commission due to technical difficulties. He recommended this item be continued to a future meeting to allow for this information to be provided to the Commission.

Commissioner Mackin moved to continue the matter to a future meeting date to be determined. Commissioner Patel seconded the motion and it was approved 5-0.

ITEMS INITIATED BY STAFF

There were none.

ITEMS INITIATED BY THE COMMISSION

There were none.

ADJOURNMENT

Commissioner Gooding moved to adjourn to the regular meeting of Thursday, June 25, 2020. Commissioner Patel seconded the motion and it was approved 5-0. The meeting adjourned at 8:00 p.m.

Attest:

John A. Swiecki, Community Development Director

NOTE: A full video record of this meeting can be found on the City's YouTube channel at www.youtube.com/BrisbaneCA, on the City's website at www.brisbaneca.org, or on DVD (by request only) at City Hall.

ATTACHMENT C
WRITTEN CORRESPONDENCE

To: The Planning Commission
Re: GPC-1-20
From: Dana Dillworth
June 11, 2020

I am not a lawyer and not able to give legal advice, but I would like to mention some lawsuits in which the Public Trust had special standing and how relinquishing the Public watercourse and Public Open Space after closed sessions with no Public Advocate present, is a bad precedent.

Marks v. Whitney, CA Supreme Ct., 1971 (6 Cal.3d 251)
National Audubon v. Superior Ct, CA Supreme Court, 1983 – Mono Lake Case
Arnold vs. Mundy, NJ Supreme Ct., 1821

The Public Trust is the slate upon which all Constitutions are written. (Paraphrased from Mary Wood, Environmental and Natural Resources Law Program, Oregon School of Law.) It existed before our modern environmental laws and gives the Public sovereignty over all other laws. A higher standing.

Rail right-of-ways are Public assets held in trust for the benefit of the Public. There is a long tradition around rail land seizures being allowed solely for the benefit of the Public. This is the Public's land; we should have some say.

Public Open Space is limited, and reaffirmed 10/9/19 by Governor Newsom. There is an "identifiable deficiency in land available for recreational purposes" California Surplus Land Act CA , gov. code 54220-54234 inclusive, among other things. You need to take special precautions before you change its Public use to private, commercial use.

I asked Mayor O' Connell on 6/10 how this request was generated. She informed me that a landowner made the request. It was discussed in closed session. The next decision-making body is the Planning Commission. Unfortunately you are only being asked about compliance with the General Plan, rather than the broader purpose you swore to in your appointment ...to serve the Public.

I ask that you deny the compliance certificate. Ask that the item, presented as a fait accompli, be fully vetted in the public arena and only then presented to you AFTER the required public offerings or the checklist of hierarchy have been met. San Mateo County Parks claim they haven't been asked.

All you have to do is look at how Shen Kee has ignored their responsibility to the Public; rampant invasive weeds, garbage strewn everywhere (images provided.) Please reconsider the implications of the act that you are certifying for the City Council.

Thank you,
Dana Dillworth
Resource referenced:

The Public Trust Doctrine in Environmental and Natural Resources Law, Blumm, Wood
ISBN-13 978-1611637236

I would like to remind everyone that this is the Public's land.

The City of Brisbane is the trustee of this land for the Public's benefit. It was gifted to the City for a nominal fee when the City promised they would develop the polluted rail spurs into a contiguous Public Park system. Please provide the document which details the disposition of this property to the City so you are fully informed of the constraints, if any, regarding this land.

While you may have the ability to obtain a fair market value of the property, it would seem there is a covenant restricting its use to Public Trust uses such as watershed habitat, wildfire setbacks, trailhead parking, etc., before you get to an evaluation to sell.

Regarding claims in this document--- that disposition of "surplus" public land has to meet only one criteria, of General Plan consistency... Please refer to the entire California Surplus Lands Act law.

https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=2.&title=5.&part=1.&chapter=5.&article=8.

Where is the determination that this land is indeed surplus, that it is no longer necessary? How did it become surplus? Was the availability of the property publicly noticed? (Code 54222)

Where is the consistency with 54220 (b) making "prior to disposition, [land] should be made available for park and recreation purposes or for open space purposes."

Code 54221 (2) (A) says "Agency use" shall not include commercial or industrial uses or activities.... Property disposed of for the sole purpose of investment or generation of revenue shall not be considered necessary for the agency's use."

While this is a circuitous argument, the City of Brisbane as an agency, is giving its use up, they are changing the use from Open Space and a myriad of beneficial Public-trusted uses to commercial.

This doesn't meet the small land exemption while it IS adjacent to a State-owned Park and an ecological preserve. Have the Open Space and Ecology and Parks and Recreation Commissions been asked their input? Where is the Public advocate in your closed sessions?

The City just initiated a community study for the TC Crocker Park. My comments, incorporated by reference ask about connections to San Bruno Mountain.... Simultaneously, in closed sessions, with minimal, cryptic public notices (blank agendas,) the City is negotiating private land sales?

I ask that you have all the necessary information about land use - from ALL elements of the General Plan and the State Surplus Land Act before you advise that this is consistent with the General Plan.

Please list the public benefits so we can weigh them: more trucks, more pollution, obstructed setbacks. This might be the place for wind or solar generation.... a cistern... parking... a native plant nursery... Let the Public have a real chance at land use decisions, rather than participate in the conversion of public property for corporate gain.

You haven't done your job if you believe you are exempt from considering anything other than Trade Commercial use for this property. Please query about the legality of your action tonight.





Note: No wildfire setback. Rampant invasive weeds (broom, eucalyptus, and cotoneaster.)



GARBAGE EVERYWHERE!!!



And Parking Problems in Crocker Park



