San Francisco Planning

1650 MISSION STREET, SUITE 400
SAN FRANCISCO, CA 94103
SFPLANNING.ORG / 415.575.9010

Appeal of Final Subsequent Environmental Impact Report – Balboa Reservoir Project

DRAFT (JULY 17, 2020) – SUBJECT TO CHANGE

DATE: August 3, 2020
TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Lisa M. Gibson, Environmental Review Officer – (415) 575-9032
Wade Wietgrefe, Principal Environmental Planner – (415) 575-9050
Jeanie Poling, Environmental Coordinator – (415) 575-9072
RE: File No. xx, Planning Case No. 2018-007883ENV
Appeal of the Final Subsequent Environmental Impact Report for the Balboa Reservoir Project
HEARING DATE: August 11, 2020
ATTACHMENTS: Attachment A: Appeal Letter
~~Attachment B: Project/Appeal Fact Sheet [Note to Reviewer: Being prepared by EP]~~
Attachment ~~C~~B: Planning Commission Motion 20730 (Certification)
Attachment C~~D~~: Planning Commission Motion 20731 (CEQA Findings)

Commented [PJ(1]: Don't include the attachments provided by the appellant.

PROJECT SPONSOR: Joe Kirchofer and Brad Wiblin, Reservoir Community Partners LLC
APPELLANT: Stuart M. Flashman on behalf of Madeline Mueller, Alvin ~~Y~~a~~l~~a, and Wynd Kaufmyn

---

DEPARTMENT'S RECOMMENDATION: Uphold the SEIR certification and deny the appeal~~———~~

INTRODUCTION

This memorandum and the attached documents are a response to the letter of appeal to the Board of Supervisors (the "Board") regarding the Planning Department's (the "~~"D~~department") issuance of a f~~F~~inal s~~S~~ubsequent ~~E~~environmental i~~I~~mpact r~~R~~eport ("f~~F~~inal SEIR") under the California Environmental Quality Act ("CEQA Determination") for the Balboa Reservoir Project (the "proposed project" or the "project"). The ~~Final~~ final SEIR (provided via email to the Board on April 29, 2020) was certified by the Planning Commission (the "~~"~~Commission") on May 28, 2020.

The appeal to the Board was filed on June 18, 2020 by Stuart M. Flashman on behalf of ~~A~~appellants Madeline Mueller, Alvin ~~Y~~a~~l~~a, and Wynd Kaufmyn ("the ~~"A~~appellant"). The five-page appeal letter from M~~t~~r. Flashman incorporates by reference the following evidence in support of the appeal: Undated set graphics titled "High Level Program Review" showing the five-year construction phasing plan for~~of~~ City College (Exhibit A), City College of San Francisco Transportation Demand Management (TDM) and Parking Plan prepared by Fehr & Peers, dated March 15, 2019 (Exhibit B), and Planning Commission ~~Resolutions~~ Motions M-20730 and M-20731.

The appeal letter and supporting exhibits and attachments are part of Board of Supervisors File No. XXXXX and can be accessed here: [link TBD].

The decision before the Board is whether to uphold the certification of the ~~f~~Final SEIR by the Commission and deny the appeal, or overturn the Commission's decision to certify the ~~F~~final SEIR and return the project to the Planning Department for additional environmental review.

PROJECT DESCRIPTION

The City and County of San Francisco (the City), acting by and through its San Francisco Public Utilities Commission (SFPUC), selected Reservoir Community Partners LLC (a joint venture between BRIDGE Housing Corporation and Avalon Bay Communities), to act as master developer for the redevelopment of a 17.6-acre site in the West of Twin Peaks area of south central San Francisco known as the Balboa Reservoir. The proposed project would develop the site with mixed-income housing, open space, a childcare facility/community room available for public use, retail space, on- and off-street parking, and new streets, utilities, and other infrastructure. Two different options for the site's residential density to capture a range of possible development on the project site are under consideration: The first is the Developer's Proposed Option (1,100 dwelling units), proposed by Reservoir Community Partners LLC. The second is the Additional Housing Option (1,550 dwelling units), developed by the City to fulfill the objectives of the San Francisco General Plan to maximize affordable housing and housing in transit-rich neighborhoods. Development under each of the two options would entail the same land uses and street configurations, and similar site plans.

Overall, the proposed project would construct up to approximately 1.8 million gross square feet of uses, including between approximately 1.3 and 1.5 million gross square feet of residential space (1,100 to 1,550 dwelling units plus residential amenities), approximately 10,000 gross square feet of community space (childcare facility and a community room for public use), approximately 7,500 gross square feet of retail, up to 550 residential parking spaces and 750 public parking spaces in the Developer's Proposed Option, and up to 650 residential parking spaces in the Additional Housing Option. The buildings would range in height from 25 to 78 feet in the Developer's Proposed Option and from 25 to 88 feet in the Additional Housing Option. Approximately 4 acres would be devoted to publicly accessible open space. The SFPUC would retain ownership of an 80-foot-wide strip of land located along the southern edge of the site where an underground water transmission pipeline is located.

Commented [PJ(2]: Put in a table instead.

The proposed project would include transportation and circulation changes, including the extension of existing north-south Lee Avenue across the site, and a new internal street network. The proposed project would also include Ocean Avenue streetscape modifications consisting of the conversion of five 21-foot-long metered parking spaces along the frontage of 1150 Ocean Avenue to metered loading spaces between the hours of 6 a.m. and 2 p.m. (subject to SFMTA approval). The project would include a roadway network that would be accessible for people walking, including people with disabilities, bicycling, and driving. The project would also add new utility infrastructure to supply the site with potable water, wastewater collection, stormwater collection and treatment, electricity, natural gas, and communications. ~~Attachment B to this appeal response contains a summary of the project's background.~~

PROJECT BACKGROUND

Balboa Park Station Area Plan Environmental Review

The ~~Department~~department initiated the Balboa Park Station Area Plan ("Area Plan") planning process in 2000. The Area Plan covers an approximately 210-acre area generally bounded by parcels along the northern edge of Ocean Avenue, the southern boundary of Archbishop Riordan High School, Judson Avenue and Havelock ~~S~~street to the north; the northeastern edge of City College, and San Jose and Delano avenues to the east; Niagara and Mount Vernon avenues, and parcels along the southern edges of Geneva and Ocean avenues to the south; and Manor Drive to the west. The area plan's objectives and policies were developed to implement a set of land use and zoning controls; urban design and architectural guidelines; and transportation/infrastructure, streetscape, and open space improvements that would enhance the overall urban environment and encourage new development, particularly housing and neighborhood-serving commercial uses.

The ~~Department~~department prepared the Balboa Park Station Area Plan [Program] Environmental Impact Report ("PEIR"), which analyzed transportation/infrastructure and public space improvements and potential future development in the ~~Area P~~plan area expected in the near future (2009–2010) or within the long-term (2010–2025) timeline. The near-future development program analyzed also included two individual near-term projects named "Phelan Loop Site" and "Kragen Auto Parts Site," which are now built.[1] On April 7, 2009, the San Francisco Board of Supervisors adopted the area plan. The Mayor subsequently signed the legislation for the area plan, which was enacted on May 18, 2009.

The PEIR provided a first-tier, plan-level analysis of the environmental impacts associated with the development program proposed for the entire plan area, including the Balboa Reservoir project site. The area plan and the PEIR do not place a cap on the number of housing units within the plan area or the project site. In order to conduct a program-level analysis, the ~~Department~~department made appropriate development assumptions at the time of the PEIR. The PEIR analyzed a development program of 500 residential units and 100,000 square feet of open space for the Balboa Reservoir site.

Balboa Reservoir Project EIR

The SEIR is tiered from a previously certified program EIR (the "Area Plan PEIR") in accordance with CEQA Guidelines section 15168~~(c)~~(c), which provides for environmental review of subsequent activities under the same program. The proposed project at the Balboa Reservoir site is the first development project under the adopted area plan in which conditions triggering a subsequent EIR are met pursuant to CEQA Guidelines section 15162.

The SEIR is a project-level environmental review that includes more details on the currently proposed project at the Balboa Reservoir than were in the PEIR. The SEIR analyzed the proposed development at the project site compared to the development assumed in the PEIR to determine whether it would be within the scope of the

---

[1] The "Phelan Loop Site" (1100 Ocean Avenue) is bounded by Lee Avenue to the west, Ocean Avenue to the south, San Francisco Fire Department Station 15 to the east, and Balboa Reservoir to the north. (It is noted that Phelan Loop is now referred to as the City College Terminal. The terminology here is from the PEIR.) This site is a mixed-use development with residential above ground-floor retail and public open space (Unity Plaza). The "Kragen Auto Parts Site" (1150 Ocean Avenue) is bounded by Ingleside Branch Library to the west, Ocean Avenue to the south, Lee Avenue to the east, and the Balboa Reservoir to the north. This site is a mixed-use development with residential above ground-floor retail.

program-level analysis or whether the project would result in new significant impacts or substantially more severe significant impacts than those identified in the PEIR.

The initial study (SEIR Appendix B), explains why the project would not have new significant impacts or substantially more severe significant impacts than those previously identified in the PEIR for 19 of the 22 resource topic areas.

Where the project might have significant impacts that have not been adequately addressed in the PEIR, either due to the nature of the project, or due to new information that was not previously available, those issues were carried forward for detailed analysis. The ~~Department~~department determined that the proposed project would result in new significant impacts and substantially more-severe significant impacts than previously identified in the PEIR for transportation and circulation, air quality, and noise.

PROCEDURAL BACKGROUND

Table ~~2~~1. CEQA Procedural Background, identifies the dates of the major CEQA milestones for the Balboa Reservoir Project's environmental analysis.

Formatted: Not Highlight

Formatted: Not Highlight

TABLE ~~2~~1. CEQA PROCEDURAL BACKGROUND

CEQA Milestone	Date
Notice of ~~P~~preparation ("NOP") of a subsequent~~n~~ EIR	October 10, 2018
_____*NOP ~~p~~Public ~~S~~scoping ~~P~~period*	October 10, 2018 – November 12, 2018 (33 days)
_____*Public ~~S~~scoping ~~M~~meeting*	October 30, 208
Draft SEIR ~~p~~Published	August 7, 2019
_____*Draft SEIR ~~P~~public ~~R~~review ~~p~~Period*	August 8, 2019 – September 23, 2019 (4~~5~~6 days)
_____*Public ~~H~~hearing on ~~D~~draft SEIR*	September 12, 2019
Responses to c~~C~~omments ("RTC") ~~P~~document published	April 29, 2020 (30 days prior to certification hearing; local requirement is 10 days)
~~Certification of the~~ Final subsequent ~~S~~EIR certified	May 28, 2020
Appellant files appeal of SEIR certification	June 18, 2020

CEQA GUIDELINES

The department prepared the ~~F~~final SEIR ~~has been prepared~~ in accordance with CEQA, the CEQA Guidelines, and local CEQA procedures under chapter 31 of the San Francisco Administrative Code. The purpose of the ~~f~~Final SEIR is to disclose any potential impacts on the physical environment resulting from implementation of the proposed project and provide an opportunity for public review and comment before decision-makers decide to approve or deny the project. The SEIR is an informational document intended to inform public agency decision-makers and the public of the significant environmental effects of a project proposal, identify possible ways to minimize the significant effects, and describe feasible alternatives to the project

Commented [PJ(3]: Global: Decide when to call it the 'final SEIR' vs. the 'SEIR.'

to reduce or eliminate those significant effects. Certification of an environmental document does not constitute a project approval of any kind.

STANDARDS OF ADEQUACY FOR CERTIFICATION OF AN EIR

On May 28, 2020, the Planning Commission reviewed and considered the ~~F~~final SEIR at a duly noticed public hearing. The ~~Planning~~ Commission found that the ~~F~~final SEIR reflected the independent judgment and analysis of the City and County of San Francisco. The ~~Planning~~ Commission found that the ~~f~~Final SEIR was adequate, accurate and objective, and that the ~~R~~responses to ~~C~~comments ("RTC") document contained no significant revisions to the ~~d~~Draft SEIR. The ~~Planning~~ Commission certified the ~~F~~final SEIR in compliance with the requirements of CEQA, the CEQA Guidelines, and chapter 31 of the San Francisco Administrative Code.

Under San Francisco Administrative Code section 31.16(c)(3), the grounds for appeal of an EIR:

> "shall be limited to whether the EIR complies with CEQA, including whether it is adequate, accurate and objective, sufficient as an informational document, correct in its conclusions, and reflects the independent judgment and analysis of the City and whether the Planning Commission certification findings are correct."

The standards for adequacy of an EIR are set forth in CEQA Guidelines section 15151, which provides:

> "An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure."

San Francisco Administrative Code section 31.16(b)(6) provides that in reviewing a CEQA decision on appeal, the Board of Supervisors "shall conduct its own independent review of whether the CEQA decision adequately complies with the requirements of CEQA. The Board shall consider anew all facts, evidence and issues related to the adequacy, accuracy and objectiveness of the CEQA decision, including, but not limited to, the sufficiency of the CEQA decision and the correctness of its conclusions."

~~SIGNIFICANT AND UNAVOIDABLE PROJECT IMPACTS AND MITIGATION MEASURES~~

~~**Table 2. Significant and Unavoidable Impacts and Mitigation Measures**, provides an abbreviated list of the significant and unavoidable impacts and accompanying mitigation measures identified in the SEIR. All other impacts would be either less than significant or can be reduced to a less-than-significant level with implementation of mitigation measures identified in the SEIR.~~

TABLE 2. SIGNIFICANT AND UNAVOIDABLE IMPACTS AND MITIGATION MEASURES	
Significant and Unavoidable Impacts	**Mitigation Measures**
Transportation and Circulation	
Operation of the project, including proposed street network changes, would impact existing passenger and freight loading zones along Lee Avenue between Ocean Avenue and the Project site, and may create potentially hazardous conditions for people bicycling and may substantially delay public transit. The SEIR finds this to be a significant project-level and cumulative impact.	No feasible mitigation measures were identified.
The project, in combination with reasonably foreseeable future projects, may result in a potentially significant cumulative impact related to public transit delay and the project could contribute considerably. The SEIR finds this to be a significant cumulative impact.	M-C-TR-4: Implement Measures to Reduce Transit Delay
Noise	
Project construction would cause a substantial temporary or periodic increase in ambient noise levels at noise-sensitive receptors above levels existing without the project. The SEIR finds this to be a significant project-level and cumulative impact.	M-NO-1: Construction Noise Control Measures
Air Quality	
During construction, the project would generate criteria air pollutants that would violate an air quality standard, contribute substantially to an existing or projected air quality violation, or result in a cumulatively considerable net increase in criteria air pollutants. The SEIR finds this to be a significant impact.	M-AQ-2a: Construction Emissions Minimization M-AQ-2b: Low-VOC Architectural Coatings M-AQ-2c: On-Road Truck Emissions Minimization for the Compressed Construction Schedule M-AQ-2d: Offset Construction Emissions for the Compressed Schedule
Construction and operation of the project would generate toxic air contaminants, including DPM, which could expose sensitive receptors to substantial pollutant concentrations. The SEIR finds this to be a significant impact.	M-AQ-2a: Construction Emissions Minimization M-AQ-4a: Diesel Backup Generator Specifications M-AQ-4b: Install MERV 23 Filters at the Daycare Facility

~~The project, in combination with reasonably foreseeable future projects, would contribute to cumulative regional air quality impacts.~~	~~M-AQ-2a: Construction Emissions Minimization~~ ~~M-AQ-2b: Low-VOC Architectural Coatings~~ ~~M-AQ-2c: On-Road Truck Emissions Minimization for the Compressed Construction Schedule~~ ~~M-AQ-2d: Offset Construction Emissions for the Compressed Schedule~~ ~~M-AQ-4a: Diesel Backup Generator Specifications~~
~~The project, in combination with reasonably foreseeable future projects, could contribute to cumulative health risk impacts on sensitive receptors.~~	~~M-AQ-2a: Construction Emissions Minimization~~ ~~M-AQ-4a: Diesel Backup Generator Specifications~~ ~~M-AQ-4b: Install MERV 13 Filters at the Daycare Facility~~

CEQA FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS

As described in CEQA Guidelines section 15093, if the ~~f~~Final EIR identifies significant effects for a proposed project, but the effects are not avoided or reduced to a less-than-significant level (i.e., significant and unavoidable impacts), a decision-maker that approves the project must find that any such unavoidable significant effects are acceptable due to overriding economic, legal, technological, social, or other policy considerations. This is known as a statement of overriding considerations. In making these findings, the decision-maker must balance the benefits of the proposed project against its unavoidable environmental effects.

The Planning Commission has ~~sole~~ authority to ~~adopt a resolution~~ recommend~~ing approval~~ to the Board of Supervisors approval of the Balboa Reservoir Project development agreement~~,~~ to approve associated General Plan and Planning Code amendments, including amendments to the Zoning Map to create a new Balboa Reservoir Special Use District; and to approve the Balboa Reservoir Design Standards and Guidelines. The Commission was the first decision-maker~~,~~ under CEQA~~,~~ that was required to adopt CEQA findings, including a statement of overriding considerations, when it approved the ~~P~~project ~~(i.e., adopted resolutions recommending approval to the Board of the Plan)~~. On May 28, 2020, following ~~Planning~~ Commission certification of the ~~f~~Final SEIR, the ~~Planning~~ Commission approved the ~~p~~Project and adopted CEQA findings as part of its approval action~~,~~ in Planning Commission ~~Resolution~~ Motion ~~No.~~ M-20731 (Attachment C to this appeal response).

PLANNING DEPARTMENT RESPONSES

One appeal letter was timely filed concerning certification of the ~~f~~Final SEIR for the Balboa Reservoir Project. The concerns raised in the letter are responded to below.

Response 1: The SEIR adequately and accurately describes the project area and existing conditions and appropriately analyzes impacts on schools.

The ~~A~~appellant contends that the SEIR does not provide adequate information ~~of~~ concerning surrounding uses, both present and future, for the City College Ocean Campus, Archbishop Riordan High School, and Lick Wilmerding High School, as well as how they would be affected by the project.

The SEIR meets CEQA requirements for describing the existing or baseline physical conditions and evaluates the impacts of the project on public services, including nearby schools and City College Ocean Campus. The adjacent land uses in the site vicinity, including City College and Archbishop Riordan High School are adequately described on SEIR pp. 2-9 to 2-12, 12 consistent with CEQA Guidelines section 15125, which states, "[t]he description of the environmental setting shall be no longer than is necessary to provide an understanding of the significant effects of the proposed project and its alternatives." As described in RTC Response CEQA-2 (p. 4.A-23), pursuant to CEQA Guidelines section 15125(a)(1), the physical conditions existing when the notice of preparation was published (October 10, 2018) was used to establish the baseline for the project-level analysis in the SEIR and initial study. The SEIR reflects the existing conditions in the vicinity, including City College and Archbishop Riordan High School, as of 2018.

The appellant's statement that future City College projects should be included in the project setting is incorrect, as the future City College projects are considered under cumulative future conditions and do not represent existing or near-term baseline conditions. The SEIR adequately analyzes cumulative impacts, including potential impacts associated with future City College facilities master plan projects funded by the March 2020 bond, and this topic is addressed in Response 3 below.

In addition, each SEIR section and initial study section also describes the existing context of the project site and vicinity relevant to the topic's impact discussions, consistent with CEQA Guidelines section 15125. Table 3 (the same as Table RTC-4 in the RTC document) provides the location of the existing setting discussion for each topic area in the SEIR.

[INSERT TABLE]

~~Specific to effects of the proposed project on City College,~~ The SEIR analyzes impacts of the proposed project on public services, including schools, ~~are analyzed~~ and ~~the SEIR~~ determines that the project would not result in the need for new facilities, the construction of which could result in significant impacts on the environment (SEIR Appendix B, pp. B-82 to B-90). As stated in RTC Response PS-2 on RTC p. 4.H-60, "[t]he CEQA Guidelines Appendix G question for public services, with respect to educational facilities, asks whether the project would 'result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for … schools….'" [emphasis added]. It is noted that Response PS-2 was provided in response to a comment alleging that the loss of the project site's use as a parking lot for~~d~~ City College would decrease access to educational opportunities. Please see Response 4, below, for a discussion of secondary impacts related to parking.

Commented [PJ(4]: Add emphasis

Concerning Archbishop Riordan High School, the SEIR adequately describes the school and thoroughly analyzes construction period noise and air quality effects on that institution; please refer to Response 6 for a discussion of noise impacts. There are no reasonably foreseeable future construction projects on the high school campus that would require cumulative impact analysis. Regarding Lick Wilmerding High School, this institution is more than 1,000 feet from the project site and very close to I-280. Therefore, the proposed project would be unlikely to result in any noise, air quality, or other impacts on Lick Wilmerding. The ~~Appellant~~appellant has not made any specific allegation as to any specific impacts on either Archbishop Riordan ~~High~~ or Lick Wilmerding high schools and, therefore, no more specific response is possible. Moreover, the ~~Appellant~~appellant has provided no evidence that

the project would require the construction of new off-site public service facilities ~~would be required~~, or that any such facilities would have significant environmental effects not already disclosed in the SEIR.

Response 2: The affordable housing percentage is adequately identified in the SEIR.

The ~~Appellant~~appellant contends that the affordable housing percentage in the project description is inaccurate and inconsistent. The ~~Appellant~~appellant states that lower income households are more likely to use public transit; thus, the unspecified final percentage of units and level of affordability makes VMT, air quality, pedestrian and bicyclist safety, and transit delay analysis inaccurate.

The ~~Appellant~~appellant is correct that the SEIR notes "up to 50 percent" of the units would be designated affordable; however, as explained below, the affordable housing share has been confirmed to be 50 percent. The SEIR specifies on p. 2-13 that the units would be designated affordable to persons earning between 55 and 120 percent of the area median income. The RTC document on p. 5-11 further updates the project description to state that as part of the project's 50 percent affordable housing element, 150 of the units would be deed-restricted to occupancy by educator households with an average income of 100 percent of the area median income. ~~A~~ The development agreement ~~is part of the entitlement process requiring~~that the Planning Commission recommends for approval by the ~~b~~Board of ~~S~~supervisors ~~and mandates that~~obligates the developer to cause 50 percent of the units constructed on the project site to be ~~designated~~ affordable.[2]

The ~~Appellant~~appellant argues that different percentages and levels of affordability would change the SEIR analysis because lower income households are more likely to use public transit. The SEIR analysis does not ~~distinguish quantify~~~~between~~ the environmental effects of an unit occupied by a low- or moderate-income ~~household affordable unit~~ versus a ~~market rate~~ unit ~~or between~~ occupied by a higher income ~~levels~~household. For example, trip generation rates used in the analysis are consistent with the ~~Department~~department's Transportation Impact Analysis Guidelines and based on number of bedrooms in a dwelling unit, not the income of the household. Therefore, the quantitative analysis assumes a one-bedroom market-rate unit would have the same trip generation rate as a one-bedroom affordable unit.[3]

Even if the percentage of transit trips are higher for low- or moderate-income households, as alleged by the appellant, the analysis of potential impacts on transit service would not change because the threshold of significance for transit impacts is transit delay caused by increased vehicle trips on nearby streets, not by increased occupancy load of transit vehicles. Any shift of trips from vehicles to transit, as alleged by the appellant, would tend to decrease other operational impacts, including air quality, noise, pedestrian and bicycle safety, and transit delay. Construction period air ~~Air~~ quality and noise impacts are based on the scale of the project and location of nearby sensitive receptors. As a result, ~~even if Appellant's argument is correct,~~ the SEIR provides a conservative, worst-case assessment of potential environmental effects from the construction of the new housing units regardless of whether those units are affordable or market rate. Refer to Response 7, which explains why noise, air quality, and transportation impacts would remain regardless of the affordable housing percentage.

Commented [PJ(5]: Leigh's edit – used it instead of Steve's.

Commented [PJ(6]: The DA will be signed after the approval hearing. The draft is posted here: it's posted here: https://sfgov.legistar.com/LegislationDetail.aspx?ID=4431185&GUID=D8DB88D0-9CCB-42DC-B411-2061DC96C35F&Options=ID|Text|&Search=baLBOA
Board file 200423

Commented [PJ(7]: WW: Please consider reordering so that this is the first point we make in this response.

Commented [PJ(8]: WW: I would prefer to leave these additions for response 7. The way this is phrased isn't quite correct.

[2] ~~[Add citation to DA when ready]~~Balboa Reservoir Draft Development Agreement, Exhibit D [add date]
[3] The supporting trip generation and travel demand data is provided in SEIR Appendix C1, Travel Demand Memorandum.

Response 3: Cumulative impacts on noise, air quality, transit delay, and pedestrian and bicycle safety are adequately identified in the SEIR. The SEIR adequately and accurately identifies all feasible mitigation measures to reduce the project's transportation, noise, and air quality impacts.

The ~~Appellant~~appellant contends that the SEIR fails to identify and mitigate significant impacts related to cumulative impacts on noise, air quality, transit delay, pedestrian and bicycle safety from construction of the project and adjacent City College construction projects (e.g., Science, Technology, Engineering, Art, and Math [STEAM] building and Diego Rivera Theater, both of which would be built on City College property on the ~~so-called~~ Balboa Reservoir "east basin," which is between the project site and Frida Kahlo Way). The ~~Appellant~~appellant argues that the cumulative impacts of the proposed project combined with those of the City College Facilities Master Plan (facilities master plan) projects are ignored and would exacerbate the already identified significant and unavoidable impacts in the SEIR.

The cumulative impact analysis in the SEIR is consistent with the requirements of CEQA and the state CEQA Guidelines. CEQA Guidelines section 15355 defines cumulative impacts as "two or more individual effects which, when considered together are considerable or which compound or increase other environmental impacts. (a) The individual effects may be changes resulting from a single project or a number of separate projects. (b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present and reasonably foreseeable future projects."

Potential cumulative impacts of the City College east basin facilities master plan projects are considered in the SEIR, and the approach to the analysis is described on SEIR pp. 3.A-10 and 3.A-14. Contrary to the a~~A~~ppellant's assertion, the RTC document acknowledges the passage of the bond measure in March 2020 (RTC p. 4.G-4). RTC Response CU-1: Cumulative Analysis describes the range of projects that could be funded by the bond, including the STEAM building and fine and visual arts and performing arts facilities (RTC p. 4.G-4).

The RTC document thoroughly responds to the ~~Appellant~~appellant's points regarding cumulative construction impacts on noise, air quality, transit delay, and pedestrian and bicycle safety. The following summarizes where each topic is analyzed in the SEIR, the mitigation measures identified to reduce those impacts, and further discusse~~d~~ion in the RTC document:

- Cumulative construction-related transportation impacts are discussed under Impact C-TR-1 starting on SEIR p. 3.B-91. As stated on SEIR p. 3.B-91 "construction of the proposed project or variant may overlap with construction of other cumulative development and transportation infrastructure projects, including new development and/or modernization of existing buildings as part of the City College Facilities Master Plan...." The SEIR concludes that construction-related transportation impacts would be less than significant and no mitigation measures are required.

- Cumulative transit impacts are discussed under Impacts C-TR-4 to C-TR-6b on SEIR pp. 3.B-92 to 3.B-102. As discussed on SEIR p. 3.B-95, the transit delay contribution from the project, City College facilities master plan projects, and other cumulative developments is expected to cumulatively increase transit delay and could exceed the threshold of significance for individual Muni routes. The SEIR analysis identifie~~sd~~ a significant impact related to cumulative transit delay and contains Mitigation Measure M-C-TR-4 (Implement Measures to Reduce Transit Delay) requiring the project sponsor to fund several

Commented [PJ(9]: Global: nonbreaking hyphen

potential SFMTA projects in the project vicinity to reduce transit delay. The SEIR, and concluded that even with implementation of Mitigation Measure M-C-TR-4 (Implement Measures to Reduce Transit Delay), the impact would be significant and unavoidable, given the uncertainty of SFMTA approval of the identified capital improvement measures in the future. The SEIR identifies a significant impact related to cumulative secondary effects on people bicycling and public transit delay due to potential conflicts associated with the existing freight and passenger loading activities on Lee Avenue between Ocean Avenue and the project associated with Whole Foods and other Ocean Avenue businessesdemand. No feasible mitigation measures are identified, and given the uncertainty regarding the ability of Whole Foods and other businesses to manage their future loading activities to avoid pedestrian and bicycle conflicts and potential transit delay; thusdemand to be accommodated, the SEIR concludes that cumulative impacts would be significant and unavoidable.

- Cumulative construction-related noise impacts are discussed under Impact C-NO-1 starting on SEIR p. 3.C-38. As explained on RTC p. 4.G-6, t"The "cumulative noise analysis is conservative in which it considers the worst-case scenario (i.e., the East Basin Parking Structure being the closest facilities master plan project) would be constructed near Archbishop Riordan High School (sensitive receptor)." at the same time that noise-generating construction is occurring at the project site. The SEIR analysis identifies a significant impact related to cumulative noise impacts on sensitive receptors and identifies Mitigation Measure M-NO-1 (Construction Noise Control Measures). The SEIR, and concludes that even with implementation of Mitigation Measure M-NO-1 (Construction Noise Control Measures), the impact would be significant and unavoidable.

- Cumulative operational noise impacts related to traffic increases of the project in combination with cumulative projects are discussed under Impact C-NO-2 on SEIR p. 3.C-40. The SEIR analysis concluded that the proposed project, in combination with the City College fFacilityies mMaster Pplan projects could result in significant cumulative substantial permanent increase in ambient noise levels; however, the proposed project's contribution would not be cumulatively considerable and the impact would be less than significant. No mitigation measures are identified for operational noise impacts related to increases in traffic because the cumulative impact is less than significant.

- Cumulative mechanical equipment noise impacts of the project in combination with cumulative projects, including the Performing Arts Education CenterCity College facilities master plan projects, are discussed under Impact C-NO-3 on SEIR p. 3.C-41. The SEIR analysis concludes that the proposed project, in combination with the City College facilitiesy master plan projects and other nearby projects could result in significant cumulative substantial permanent increase in ambient noise levels; however, the proposed project's contribution would not be cumulatively considerable with the implementation of Mitigation Measure M-NO-3 (Fixed Mechanical Equipment Noise Controls) and the impact would be less than significant with mitigation.

- Cumulative construction-related air quality impacts are discussed under Impact C-AQ-2 starting on SEIR p. 3.D-91. As explained on RTC pp. 4.G-5 to 4.G-6, the "project-level health risk assessment identified sensitive receptors that are close to where the new City College fFacilities Mmaster Pplan projects might be located, and acknowledges thate possibility that these projects could generate construction-related toxic air contaminant emissions *at the same time as the proposed project* (emphasis added)." The SEIR analysis identifies a significant impact related to cumulative health risk on offsite and onsite sensitive

receptors with respect to increased cancer risk, identifiesd Mitigation Measures M-AQ-2a (Construction Emissions Minimization), M-AQ-4a (Diesel Backup Generator Specifications), and M-AQ-4b (Install MERV 13 Filters at the Daycare Facility). The SEIR ~~appropriate mitigation measures, and~~ concludes that even with implementation of Mitigation Measures M-AQ-2a ~~(Construction Emissions Minimization)~~, M-AQ-4a ~~(Diesel Backup Generator Specifications)~~, and M-AQ-4b ~~(Install MERV 13 Filters at the Daycare Facility)~~, such impacts would be significant and unavoidable.

- As discussed on draft SEIR pp. 3.A-3 and 3.B-31, the proposed project meets the Public Resources Code section 21099(d) criteria as a residential, mixed-use infill project in a transit priority area; therefore, parking, and/or its displacement, is not considered a significant impact on the environment pursuant to CEQA. Refer to Response 4 regarding how indirect parking effects are addressed in the SEIR and RTC document.

In conclusion, the SEIR's cumulative analysis appropriately considers the growth and development information available for City College, including the future buildings on the east basin and passage of the March 2020 bond measure. As explained in RTC Response CEQA--3, Administrative Record (RTC p. 4.A-31), the planning department staff engaged in communications with City College staff regarding the cumulative projects.

Although not a concern raised by the ~~Appellant~~appellant, ~~the Department~~department staff acknowledges that City College, as a separate lead agency, ~~is in the process of~~ has conduct~~in~~ged separate CEQA analysis for ~~the~~ its facilities master plan projects, including its 2004 Facilities Master Plan EIR and a recent addendum to that EIR. Subsequent to the publication of the RTC document on April 29, 2020, the San Francisco Community College District filed a Notice of Determination on June 29, 2020 for Addendum No. 2 to the City College of San Francisco 2004 Facilities Master Plan EIR. Addendum No. 2 (addendum) addressed proposed changes to the projects analyzed in the 2004 facilities master plan EIR, which involved revisions to the Arts Center (now known as the Diego Rivera Theater), the Child Development Center (now known as the Childcare Center), and Advanced Technology Learning Center and Administration Building (together now known as the STEAM Building).[4] ~~Based on review of the addendum, t~~The projects ~~described within~~analyzed in the addendum are consistent with the facilities master plan projects considered in the SEIR's cumulative analysis. For example, the Childcare Center is included as a residential sensitive receptor in the SEIR's air quality analysis. The SEIR's noise analysis is based on the conservative assumption that the east basin parking garage would be constructed concurrently with the proposed project, thus analyzing impacts of the cumulative project to a sensitive receptor ~~at~~ 80 feet away (Archbishop Riordan High School), whereas the Diego Rivera Theater and STEAM Building would be approximately 300 feet from that receptor.

The ~~Appellant~~appellant does not provide any substantial evidence regarding the completeness of the cumulative impact analysis, nor does ~~the~~y identify any additional feasible mitigation measures beyond those identified in the SEIR.

Commented [PJ(10]: Revise footnote as appropriate. I am sending the NOD to ESA.

Commented [PJ(11]: Rephrase this to explain that there are sensitive receptors even closer that are analyzed in the SEIR, so the analysis covers this sensitive receptor too.

Commented [PJ(12]: WW: Global: please update the conclusion statements to be around the adequacy of the EIR (our substantial evidence) and the process, not if the appellant provides substantial evidence.

[4] ~~Impact Sciences~~City College of San Francisco, Addendum No. 2 to the City College of San Francisco 2004 Facilities Master Plan EIR, ~~prepared for City College of San Francisco~~, May 2020; and Notice of Determination filed with the California Office of Planning and Research, SCH No. 2003102086 on June 25, 2020.

Response 4: The SEIR adequately and accurately analyzes secondary impacts related to parking.

The ~~Appellant~~appellant contends that the SEIR does not take into consideration (1) that expansion of the City College campus would increase student enrollment and require more student parking, and (2) VMT and air quality impacts due to ~~the~~ cumulative parking shortage.

The SEIR discloses that the project would displace the existing parking that currently occupies the project site, some of which is used as overflow parking by City College students, faculty, and staff. (SEIR p. 2-7). It should also be noted that the development agreement requires the project sponsor to replace a portion of the existing parking spaces used as overflow parking by City College such that some overflow parking would remain available to students, faculty and staff. The SEIR appropriately evaluates impacts to public services, including secondary impacts related to the loss of City College parking, as discussed in Impact PS-1 on SEIR Appendix B, pp. B-85 to B-91. RTC Response PS-2 (beginning on p. 4.H-59) thoroughly addresses the ~~Appellant~~appellant's concerns regarding indirect or secondary effects due to the loss of parking. RTC Response TR-7: Parking (beginning on p. 4.C-61) addresses concerns regarding parking supply and utilization for informational purposes.

As noted on SEIR Appendix B p. B-87, parking loss or deficit in and of itself does not result in direct changes to the environment. In 2013, Governor Brown signed California SB 743, which amended the CEQA statute itself with respect to parking, among other things. Specifically, the bill stated that, effective January 1, 2014, parking (and aesthetics) shall not be considered significant impacts on the environment for residential, mixed-used residential, or employment center projects on an infill site within a transit priority area, as defined in CEQA.

RTC Response PS-2: Public Services and Secondary Impacts, explains the CEQA Guidelines Appendix G question as it relates to public services, and that per CEQA Guidelines section 15358(b), effects under CEQA must be related to a physical change. As further stated in RTC Response PS-2, in order for this impact to occur, it must ~~be the case~~first be determined that the loss of the existing City College parking would conflict with one or more performance objectives established by City College. RTC Response PS-2 explains in detail, on p. 4.H-61, that the reasoning with respect to the potential effect of the removal of the surface parking lot is as follows:

> "a) Would the loss of the existing use of the project site for City College parking conflict with one or more performance objectives established by City College?
>
> b) If a) is yes, would that require the need for new or physically altered City College facilities, such as TDM or replacement parking?
>
> c) If b) is yes, would the construction or operation of such new or physically altered City facilities, such as TDM or replacement parking, result in any adverse physical effects? Examples include an increase in VMT, increased emissions of criteria pollutants and/or toxic air contaminants, increased noise, or other impacts.
>
> Only if questions a), b), and c) were all answered in the affirmative would a significant impact result under CEQA."

RTC Response PS-2 explains that with regard to question a), "As discussed on draft SEIR Appendix B, p. B-90, the City College sustainability plan has a performance objective to reduce automobile trips, with which the removal of parking at the project site would not conflict. City College does not have performance objectives or

Commented [PJ(13]: WW: Please also cite OPR's technical advisory, p. 20-21, which states that the removal of off-street parking spaces would not likely lead to a substantial or measurable increase in vehicle travel, and therefore generally should not require an induced travel analysis. https://opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf

Our SF TIA guidelines also support this in the VMT memo, including annotated bibliography.

Commented [PJ(14]: Need to better summarize the two-part question on RTC page 4.H-60.

other standards related to the provision of parking, except insofar as it seeks to reduce automobile trips, which would serve to decrease parking use." RTC Response PS-2 also includes for informational purposes that neither California Community Colleges nor City College uses parking availability as a variable for projecting future enrollment or as an enrollment strategy (p. 4.H-61). It is the foregoing analysis that the SEIR relies upon to determine that effects on City College resulting from the loss of parking on the project site would result in a less-than-significant impact.

Although the answer to question a) is no, the ~~Department~~department provided additional discussion regarding questions b) and c) for informational purposes. Indirect or secondary effects due to the loss of parking and City College's performance objective to reduce automobile trips are appropriately analyzed on SEIR Appendix B, p. B-90. The SEIR states that the hypothetical shortfall in parking supply "would cause some drivers to shift to another mode of travel," among other things such as rearranging travel or parking elsewhere. Studies show that the removal of parking would likely cause some drivers to shift to another mode of travel; thus, the information in the SEIR regarding this shift is based on substantial evidence.

Commented [PJ(15)]: Make this stronger. What studies?

[Add a discussion to respond to the appellant's statement that the facilities master plan will significantly increase City College enrollment and increase parking demand. See RTC 4.H-61 to -63]

The ~~Appellant~~appellant provides no substantial evidence or new information to substantiate the claim that secondary impacts related to parking would result in significant impacts.

Response 5: The SEIR adequately and accurately analyzes the project's land use impacts.

The ~~Appellant~~appellant contends that the SEIR fails to identify and mitigate significant impacts ~~including~~ associated with land use, further stating that the project is inconsistent with two of San Francisco's priority policies; specifically priority policy 2 (conservation and protection of existing housing and neighborhood character to preserve the cultural and economic diversity of neighborhoods) and priority policy 8 (protection of parks and open space and their access to sunlight and vistas).[5]

The SEIR adequately and accurately analyzes the project's land use impacts. The potential impacts of the project with regard to land use are analyzed under Topic E.1 of the initial study, on SEIR Appendix B, pp. B-12 to B-15. Under CEQA, a project would result in a significant land use impact if it ~~would~~ (1) would physically divide an established community, ~~and~~ or (2) would cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. As discussed on p. B-14 of SEIR Appendix B, the proposed project would not divide an established community; instead the project would -add connections through the community by ~~because the project would~~ extending ~~a network of~~ pedestrian and bicycle facilities through the project site, and extending Lee Avenue to connect to the proposed interior streets.

Compatibility with existing zoning and plans and land use impacts are analyzed in SEIR Appendix B pp. B-2 to B-7 and pp. B-12 to B-15. CEQA Guidelines section 15125(d) requires an EIR to "discuss any inconsistencies between the proposed project and applicable general plans, specific plans, and regional plans." This consideration

[5] The ~~Appellant~~appellants incorrectly lists policy number 7 in the appeal letter.

of plan inconsistency is part of the discussion of the project's environmental setting, pursuant to CEQA Guidelines section 15125(d). As discussed on SEIR Appendix B, pp. B-3 and B-14, a conflict between a proposed project and plans, policies, and regulations do not, in and of itself, indicate a significant effect on the environment within the context of CEQA. CEQA Guidelines section 15382 defines a significant effect on the environment as "a substantial or potentially adverse change in the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance." Therefore, for a project to result in a significant impact under CEQA with respect to a conflict with the general plan or other policies, the project must be inconsistent or otherwise conflict with a plan or policy adopted for the purpose of mitigating an environmental effect *and* result in a physical environmental effect related to the identified policy conflict. As stated in RTC Response PP-1 (p. 4.H-10), to the extent that such physical environmental impacts may result from such conflicts, the SEIR discloses and analyzes the physical impacts under the relevant topic sections, of a project may result from conflicts with one of the policies related to a specific resource topic, such physical impacts are adequately analyzed in the SEIR within each topic sections.

RTC Response PP-1 (p. 4.H-11) explains that changes to neighborhood character are not considered significant environmental effects under CEQA unless the changes would result in a substantial adverse physical change in the environment. That response explains that physical environmental effects related to building height, such as wind and shadow, are discussed in the draft SEIR Appendix B, Sections E.10 and E.11, respectively. However, as stated on SEIR Appendix B p. B-12, aesthetic impacts of residential or mixed-use residential project on an infill site in a transit priority area shall not be considered significant impacts on the environment, pursuant to CEQA Guidelines section 21099; therefore, the environmental review does not consider aesthetics in determining the significant of its impacts under CEQA. RTC Response PP-1 acknowledges that the Balboa Park Station Area Plan includes language accompanying Policy 6.4.1 stating that "new development should add to the district's character, create a human scale public realm, and fit within the city's traditional fabric." The policy considerations of changes in neighborhood character—including height, massing, scale, density, parking availability, and myriad other factors—may be evaluated by the Bboard of Ssupervisors, along with other policy matters—including those set forth by Proposition M—in ~~their~~ its deliberations on the project.

[Add a discussion of the IS Shadow section concluding that the project would not cause significant shadows on any parks or open space, in response to the Priority Policy #8 allegation.]

The SEIR has not failed to analyze and disclose significant environmental impacts in regards to land use. The ~~Appellant~~appellant has provided no information or substantial evidence to demonstrate that the proposed project is inconsistent with ~~the~~ any priority policy~~ies~~, or that such an inconsistency would result in significant environmental effects not already disclosed and evaluated in the SEIR.

Response 6: The SEIR adequately and accurately analyzes the project's construction and operational noise impacts on sensitive receptors.

The ~~Appellant~~appellant contends that the SEIR fails to identify and mitigate significant impacts related to construction and operational noise impacts on children in the City College Multi-Use Building childcare facilities and other childcare facilities and schools. The ~~Appellant~~appellant also states that the SEIR erroneously identifies the time of least noise sensitivity as between 9 a.m. and 4 p.m., stating that these are during City College class times and childcare facility operations.

Construction noise impacts aree evaluated under Impact NO-1 on SEIR pp. 3.C-23 to 3.C-31. Operational noise impacts are evaluated under Impact NO-3 on SEIR pp. 3.C-33 to 3.C-38 and Impact NO-4 on SEIR pp. 3.C-36 to 3.C-38. The ~~Appellant~~appellant incorrectly asserts that the SEIR does not disclose and mitigate the project's impact. For example, the ~~Department~~department fully responded to comments on the draft SEIR regarding children in the Multi-Use Building, childcare facilities, and schools in RTC Response NO-1: Noise Baseline (pp. 4.D-2 to 4.D-5), RTC Response NO-3: Construction Noise Impacts (pp. 4.D-11 to 4.D-17), RTC Response NO-5: Operational Noise (pp. 4.D-20), and RTC Response NO-6: Noise Mitigation Measure (pp. 4.D-21 to 4.D-23).

As described on SEIR p. 3.C-25 and in RTC Response NO-1: Noise Baseline, the construction noise analysis is based on the closest sensitive receptors to the project site and include residences along Plymouth Avenue, San Ramon Way, and 1100-1150 Ocean Avenue ~~residences~~, and Archbishop Riordan High School. As stated in RTC Response NO-1 (RTC p. 4.D-3), the "predicted construction-related noise levels at sensitive receptors are evaluated to determine whether the project would result in a (1) an increase in sustained noise levels that are 10 dBA above the ambient background noise levels over a substantial period of time, or (2) noise levels above the Federal Transit Administration's limit of 90 dBA. The analysis and disclosure of maximum potential project-specific increases over existing ambient environments (i.e., a '"worst-case'" assessment) follows standard methodology for the evaluation of noise impacts."

RTC Response NO-1 explains that the predicted construction-related noise levels at the nearest sensitive receptor locations show where the maximum combined noise levels from construction equipment would occur. Other childcare facilities were not included in the impact table because they are substantially more distant than the nearest sensitive receptors shown in Table 3.C-8 of the SEIR (p. 3.C-27). Tables RTC-5 and ~~Table~~ RTC-6 provide~~s~~ for informational purposes construction-related noise levels at other childcare locations such as Mighty Bambinis Childcare and the future City College daycare at Judson Avenue and Frida Kahlo Way (see RTC pp. 4.D-4 to 4.D-4). As shown in Tables RTC-5 and RTC-6, the resultant construction noise levels at more distant childcare receptors would not exceed the FTA's 90 dBA daytime standard or the "Ambient + 10 dBA" standard.

The ~~Appellant~~appellant asserts that the hours between 9 a.m. and 4 p.m. are not times of least noise sensitivity due to classes held at City College and childcare facilities in operation. As explained in RTC Response NO-3 on p. 4.D-12, City College classes are not defined as noise-sensitive receptors based on the Governor's Office of Planning and Research's *General Plan Guidelines 2017*. There is no outdoor space for children associated at the Multi-Use Building and land uses designed for children to receive instruction on a regular basis (i.e., are enrolled) such as an elementary or pre-school are typically considered noise sensitive. The RTC document provided the potential noise impacts at the exterior of the Multi-Use Building for informational purposes only. As explained in RTC Response NO-3, "construction noise heard inside the building would be further attenuated by the building which is of recent construction. Additionally, Mitigation Measure M-NO-1: Construction Noise Control Measures would further reduce the construction noise impact heard inside the building at this receptor. Nevertheless, as stated on draft SEIR p. 3.C-31, the overall construction noise impact of the proposed project is significant and unavoidable with mitigation." Furthermore, construction hours are regulated under San Francisco Police Code article 29, and section 2908 prohibits nighttime construction between 8 p.m. and 7 a.m. The SEIR appropriately analyzes construction impacts on sensitive receptors and concluded that impacts would be significant and unavoidable with mitigation.

Commented [PJ(16]: I don't follow – delete or revise this

Operational noise impacts from fixed mechanical equipment are analyzed in the SEIR under Impact NO-3, pp. 3.C-33 to 3.C-38. The SEIR identifies Mitigation Measure M-NO-3 (Fixed Mechanical Equipment Noise Controls)

to reduce potentially significant operational noise impacts to a less-than-significant-level. Impact NO-4 presents the operational traffic analysis associated with implementation of the proposed project. The SEIR concludes on p. 3.C-41 that there would be no significant traffic noise increase from the project along any roadways adjacent to sensitive land uses, and impacts would be less than significant.

The ~~Appellant~~appellant provides no substantial evidence or new information to support the assertions that the SEIR fail~~eds~~ to identify and mitigate significant noise impacts related to sensitive receptors in the vicinity of the site.

Response 7: The SEIR adequately evaluates a reasonable range of feasible alternatives.

The ~~Appellant~~appellant contends that the SEIR fail~~sed~~ to include a range of feasible alternatives, and that there is no supporting evidence that a 100 percent affordable project is infeasible. The ~~Appellant~~appellant argues that a 100 percent affordable City-owned project containing 550 affordable units and no market-rate units is ~~still~~ an alternative that should be given consideration. The ~~Appellant~~appellant specifically states that such an alternative of a smaller project with roughly the same amount of affordable housing would have reduced transit delay, air quality, and noise impacts.

Commented [PJ(17]: Only include this if the appellant submits supplemental materials making this claim. Their appeal letter doesn't currently specify the number of units.

The SEIR alternatives analysis is consistent with CEQA Guidelines section 15126.6. Pursuant CEQA Guidelines section 15126.6(a), an EIR is required to set forth alternatives necessary to permit a reasoned choice and shall be limited to alternatives that would avoid or substantially lessen any of the significant effects of the project and that would meet most of the project sponsor's basic objectives.

An EIR need not consider every conceivable alternative to a project but instead "must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation." (CEQA Guidelines section 15126.6(a).) ~~An~~ That is, an EIR~~, however,~~ does not have to identify and analyze alternatives that would not meet most of the project sponsor's basic objectives, nor does it have to discuss every possible variant or permutation of alternatives, or alternatives that do not further reduce or eliminate significant environmental impacts of the project. (*Id.*) Under the "rule of reason" governing the selection of the range of alternatives, the EIR is required "to set forth only those alternatives necessary to permit a reasoned choice." (CEQA Guidelines Section 15126.6(f).) CEQA generally describes "feasible" to mean the ability to be accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, technological, and legal factors. Site suitability, economic viability, availability of infrastructure, General Plan consistency, other plans or regulatory limitations, jurisdictional boundaries, and the ability of the proponent to attain site control may also be taken into consideration when assessing the feasibility of alternatives (CEQA Guidelines section 15126.6(f)(1)).

The analysis presented in Chapter 6 of the SEIR represents a reasonable range of alternatives and complies with the CEQA Guidelines. The main purpose of presenting a range of alternatives to a proposed project is to focus on alternatives that are capable of reducing or eliminating any significant environmental effects of the proposed project identified in an EIR (CEQA Guidelines section 15126.6(b)), not to focus on other issues such as potential socioeconomic effects. The SEIR identifies and analyzes four alternatives to the project~~, including~~: (1) the CEQA-required No Project Alternative; (2) the Reduced Density Alternative of 800 units; (3) the San Ramon Way Passenger Vehicle Access; and (4) the Six-Year Construction Schedule Alternative. The alternatives selection process consisted of several steps and described in the SEIR on pp. 6-3 to 6-7 as follows:

- The first step is to use the project objectives in the identification, selection, and evaluation of the alternatives;
- The second step presents a summary of all the significant and unavoidable environmental impacts that are identified in draft SEIR Chapter 3, which consist of secondary operational loading impacts, transit delay impacts, and noise and air quality impacts during constriction (SEIR pp. 6-3 to 6-5);
- The third step focuses on strategies to address the significant and unavoidable impacts:
    - Alternative Strategy to Address Secondary Loading Impacts (SEIR p. 6-5 to 6-6)
    - Alternative Strategy to Address Transit Delay Impacts (SEIR p. 6-6 to 6-7)
    - Alternative Strategy to Address Construction-Related Impacts (SEIR p. 6-7)
- The strategies to address the significant and unavoidable impacts are screened for their feasibility and ability to meet most of the project objectives

RTC Response AL-1: Range of Project Alternatives (pp. 4.F-12 to 4.F-17) contains a detailed analysis of why the SEIR need not evaluate a 100 percent affordable housing ~~unit~~ alternative or a smaller project with the same number of affordable housing units. The following summarizes the RTC document's findings in this regard. As described on SEIR p. 6-59 and repeated in RTC Response AL-1, a 100 percent affordable housing project would be a fundamentally different project. Among the project objectives is "[b]uild a mixed income community with a high percentage of affordable units to provide housing options household at a range of income levels" and "[r]eplace the reservoir's abandoned infrastructure with new infrastructure improvements." As described in the CEQA findings adopted by the Planning Commission, the financial structure for the project assumes that the market-rate units, combined with various state funding sources, would finance the required new infrastructure improvements and two-thirds of the affordable units, with the City subsidizing one-third of the affordable units.

The Mayor's Office of Housing and Community Development (MOHCD) provided the following information regarding funding of affordable housing:[6]

> The affordable housing will be funded using a typical mixture of sources such as Low-Income Housing Tax Credits, state grants, and "gap funding" provided by the developer and the City. The developer requirement for on-site affordable housing per the Planning Code would otherwise be 18 percent. But for this project, the developer is responsible for funding the "gap" amount for 33 percent affordable units (363 units) and the City will provide "gap" funding for 17 percent affordable units (187 units). This funding collaboration was stipulated in the City's request for proposals for the Balboa Reservoir and ensures that the SFPUC will receive fair market value for the sale of their land based on a basis of 33 percent affordability.
>
> City funding will come through MOHCD in the same way that the City funds the "gap" on affordable developments throughout the City. MOHCD will use funding acquired through the 2019 affordable

~~[6] MOHCD, "Balboa Reservoir FAQs, July 2020.~~

housing bond and the affordable housing trust fund. The developer will fund their "gap" amount using funds generated from the market rate housing component of the project. The 150 educator units will be funded solely by the developer using equity and conventional debt, with no City funding or external subsidy. ~~and "100 percent affordable housing developments in San Francisco are typically sponsored by the Mayor's Office of Housing and Community Development, which provides substantial financial support for such projects and which typically seeks out not-for-profit developers who specialize in the production of fully affordable residential projects. Accordingly, it has never been the case that the planning for this project assumed or required a 100 percent affordable housing development, which would require a substantially different financial structure and City development partner(s)." [Placeholder to incorporate or reference Leigh's memo]~~

~~The project sponsor provided additional information that was included in the RTC regarding educator housing at the site. The RTC provides an update in Chapter 2, Revisions and Clarifications to the Project Description, that the project sponsor is proposing to provide approximately 150 moderate-income dwelling units dedicated to educator households as part of the 50 percent affordable housing. This commitment is part of the development agreement between the City and project sponsor.~~[7]

For the same reasons explained in RTC Response AL-1 (pp. 4.F-16 to 4.F-17), a 100 percent affordable project (including housing for educators), or a ~~smaller~~ reduced density project as explained in RTC Response AL-4: Alternative B, Reduced Density Alternative (pp. 4.F-24 to 4.F-28), would not reduce the significant and unavoidable transportation, noise, and air quality impacts identified in the SEIR. As explained in Response 4 above, based on the transportation analysis methodology, affordable housing does not have different impacts (~~i.e., trip generation rates~~e.g., mode splits) than market-rate housing. A project at a smaller scale may lead to less vehicular travel. However, for the same reasons explained on RTC p. 4.F-27 to 4.F-27, the impacts under such a scenario would likely remain significant and unavoidable for the following reasons:

- The construction air quality and noise impacts would occur regardless of the scale of the project or the income levels of its future residents, as these impacts are associated with demolition of the existing reservoir berms and asphalt paving, grading, excavation, and/or building construction activities and proximity to sensitive receptors. As explained on RTC p. 4.F-26, regardless of the number of units, construction would require the initial phase to prepare the project site. The construction equipment and use characteristics would not change and the air quality and noise impacts would still occur (discussed on SEIR pp. 6-21 to 6-24).

- Cumulative impacts related to public transit delay is based on the addition of vehicle and transit trips generated by the proposed project *in combination with the City College facilities master plan projects and other cumulative development*. Due to the uncertainty surrounding the development at City College's Ocean Campus and the uncertainty of SFMTA approval of other measures under its jurisdiction, cumulative transit delay impacts would be significant and unavoidable. The impacts to transit delay would occur irrespective of potential changes in travel demand or patterns from affordable housing.

Commented [WW(18]: Global: only include this reduced density alternative if the appellant's letter (or supplemental letter) argues for a reduced density.

Commented [PJ(19]: WW: Global: please rephrase to touch on these points (in no particular order).

Describe that the transportation analysis methodology conservatively assumes that the travel demand analysis assumes the same trip rates and mode splits for market rate and affordable housing.

Describe that this is because the data collection and analysis used to create the travel demand methods didn't separate market rate and affordable housing.

Acknowledge that yes affordable housing does result in less vehicle trips than market rate housing but we didn't quantify that difference (can cite TDM technical justification.)

[7] ~~[Add citation to DA when ready]~~Ba;bpa Reservoir Draft Development Agreement [add date]

- The cumulative impact to passenger and freight loading (Impact C-TR-6b, discussed on SEIR pp. 3.B-101 to 3.B-102) is determined based on the impact to existing loading zones along Lee Avenue between Ocean Avenue and the project site. Under ~~such a scenario~~all build alternatives or a 100 percent affordable projects, the Lee Avenue extension would still occur, and impacts to loading on Lee Avenue would occur irrespective of potential changes to travel demand or patterns from affordable housing. Thus, the impact conclusion would be significant and unavoidable.

As explained in RTC Response AL-1 and RTC Response AL-4, a 100 percent affordable project or a reduced density alternative would ~~not~~ neither meet the basic objectives of the proposed project~~,~~ nor ~~would it~~ avoid or substantially lessen significant effects of the proposed project. Per CEQA Guidelines section 15126.6(b) and (e), the SEIR evaluates the No Project Alternative, and three other alternatives with the intention of reducing the environmental impacts of the proposed project while still meeting most of the project objectives.

Response 8: The SEIR is adequate and~~,~~ complete, and complies with CEQA, the CEQA Guidelines, and chapter 31 of the San Francisco A~~a~~dministrative ~~c~~Code. The COVID-19 pandemic and shelter-in-place order does not result in new significant environmental effects not previously disclosed, would not change the SEIR's conclusions, and does not require recirculation.

Citing CEQA Guidelines section 15088.5, the ~~Appellant~~appellant contends that the draft SEIR should have been recirculated due to changed circumstances and new information as a result of the COVID-19 pandemic and shelter-in-place order. The ~~Appellant~~appellant states that the RTC document ignor~~eds~~ the changed circumstances such as decrease in public transit availability and usage, increase in telecommuting, reduction in hiring, and increase in rental housing vacancy rates. The ~~Appellant~~appellant claims that by releasing the RTC document, the ~~Department~~department ignore~~d~~s the changed circumstances and the analysis does not take these changes into account.

The SEIR is adequate, complete, and complies with CEQA, the CEQA Guidelines, and chapter 31 of the administrative code. Pursuant to CEQA Guidelines section 15088.5, new information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse effect of the project or a feasible way to mitigate or avoid such an effect. Significant new information requiring recirculation include disclosure showing that:

> (1) a new significant environmental impact would result from the project or from a new mitigation proposed to be implemented;
>
> (2) a substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of significance;
>
> (3) a feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it;
>
> ~~-~~(4) the draft EIR is so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded (CEQA Guidelines section 15088.5(a)(1)-(4)). The SEIR does not require recirculation because none of the standards articulated in CEQA Guidelines section

15088.5(a)(1)-(4) are met. Furthermore, the ~~Appellant~~appellant has provided no evidence demonstrating how the changed circumstances would result in new significant environmental impacts or an increase in severity of impact.

The SEIR describes the conditions at the time the Notice of Preparation was published in October 2018, in accordance with CEQA Guidelines section 15125. ~~The Department acknowledges that the conditions of the COVID-19 pandemic and shelter-in-place order presents a different set of variables and conditions than what existed when the proposed project's environmental analysis began in 2018, including how the transportation system has been affected, at least for short to medium term.~~ CEQA Guidelines section 15144 acknowledges that drafting an EIR involves some degree of forecasting and "[w]hile foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that is reasonably can." ~~Pursuant to CEQA Guidelines sections 15144 and 15145, if a lead agency, after thorough investigation and using "best efforts to find out and disclose all that it reasonably can," "finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact." Speculation does not constitute substantial evidence on which a conclusion regarding the existence of a significant impact can be made. (CEQA Guidelines section 15384)~~ The analysis in the SEIR reflects a reasonable, good faith effort by the ~~Department~~department and its outside experts and is based on substantial evidence consisting of recent data and research of travel behavior. The recent research trends are consistent with decades of data of how people travel in cities.

The focus of the COVID-19 inquiry is not on the nature, scope, or extent of the changed circumstances, but rather on whether the changed circumstances will lead to new significant environmental impacts not previously considered. See Fund for Envtl. Def. v. Cty. of Orange, 204 Cal. App. 3d 1538, 1552 (1988). In the case of the proposed project, although COVID-19 has changed certain aspects of our daily lives, COVID-19 does not alter the environmental impact of the proposed project. Further, ~~Given that~~ the proposed project would not be operational ~~for a few years~~before 2023, and because long-term effects of the pandemic on the transportation system is unknown at this time, it would be unreasonable to speculate how travel behavior will change in the future. Thus, COVID-19 is not a changed circumstance that would necessitate EIR recirculation. ~~It would be speculative to assume that the COVID-19 pandemic will fundamentally change long-term behavior.~~

Changes in hiring practices or housing vacancy rates are not considered environmental impacts under CEQA unless there would be a physical impact on the environment resulting from such effects, or if such effects result in the need for the construction of new or physically altered facilities that would result in significant physical environmental impacts.

The SEIR and RTC satisfy the best efforts requirement of CEQA and present the best available information at the time.

Response 9: CEQA procedures have been followed appropriately, and the CEQA Findings and Statement of Overriding Considerations are outside the scope of this appeal.

The ~~Appellant~~appellant contends that the findings made in support of the SEIR certification~~,~~ in Planning Commission Motion M-20730, and~~including~~ the CEQA findings in Motion M-20731, are inadequate. ~~For informational purposes, please note that the CEQA Findings and Statement of Overriding Considerations prepared as part of the approvals for the proposed project are complete and supported by substantial evidence.~~ As noted above under Standards of Adequacy for Certification of an EIR, Chapter 31 of the City's Administrative

Code establishes the types of environmental review decisions that may be subject to appeal as well as the grounds for such an appeal.

Chapter 31.16(c)(3) states that the grounds for appeal of an EIR shall be limited to whether the EIR complies with CEQA, including whether it is adequate, accurate and objective, sufficient as an informational document, correct in its conclusions, and reflects the independent judgment and analysis of the City, and whether the Planning Commission certification findings (Motion M-20730) are correct. The appellant does not specify how the certification findings are inadequate.

The CEQA Findings and Statement of Overriding Considerations (Motion M-20731) support the project approvals, are separate from certification of the SEIR, and are not the subject of this appeal. The final SEIR provides a full and complete analysis, and the ~~b~~Board of ~~s~~Supervisors' role in this appeal is to conclude whether the final SEIR itself was prepared appropriately and adequately, as stated in the Planning Commission's certification findings.

The Board will ~~and not to~~ consider whether the Planning Commission's CEQA Findings and Statement of Overriding Considerations are correct and adequate when it considers the project approvals, including the development agreement and rezoning actions.~~approval of the project was correct or desirable~~. However, the following is provided for informational purposes.

The ~~Appellant~~appellants~~s~~ ha~~ves~~ not specified in what way the CEQA Findings and Statement of Overriding Considerations are inadequate and incomplete and not supported by substantial evidence. The CEQA Findings ~~included as Attachment A~~attached to Planning Commission Motion 20731 adopting Environmental Findings pursuant to CEQA (Attachment C to this appeal response) are consistent with the requirements of CEQA Guidelines Section 15091. Within Planning Commission Motion 20731, the Section III findings regarding significant impacts identified in the SEIR that can be avoided or reduced to a less-than-significant level through mitigation are supported by substantial evidence. Within Planning Commission Motion 20731, the Section IV findings regarding significant impacts that cannot be avoided or reduced to a less-than-significant level are also supported by substantial evidence. As required by Public Resources Code Section 21083, separate findings are made for each significant effect and the findings are supported by substantial evidence related directly to the facts presented in the SEIR. CEQA ~~F~~findings regarding rejection of the SEIR alternatives as infeasible are also supported by substantial evidence, including an economic feasibility report prepared by Economic and Planning Systems, Inc. (EPS) and independently review by ~~Department staff~~the City through its economic consultant.

CEQA Guidelines Section 15093(a) provides that "[i]f the specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered 'acceptable.'" Per CEQA Guidelines Section 15093(a), if significant and unavoidable impacts are to be accepted with approval of a project, the lead agency must "balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project." The Statement of Overriding Considerations provided in Section VI of Planning Commission Motion 20731 complies with CEQA Guidelines Section 15093(b) by stating the specific reasons why the Planning Commission finds, after consideration of the final EIR and the evidence in the record, that each of the specific overriding economic, legal, social, technological and other benefits of the project independently and collectively outweighs the significant and unavoidable

impacts of the project. Those benefits are listed on pages 24 through 27 of Attachment A to Planning Commission Motion 20731 (Attachment C to this appeal response).

~~To~~ In conclusion, although the Planning Commission's adoption of CEQA Findings and a Statement of Overriding Considerations for the proposed project are outside the scope of the appeal per Administrative Code Section 31.16(c)(3), they are nevertheless consistent with Public Resources Code Section 21081 and CEQA Guidelines Sections 15091 and 15093.

Response 11: The appeal hearing schedule and cost of property are outside of the scope of the grounds for appeal.

The ~~Appellant~~appellant makes several requests related to the appeal hearing time and allotted times. The ~~Appellant~~appellant also questions whether the negotiated price of the parcel represents fair market value.

Chapter 31.16(c)(3) states that the grounds for appeal of an EIR shall be limited to whether the EIR complies with CEQA, including whether it is adequate, accurate, and objective, sufficient as an informational document, correct in its conclusions, and reflects the independent judgment and analysis of the City, and whether the Planning Commission certification findings are correct. Therefore, requests regarding the appeal hearing schedule and statements regarding the cost of the project site are not comments on the adequacy or accuracy of the SEIR, are outside of the scope of the grounds for appeal, and do not require further response from the department.

CONCLUSION

For all the reasons provided in this appeal response, the SEIR complies with the requirements of CEQA and the CEQA Guidelines and provides an adequate, accurate, and objective analysis of the potential impacts of the proposed project. The appellant has not demonstrated that the Planning Commission's certification of the SEIR was not supported by substantial evidence in the record. Therefore, the department respectfully recommends that the Board uphold the Planning Commission's certification of the SEIR and deny the appeal.

~~The Appellant has not raised any new issues relative to the project's physical environmental impacts that were not previously addressed in the draft SEIR and appendices, RTC document and attachments, or at the SEIR certification hearing. As discussed above, the analysis and conclusions of the Final SEIR are supported by substantial evidence in the record. Moreover, the Appellant has not provided substantial evidence in support of its arguments regarding the adequacy and accuracy of the final SEIR. Argument and speculation alone are not substantial evidence under CEQA. Even if the Appellant had provided substantial evidence that contradicts the analysis and conclusions of the final SEIR, the agency's adequacy determination remains valid when the EIR is based on substantial evidence in the record. The final SEIR and supporting documents provide such substantial evidence.~~

~~For the reasons stated above, the Planning Commission's certification of the SEIR complies with the requirements of CEQA, the CEQA Guidelines, and chapter 31 of the San Francisco Administrative Code. The Department, therefore, recommends that the Board uphold the Commission's decision to certify the SEIR and deny the appeal.~~