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**From:** BRCAC (ECN)  
**Sent:** Thursday, September 12, 2019 6:57 PM  
**To:** CPC.BalboaReservoir; Balboa Reservoir Compliance (ECN)  
**Subject:** FW: Addendum to Comment on Initial Study: Land Use  
**Attachments:** Comment 10.docx

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**From:** aj [mailto:ajahjah@att.net]  
**Sent:** Wednesday, September 11, 2019 5:35 PM  
**To:** Poling, Jeanie (CPC) <jeanie.poling@sfgov.org>; CPC.BalboaReservoir <CPC.BalboaReservoir@sfgov.org>  
**Cc:** BRCAC (ECN) <brcac@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>; Low, Jen (BOS) <jen.low@sfgov.org>; Maybaum, Erica (BOS) <erica.maybaum@sfgov.org>  
**Subject:** Addendum to Comment on Initial Study: Land Use

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I have added the following addition to "Comment on Initial Study: Land Use":

**The increase from 500 units contained in the program-level PEIR to 1,100 to 1,550 units of the current proposal constitutes "substantial unplanned growth." This increase should trigger SEIR review.**

Please enter into record.

Thanks,  
aj

----- Forwarded Message -----

**From:** aj <[ajahjah@att.net](mailto:ajahjah@att.net)>  
**To:** Poling Jeanie (CPC) <[jeanie.poling@sfgov.org](mailto:jeanie.poling@sfgov.org)>; CPC.BalboaReservoir <[cpc.balboareservoir@sfgov.org](mailto:cpc.balboareservoir@sfgov.org)>; [commissions.secretary@sfgov.org](mailto:commissions.secretary@sfgov.org) <[commissions.secretary@sfgov.org](mailto:commissions.secretary@sfgov.org)>  
**Cc:** BRCAC ECN <[brcac@sfgov.org](mailto:brcac@sfgov.org)>  
**Sent:** Tuesday, September 10, 2019, 11:23:25 PM PDT  
**Subject:** Comment on Initial Study: Land Use

## COMMENT ON INITIAL STUDY: LAND USE

The Initial Study's B. PROJECT SETTING states: *The project setting and existing site land use characteristics are provided in SEIR Chapter 2, Project Description.*

Going to the referred Ch.2 Project Description produces this:

## Project Description

### 2.A Project Overview

*The proposed Balboa Reservoir Project is located on a 17.6-acre site in the West of Twin Peaks area of south central San Francisco (see **Figure 2-1, Location Map**). The site is north of the Ocean Avenue commercial district, west of the City College of San Francisco Ocean Campus, east of the Westwood Park neighborhood, and south of Archbishop Riordan High School. The project site is owned by the City and County of San Francisco (City) under the jurisdiction of the San Francisco Public Utilities Commission (SFPUC).*

This constitutes the entire description of the Project Setting's baseline existing condition for the Initial Study/SEIR.

This fails to acknowledge that schools are central feature in the immediate vicinity of the Reservoir: City College, Riordan, Lick Wilmerding.

The Reservoir site has historically been used by City College for decades. The Initial Study/SEIR fail to acknowledge this fact.

City College is the main educational, economic, cultural feature of the immediate Reservoir vicinity. The Initial Study/SEIR fail to acknowledge this fact.

City College, Riordan, Lick Wilmerding are the main target destinations for the immediate Reservoir vicinity. The Initial Study/SEIR fail to acknowledge this fact.

I contend that these facts have been deliberately omitted from the description of the baseline existing condition because it is an inconvenient truth. These facts are inconvenient truths that would inhibit the privatization of public assets (though disguised misleadingly as an affordable housing project).

CEQA requires a baseline determination of existing conditions upon which environmental impact of a project will be assessed.

From the Association of Environmental Professional's (AEP) CEQA Portal:

#### *What Are Baseline and Environmental Setting?*

*Under CEQA, the impacts of a proposed project must be evaluated by comparing expected environmental conditions after project implementation to conditions at a point in time referred to as the baseline. The changes in environmental conditions between those two scenarios represent the environmental impacts of the proposed project. The description of the environmental conditions in the project study area under baseline conditions is referred to as the environmental setting.*

## Why Is Baseline Important?

Establishing an appropriate baseline is essential, because an **inappropriately defined baseline can cause the impacts of the project either to be under-reported or over-reported**. A considerable number of CEQA documents have been litigated over the choice of a baseline for a given project, and many CEQA documents have been invalidated for the use of an inappropriate baseline (see Important Cases below).

From 14 CCR 15125:

(a) An EIR must include a description of the physical environmental conditions **in the vicinity of the project**. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.

**The draft SEIR/Initial Study is fundamentally defective because it fails to recognize the baseline condition of City College's prominence and importance in the immediate vicinity of the Reservoir.**

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## **Summary of Land Use Impacts in the PEIR (p. B-12)**

*The proposed project would not result in new or substantially more severe impacts than those identified in the PEIR.*

For this to be accurate, the following question would have to be answered in the negative:

*Would the project result in potentially significant effects **not identified in the prior EIR**? This question examines whether or not the proposed project would result in new significant or potentially significant environmental effects that were not identified in the PEIR. This could include significant effects that are due to:*

- **Project-specific features of the proposed project.**
- **Substantial changes with respect to the circumstances under which the project would be undertaken,** such as real estate development trends in the surrounding area or major projects that were previously unanticipated.

I contend that the answer to the question is YES, thus triggering Impact treatment in the SEIR.

The section acknowledges: *The project site was located within the Balboa Reservoir Subarea and was assumed to include up to 500 residential units.*

A later paragraph states: *The PEIR concluded that implementation of the area plan would not result in significant land use impacts and did not require any mitigation measures.*

SF Planning Dept professionals are aware that a program-level determination is not the same as a project-level determination. Otherwise, the BPS FEIR would not have necessitated project-level reviews of the Kragen Project and the Phelan Loop Project within the FEIR.

It is professionally dishonest for the Planning Dept to pretend that the BPS FEIR's program-level determination for an BPS Area Plan **area-wide** target of 1,780 units could be legitimately used to insinuate that the Reservoir Project current numbers of 1,100-1,550 units had already gotten the thumbs-up from the PEIR.

Did you forget the earlier quote of the Reservoir sub-area "*assumed to include up to 500 residential units*" ?

In the context of "**Project-specific features of the proposed project**", by any objective measure, jumping from 500 units in the program-level PEIR to 1,100-1,550 units in the current two Reservoir options is a big increase of 120% and 210% respectively.

The area-wide target of 1,780 units is shown on the Area Plan Development Status Sept 2018 Update pdf. It consists of 790 Tier 1 (0-5 yrs) units and 990 Tier 2 ( 5-20 yrs) units. The pdf shows 482 units built or underway. This leaves an area-wide shortfall of 1,298 units.

Although I can understand the desire to achieve this area-wide target, forcing a square peg into a round hole out of desperation will not succeed without imposing adverse impacts onto the Reservoir vicinity. Trying to force the Reservoir Project--targeted for 500 units in the PEIR--in order to fulfill the 1,298 unit area-wide shortfall is an objectively significant Reservoir impact.

**The approval and certification of the program-level BPS Final EIR with an area-wide target of 1,780 units does not equate with a LTS determination for a project-level 1,100-1,550 Reservoir units. The Initial Study merely manipulates words and paragraphs to imply and assert, without evidence, that:**

*"The proposed project would not result in new or substantially more severe impacts than those identified in the PEIR."*

**The increase from 500 units contained in the program-level PEIR to 1,100 to 1,550 units of the current proposal constitutes "substantial unplanned growth." This increase should trigger SEIR review.**

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### ***Summary of Land Use Impacts in the PEIR*** (p. B-12)

This section omits the fact that a zoning change from P (Public) to a Special Use District is A BIG DEAL. Privatizing public land by a private developer is A BIG DEAL.

Since the certification of the BPS Final EIR, there has been a major change in the housing development environment for surplus public sites.

At the time of the PEIR, only non-profit agencies were able to buy and build on public surplus lands.

2015 Prop K Public Land for Housing ended the restriction that only non-profit builders could use public lands for housing. With the passage of Prop K, private for-profit developers were allowed to cash in on a bonanza to privatize public lands.

**The change of zoning from P to SUD to enable privatization of public land is a new condition that did not exist at the time of the PEIR. A LTS determination based on conditions that did not exist at the time of the PEIR requires fresh treatment in SEIR.**

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***Impact LU-2: The proposed project would not conflict with any applicable land use plans, policies or regulations of an agency with jurisdiction over the project adopted for the purpose of avoiding or mitigating an environmental effect. (Less than Significant)***

The Initial Study fails to assess the PUC Land Use Policy. The Land Use Framework adopted by the Public Utilities Commission in 2012 (PUC Resolution 12-0044) states: *"Use of the land sold is not to result in activities creating a nuisance."*

Given the limited street parking in the surrounding neighborhoods, and the fact that the main ingress/egress to the Reservoir Housing project will be Kahlo Way, the 1100-1550 unit Balboa Reservoir Project will result in creating a substantial traffic and parking nuisance [The word "nuisance" understates the problem].

From earlier submission to the Reservoir CAC and City Team:

## **PUC LAND USE POLICY**

1. The RFQ's section on Applicable Land Use Policies makes no reference to the PUC's own "Framework for Land Use and Management."
2. From the PUC website: By adoption of [the Framework](#), the Commission is seeking to advance the analytical and decision-making process surrounding the administration of real estate assets under the SFPUC's exclusive jurisdiction.
3. PUC's Land Use Framework policy allows sale only if: *"Use of the land sold will not result in creating a nuisance."*
4. Even though the PUC Land Use Framework was formulated to focus on "Land Management Guidance for...Disposition of SFPUC Lands," The City Team has dismissed the importance of this policy document: *"It is not necessary, or feasible, for an RFQ to name all of the City policies and procedures that apply to the project."* [ from Staff Response to "Why doesn't the RFQ discuss the SFPUC Land Use Framework?" ]

Importantly, Staff misstated the essence of the question. **The real question was whether or not the intended disposition of the PUC Reservoir property complies with PUC's policy on "Disposition of SFPUC Lands"; the question was not whether the Land Use Framework policy is "named."**

The PUC Land Use Framework was adopted post-PEIR. Its requirement that use of the Reservoir not result in a nuisance should be enforced.

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The entire Reservoir Project process has avoided discussion or application of the State Surplus Property Statute:

## STATE SURPLUS PROPERTY STATUTE

The State Surplus Land Statute 54222 says:

*Any local agency disposing of surplus land shall send, prior to disposing of that property, a written offer to sell or lease the property as follows:*

*(c) A written offer to sell or lease land suitable for school facilities construction or use by a school district for open-space purposes shall be sent to any school district in whose jurisdiction the land is located.*

PUC's principle of market rate return is not absolute. SF Administrative Code 23 for Real Property Transactions calls for:

SF Administrative Code 23.20 states

*Transfers of Real Property pursuant to this Article shall be paid for no less than 100% of the appraised value, except where the Board of Supervisors determines by resolution that a lesser sum will further a proper public purpose, and provided that the Public Utilities Commission shall be paid at least the historical cost of such Real Property.*

SF Administrative Code 23.3 for Real Property Transactions calls for:

*"... sales price of at least 100% of the appraised value of such Real Property, except where the Board determines either that (a) a lesser sum will further a proper public purpose, or..."*

The Balboa Park Station Area Plan had called for developing the Reservoir to "best benefit the Neighborhood, City, Region as a whole." Yet any analysis of what constitutes "best benefit" has been bypassed. Instead, by fiat, the City declared that the Reservoir would be used for housing to be developed by private developers. And despite the teacher shortage, consideration for teacher housing by school has been minimized.

The Reservoir Project has apparently ducked the State Surplus Property Statute's requirement that the property be offered for school facilities construction. This omission should trigger treatment in the SEIR.

Submitted by:

