

CITY OF BUENA PARK  
MINUTES OF CITY PLANNING COMMISSION  
November 28, 2018

The regular meeting of the Planning Commission of the City of Buena Park convened at 7:00 p.m. on November 28, 2018, in the City Council Chamber, 6650 Beach Boulevard, Buena Park, California with Chair McGuire presiding.

PRESENT: COMMISSIONERS: Barstow, Capelle, Diep, Schoales, and McGuire

ABSENT: COMMISSIONER: Chung, Desai

Joel W. Rosen, AICP, Director of Community Development  
Brady M. Woods, Planning Manager  
Swati Meshram, Ph D, AICP, LEED AP, Senior Planner  
Braulio M. Moreno, Assistant Planner  
Amir Modarressi, Interim Assistant City Engineer  
John W. Lam, Assistant City Attorney  
Ruth Santos, Senior Administrative Assistant

**CONSENT CALENDAR:**

**1. APPROVAL OF MINUTES November 14, 2018**

RECOMMENDED ACTION: Approve

AYES:	5	COMMISSIONERS:	Barstow, Diep, Capelle, Schoales, and McGuire
NOES:	0	COMMISSIONER:	
ABSENT:	2	COMMISSIONERS:	Chung, Desai
ABSTAIN:	0	COMMISSIONER:	

**2. GENERAL PLAN FINDING OF CONFORMANCE NO. GPC18-34130**

A request to determine that the proposed installation of ground water quality monitoring extraction wells and a water pipeline within the channel access road over Brea Creek Channel, along Malvern Avenue is in conformance with the City of Buena Park General Plan. The project is categorically exempt pursuant to California Environmental Quality Act (CEQA) Section 15061(b)3.

APPLICANT: County of Orange  
Public Works Department  
300 N. Flower Street  
Santa Ana, CA 92703

RECOMMENDED ACTION: Adopt Resolution of Approval

Orange County Flood Control District easement within Brea Creek Channel. Zoning and General Plan Land Use designation is Open Space.

**SURROUNDING LAND USE CHARACTERISTICS**

	<b>General Plan</b>	<b>Zoning</b>	<b>Existing land use</b>
<b>North</b>	Low Density Residential	RS-10 and RS-8	Single family homes and Los Coyotes Golf Club
<b>South</b>	Planned Development	Planned Development	Single family residential
<b>East</b>	City of Fullerton	City of Fullerton	City of Fullerton
<b>West</b>	Open Space	Open Space	Brea Creek Channel

Staff recommends that the Planning Commission adopt the attached Resolution finding that the proposed Raytheon installation of ground water quality monitoring extraction wells and a water pipeline within the channel access road conforms with the City of Buena Park General Plan.

A corrective measures study (CMS) was prepared by Hargis + Associates, Inc. on behalf of Raytheon Company, formerly Hughes Aircraft Company, to study groundwater corrective measures for the former site located at 1901 West Malvern Avenue, Fullerton, California. This study was conducted to determine appropriate groundwater corrective actions for previous operations conducted on site. It identified and evaluated corrective measure alternatives to address groundwater in the regional aquifer system containing volatile organic compounds (VOCs) and 1,4-dioxane.

In 2015, the Orange County Water District, the City of Fullerton, and the City of Buena Park provided a unified written support of the recommended corrective measure alternative presented in the study. The selected corrective measures are being implemented by Raytheon under the oversight of the California Environmental Protection Agency, Department of Toxic Substances Control.

The corrective measure will extract groundwater using five existing wells, and four proposed new extraction wells. Two of the proposed extraction wells and portion of the pipeline are located in the City of Buena Park, while the others are located in the City of Fullerton. The two proposed wells within Buena Park are located within the Orange County Flood Control District easement long the Brea Creek Channel to the north of residential community known as Lakeside on the southeast corner of the intersection of Dale Street with Malvern Avenue. The groundwater extraction wells will be similar to the existing monitoring wells installed along the Brea Creek access road.

Pursuant to State of California Government Code Section No. 65402, a local agency such as the County of Orange Public Works Department shall not construct public works projects in any city until the location, purpose, and extent of such works have been submitted to the planning agency having jurisdiction and the conformity to the City's adopted General Plan is reported. Therefore, the Planning Commission is required to make findings that the proposed improvements of the Brea Creek Channel groundwater corrective measures are in conformance with the provisions of the General Plan before construction of the improvements begins.

The groundwater corrective measure is designed to be protective of human health and the environment. Groundwater provides much of the potable water supply to the residents of Orange County, including Buena Park. The groundwater extraction and treatment system is projected to substantially reduce or eliminate the potential for migration of residual contaminants in groundwater from the former Raytheon site to public water supply wells in the vicinity.

The City's General Plan Community Facilities Element provides for water facilities, with the goal being to maintain clean and adequate water supply. Therefore, since the proposed improvements to the Brea Creek Channel will not negatively affect the use of the surrounding properties and will improve ground water quality which is a source for potable water supply for Buena Park as well as rest of Orange County, Staff feels that the proposed improvements are in conformance with the General Plan and recommends Planning Commission approval of the attached resolution.

The project is Section 15061(b)3, categorically exempt from CEQA.

No public hearing notice is required for this application.

**RESOLUTION NO. 6135  
GENERAL PLAN FINDING OF CONFORMANCE NO. GPC18-34130**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF  
BUENA PARK FINDING THE PROPOSED INSTALLATION OF GROUND  
WATER QUALITY MONITORING EXTRACTION WELLS AND A WATER  
PIPELINE WITHIN THE BREA CREEK CHANNEL IS IN CONFORMANCE  
WITH THE GENERAL PLAN**

AYES:	5	COMMISSIONERS:	Barstow, Diep, Capelle, Schoales, and McGuire
NOES:	0	COMMISSIONER:	
ABSENT:	2	COMMISSIONERS:	Chung, Desai
ABSTAIN:	0	COMMISSIONER:	

===== END OF CONSENT CALENDAR=====

**OLD BUSINESS:**

**3. EXTENSION OF TIME NO. EXT18-33780**

A request for a one (1) year extension of time to complete construction of the Butterfly Palladium project located at 7711 and 7733 Beach Boulevard within the ECSP (Entertainment Corridor Specific Plan) zone. The project is categorically exempt pursuant to California Environmental Quality Act (CEQA) Section 15332, Class 32 (In-Fill Development).

PROPERTY OWNER: Butterfly Pavillion, LLC  
7700 E. Sunset Cove, Unit 126  
Scottsdale, AZ 85258

PROJECT PROPONENT: Butterfly Pavillion, LLC  
c/o Jay Schuette  
2813 Domingo Road  
Fullerton, CA 92835

RECOMMENDED ACTION: Adopt Resolution of Referral to City Council

In reply to Chair McGuire, Ms. Santos stated that staff had received no written communication on the item.

The staff report was presented by Joel Rosen, Director of Community Development.

The property under application is located on the west side of Beach Boulevard, approximately 260 ft. south of El Capitan Way. The property maintains a combined street frontage of 624 ft. and a total land area of approximately 8.54 acres.

Staff recommends that the Planning Commission adopt the Resolution making a finding that Extension of Time No. EXT18-33780 exceeds the authority of the Planning Commission, that the Butterfly Palladium project is of City-wide importance, and referring this matter to the City Council.

On September 14, 2016, the Planning Commission conducted and concluded a public hearing on Development Agreement DA16-005 before adopting Resolution No. 6012 recommending City Council approval of DA16-005.

On November 22, 2016, the City Council conducted and concluded a public hearing on DA16-005 before adopting Ordinance No. 1617 approving DA16-005 to construct an approximately 53,000 sq. ft. butterfly and nature habitat entertainment/educational facility including a 17,500 sq. ft., 60 ft. tall glass atrium, an approximately 4,300 sq. ft. full service restaurant with outdoor dining/patio area as well as the sale of alcoholic beverages for on-site consumption, and related parking and site improvements.

Pursuant to milestone performance requirements conditioned within DA16-005, the deadline for project construction completion was eighteen (18) months from issuance of building permits. Building permits for the building shell and atrium were issued by the City on April 18, 2017; making the project deadline October 18, 2018. As of the date of this report, staff estimates that the project is approximately 10% complete.

On October 18, 2018, the Community Development Director granted a thirty (30) day extension of time to complete construction of the Butterfly Palladium project, in compliance with DA16-005 Section B(7). A hearing before the Planning Commission was scheduled for November 14, 2018; but was continued to this date at the request of the applicant. Since the November 14, 2018 Planning Commission meeting, the Developer submitted additional information as discussed in more detail below.

The applicant is requesting a one-year extension of time, claiming that the current completion time limit in DA16-005 will present an undue hardship to Developer (see attached November 19, 2018 letter).

As stated by the applicant, there are two primary factors that have delayed the construction timing. First, completion of the glass atrium structure is delayed. According to the Developer, the atrium is being custom built in Europe by Deforche Construct. Deforche recently stated in their November 1, 2018 letter (attached) that the atrium trusses and gazing system will not be delivered to the site until April/May 2019.

Similarly, the Developer represents that the grotto within the atrium is delayed. The grotto is being designed in California by OTL, but, according to the Developer, the construction of the grotto needs to be coordinated with the atrium. In addition, Developer represents they have commissioned a \$1 million jellyfish aquarium from a Japanese manufacturer. The Developer has stated that the aquarium will soon be ready for installation, but is best coordinated with the atrium and grotto.

Second, are issues with project and construction financing. Developer represents that financing has been delayed due to the unique nature of this property and project, and that extensive and custom underwriting has been required. However, the Developer has stated that they have recently "secured" a \$34.95 million loan commitment for the remaining construction costs which currently total approximately \$47.6 million.

Concurrent with this application, the General Contractor for the project has also requested an extension of the building permit. Building inspections have been performed since the last report to the Planning Commission, thereby automatically extending the building permit for 180 days from the last inspection.

Pursuant to Section B(7) of DA16-005, the Planning Commission may grant extensions for up to one year if, after inquiry by the Planning Commission, the Planning Commission determines that the deadline presents an undue hardship with respect to implementing the approved use and development of the property, and whether or not such extension would be materially detrimental to the public health, safety, and welfare.

As part of the City's due diligence to determine whether a twelve (12) month extension of time is warranted under the terms of DA16-005, Staff sent a letter to the Developer dated October 26, 2018 requesting supporting documentation as follows:

1. Detailed construction budget and construction schedule;
2. Verified construction financing necessary to complete the project;
3. Current information showing project financial feasibility;
4. Evidence of a construction completion bond with sufficient coverage to complete the project;
5. Verified details of all project expenses incurred to date;
6. Evidence that restaurant and retail services tenants have been secured for the project;
7. Verified evidence of the current status of the project atrium and grotto design, fabrication, and delivery, including the anticipated date the aforementioned items will be on the project site; and
8. Any other information, evidence, documentation, or materials you desire the Planning Commission to consider in rendering a decision on your request.

On November 19, 2018, the Developer provided staff with certain of documents responsive to the City's request, some of which are considered proprietary and confidential. All the documents submitted not considered proprietary or confidential are attached for the Planning Commission's consideration, including an updated construction schedule.

The Developer's most recent construction schedule anticipates a project completion date of May 1, 2020; which is approximately 18 months after the current deadline of November 2018.

DA16-005 allows the Planning Commission to grant extensions in one-year increments. The language states: "[T]he Planning Commission may grant extensions of such time period for up to one year for each extension if the earlier expiration of such time is found to present an undue hardship..." Based on this language and Developer's new proposed completion date of May 1, 2020, the extension required by the Developer exceeds the discretion expressly vested in the Planning Commission via DA16-005.

Under DA 16-005 Section B(7), the Planning Commission's decision whether to grant the extension of time is weighed against the public's concern of whether that an extension would be materially detrimental to the public health, safety, and welfare. A partially constructed project will become an attractive nuisance based on the experience of Staff. Staff has experience with partially constructed projects in Buena Park and surrounding cities that became magnets for homeless, graffiti, and illicit activities. Examples of partially constructed buildings which became attractive nuisances and had blighting influences on surrounding properties include 8750 Knott Avenue, Buena Park (Monroe Furniture Store), 7860 Beach Boulevard, Buena Park (Best Inn), and 7457 Franklin Street, Buena Park (apartments) as well as partially constructed projects in the area including in Garden Grove and Fullerton. A highly visible 8.7-acre partially constructed project in the middle of the City's entertainment district will have a blighting influence on the entertainment district and could cause economic harm to the surrounding properties and the City as a whole.

The Developer's capacity to finance the project is also a concern. Because the Planning Commission's authority is normally limited to matters land use and zoning matters, the financing terms of development agreements are typically within the purview of the City Council. Municipal Code Section 2.44.060(C) authorizes the Planning Commission to "make recommendations to the City Council of changes and modifications in the City's zoning and other ordinances dealing with the regulation of private works of improvement." The Development Agreement was approved by Ordinance of the City Council, and dictates the terms and conditions of a "private work of improvement." Further, Section 19.120.085 provides that "Planning Commission actions may be reviewed by the City Council in the event that any member of the City Council believes that the action has city-wide importance and should be reviewed and determined by the elected officials of the City."

All the above supports the Planning Commission making a determination that extension of time request EXT18-33780 exceeds the Planning Commission's authority, that the Butterfly Palladium project is of "city-wide importance" and that the matter should be referred to the City Council for consideration.

The City Attorney has reviewed and approved this report.

The approved Development Agreement was found exempt pursuant to Section 15332 (In-fill Development) of the CEQA Guidelines. There are no changes to the originally approved development plans, and thus there are no environmental impacts associated with this request for extension of time.

Chair McGuire asked if there were any questions for staff.

There were no questions for staff. Chair McGuire opened the item for public comments.

There being no one wishing to speak on the matter, Chair McGuire advised that the item requires a Motion to adopt a Resolution for approval or denial with findings.

Commissioner Diep moved, and Commissioner Barstow seconded, the motion to adopt the Resolution of referral to City Council.

**RESOLUTION NO. 6136  
EXTENSION OF TIME EXT18-33780**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BUENA PARK REFERING A REQUEST FOR A ONE-YEAR EXTENSION OF TIME FOR PREVIOUSLY APPROVED DEVELOPMENT AGREEMENT NO. DA16-005 TO COMPLETE CONSTRUCTION PURSUANT TO DEVELOPMENT AGREEMENT DA16-005 FOR THE BUTTERFLY PALLADIUM PROJECT AT 7711 AND 7733 BEACH BOULEVARD TO THE CITY COUNCIL OF THE CITY OF BUENA PARK**

AYES:	5	COMMISSIONERS:	Diep, Barstow, Capelle, Schoales, and McGuire
NOES:	0	COMMISSIONER:	
ABSENT:	2	COMMISSIONERS:	Chung, Desai
ABSTAIN:	0	COMMISSIONER:	

**ORAL COMMUNICATIONS:**

None

**AGENDA FORECAST:**

None


**STAFF REPORTS:**

Mr. Rosen and Mr. Lam discussed City Council adoption of an Urgency Ordinance establishing regulations for "sidewalk vendors" operating upon City public rights-of-way that comply with Senate Bill 946.

**COMMISSION REPORTS:**

None

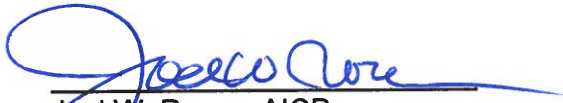
**ADJOURNMENT:** At 7:12 p.m., Chair McGuire adjourned to the regularly scheduled Planning Commission meeting on Wednesday, December 12, 2018, at 7:00 p.m. in the City Council Chamber



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Richard McGuire  
Chair

ATTEST:



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Joel W. Rosen, AICP  
Secretary