

From: [aj](#)
To: [Poling, Jeanie \(CPC\)](#)
Cc: [BRCAC \(ECN\)](#); [Shanahan, Thomas \(ECN\)](#); [Hood, Donna \(PUC\)](#); [Secretary, Commissions \(CPC\)](#); [Board of Supervisors, \(BOS\)](#); [Yee, Norman \(BOS\)](#); [Low, Jen \(BOS\)](#); [Maybaum, Erica \(BOS\)](#); [Rafael Mandelman](#); [Tom Temprano](#); [Ivy Lee](#); [Brigitte Davila](#); [Thea Selby](#); [John Rizzo](#); [Alex Randolph](#); [studenttrustee@mail.ccsf.edu](#); [Shanell Williams](#); [Shaw, Linda \(MYR\)](#)
Subject: Balboa Reservoir: ON OVERRIDING CONSIDERATIONS
Date: Sunday, November 04, 2018 3:41:36 PM
Attachments: [2018-9-4 AFFORDABLE HOUSING SCAM.docx](#)

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Hi Jeanie:

Here's another submission (probably my last), with additional attachment, for the administrative record. Thank you for taking care of it.

--aj

ON OVERRIDING CONSIDERATIONS

Even if the Subsequent EIR finds significant and unavoidable impacts, the Reservoir Project holds a trump card. That trump card would be a Statement of Overriding Considerations.

Such a Statement of Overriding Consideration would more than likely put forth the idea that the Reservoir Project would make a substantial contribution in alleviating the housing crisis.

However, in making such an argument of overriding consideration, extreme care must be taken to distinguish between slick marketing hype and PR and the reality contained in the Development Parameters and the Exclusive Negotiating Agreement (ENA).

OVERVIEW

The **Balboa Park Station (BPS) Area Plan** adopted by the City & County of SF is used as justification for the Balboa Reservoir Project. However, this justification for housing in the Reservoir was cherry-picked from the BPS Area Plan.

In actuality the BPS Area Plan asked for **consideration of the best use** of Reservoir:
<!--[if !supportLists]-->• <!--[endif]-->Housing was one **consideration**. It was not a mandate.
<!--[if !supportLists]-->• <!--[endif]-->Open Space was another **consideration**;
<!--[if !supportLists]-->• <!--[endif]-->**Education** should logically have been another consideration because of location and existing use, but was not contained in the BPS Area Plan.

The **Public Lands for Housing Program** has been the main lever for the Balboa

Reservoir Project.

According to Administrative Code 23.a.2 (l), the Surplus Public Lands Ordinance can serve only as **recommendation** to enterprise agencies like the PUC.

The Reservoir Project has been made poster child for the Public Lands for Housing Program. But, by law, the City cannot mandate the PUC to do so. Being an enterprise agency, City Ordinance only allows the City to recommend to PUC that the Reservoir be made part of Public Lands for Housing.

AFFORDABLE FOR WHOM? THE AFFORDABLE HOUSING SCAM

The initial legislation and legislative intent regarding surplus City property was for using public land to help provide housing:

• for the **homeless and low-income** populations, and
• built solely by **non-profit community developers**.

In a deceptive advertising campaign, 2015 Proposition K was passed which changed the City's Administrative Code Ch.23A to enable public land to be used:

• for newly defined "affordable housing" extended to **"middle-income" (150% Area Median Income**, which is \$124,350 for an individual as of 4/1/2018), even as the State maintains that "moderate-income" and "middle-income" are identical (120% AMI which is \$99,500 for an individual as of April 2018), and
• for sale to, and built by **private developers** instead of just by non-profit developers.

The biggest scam is **privatization of public property by private developers** in the guise of affordable housing.

The Reservoir Project has been skillfully marketed and framed as an affordable housing development. Yet documents reveal otherwise.

The Reservoir Development has been marketed as—from more deceptive to less deceptive-- affordable housing, or 50% affordable housing, or up to 50% affordable housing.

To paint lipstick on a pig, the privatization of the Reservoir has been deceptively marketed as **"affordable housing"** and/or **"50% affordable housing."** Despite the marketing of "50% affordable", the reality is that only 33% affordable housing is guaranteed, while 50% unaffordable housing is guaranteed. The remaining 17% affordable for middle-income of up to 150% AMI (that would bring "affordable" up to 50%) will not be funded by Reservoir Community Partners LLC. The aspirational 17% "additional affordable" would have to be funded by unsourced public funds and is actually a bait- and-switch deception.

The "**affordable**" definition scam: "Affordable" has been redefined to include up to 150% Area Median Income (\$124,350 as of 4/1/2018).

The **affordable "in perpetuity"** scam: "In perpetuity" is defined as "throughout the useful lives of the buildings..."

The **Transportation Demand Management (TDM) scam** which wishes and greenwashes away the problem of elimination of 1,000 student parking spaces with a solution of "*reduc[ing] single-occupant vehicle trips by college staff, faculty, students, and neighborhood residents.*"

BYPASSING STATE SURPLUS PROPERTY STATUE

The disposition of public land is governed by the **State Surplus Property Statute**:

The State Surplus Land Statute Section 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.***

Yet there has been no transparent public record or open Board of Trustees Action to show that SFCCD has rejected a written offer to acquire the Reservoir **for school facilities or open space**.

Any evaluation of overriding considerations must evaluate the full range of harms and benefits instead of making an *a priori* unsubstantiated assumption that privatizing public land for **at least 50%** to 67% units that would be unaffordable to those of moderate income (120% of AMI which is \$99,500 for an individual) constitutes the best use of the publicly-owned PUC property.

Please refer to the attached "Affordable Housing Scam of Balboa Reservoir Project".

Submitted for the administrative record on Balboa Reservoir by:

Alvin Ja 11/5/2018

“AFFORDABLE HOUSING” SCAM OF BALBOA RESERVOIR PROJECT (9/4/2018)

The Balboa Reservoir Project has been presented to the community essentially as a done-deal. It has been justified by referencing the Balboa Park Station Area Plan and the Public Land for Housing Program.

However, there has been no fact or evidence-based analysis of the assumptions and premises involved in the Reservoir Project’s so-called affordable housing. The Project has been framed as an affordable housing effort; it has also been framed as providing affordable housing “in perpetuity.” Yet when deeper analysis is made, only 33% of the housing on public land will be Affordable Housing for low to moderate-income populations.

And when you read the fine print, “in perpetuity” only means “for the useful life of the buildings.”

Objective 1.4 of the Balboa Park Station Area Plan called for using the Reservoir for the “best benefit of the neighborhood, the city, and the region as a whole.” Yet the Balboa Reservoir Project has failed to assess the relative harms and benefits of the proposed housing development versus the educational needs of the city and the Bay Area. As envisioned, the Reservoir Project will harm City College of San Francisco which serves the broadest public interest and benefit to the entire Bay Area.

During the course of the public engagement process, much input has been provided to the City Team regarding flaws in the Reservoir Project. However, fundamental questions and concerns regarding the validity of the Project have not been addressed.

Here is an updated digest of critiques have remained unaddressed by the City Team.

CONCEPTUAL FRAMEWORK: PUBLIC LAND FOR THE PUBLIC GOOD

1. Public land should be used for the public good.
2. Affordable housing for homeless, low-income and moderate-income people contributes to the public good.
3. The California State Surplus Land Statute and the City’s Surplus City Property/Public Lands Ordinance were set up to help address housing targeted for homeless, low-income and moderate-income people.
4. The intent of both State and City laws were not meant to subsidize high-cost housing.
5. As defined by State law, “Affordable Housing” covers moderate-income housing going up to 120% Area Median Income only.
6. Balboa Reservoir Project only requires that 33% of the BR housing to be State-defined “Affordable Housing.” The remaining 67% of housing falls outside the bounds of the original intent of State and City targets of Affordable Housing--as defined by State law--for low-income, and moderate-income people.
7. The result of this 33% Affordable Housing/67% non-Affordable Housing ratio is that public land will be transferred to private interests/higher income owners in the guise of “Affordable Housing.”
8. The Reservoir Project has been deceptively marketed as “affordable housing” and/or “50% affordable housing.” Despite such marketing, the reality is that only 33% is guaranteed to be

affordable while 50% UNaffordable is guaranteed. The remaining 17% (that would bring "affordable" up to 50%) "additional" affordable to City & County –defined "middle-income" (150% AMI--\$124,350 for an individual)people is but aspirational,....and which would be have to be financed with public funds, not by the private developer.

9. Using 33% "Affordable Housing" to subsidize the 67% high-cost housing is contrary to the intent of the original legislation.

10. Distorted meaning of "in perpetuity": Affordable units are supposedly going to be deed-restricted "in perpetuity." Yet, contrary to the normal meaning of "in perpetuity", the City/RFQ defines it as follows: "The project's affordable housing units must remain affordable in perpetuity (i.e. throughout the useful lives of the buildings in which those units are located), ..." What this really means is that after 55-75 years, or even sooner--depending on how the developer defines "useful life"-- even the 33% Affordable will no longer be in existence. **The entire Reservoir property will be owned free and clear by private interests with no requirements for affordability: It's the pot at the end of the rainbow for private interests that are willing to make a short-term sacrifice in exchange for a long-term bonanza.**

11. Best use of PUC Reservoir:

Under Objective 1.4 of the Balboa Park Station Area Plan, Policy 1.3.2 [sic] states "*POLICY 1.3.2 Develop the west basin of the reservoir [for] the greatest benefit of the city as a whole as well as for the surrounding neighborhoods.*"

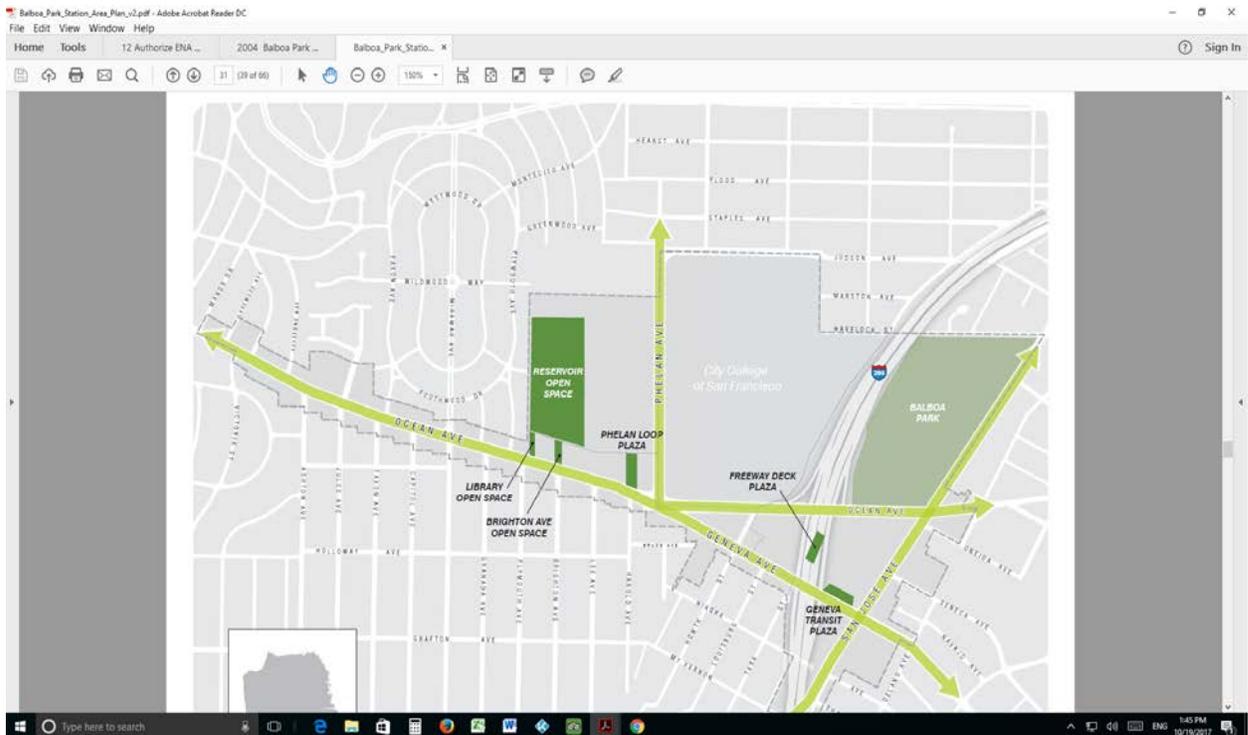
- There has never been any discussion about what constitutes "greatest benefit." The City/Mayor simply declared by fiat that it would be used for housing.
- It can be legitimately argued that **using the west basin for educational purposes would be the "greatest benefit."**

12. Balboa Station Area Plan does not mandate housing at Reservoir

Proponents of the Reservoir Project refer to the Balboa Park Station Area Plan as calling for housing on the Reservoir. This is inaccurate. The BPS Area Plan actually used the term "consider." It called for housing to be considered. It was not a mandate. In addition to housing, there was something else that the BPS Area Plan asked to be considered: OPEN SPACE.

The BPS Area Plan contains several elements, among which are the Housing Element and the Open Space Element.

The Open Space Element of the BPS Area Plan includes discussion of the western Reservoir as open space and includes this map, yet this section of the BPS Are Plan has been ignored.



And then again, on a broader perspective, the BPS Area Plan has asked that the "best use" be considered for the Reservoir. Instead of "best use" or "open space" as presented by the BPS Area Plan, the City jumped directly to housing as the sole consideration.

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 districts was negated by City Staff.

CEQA CONSIDERATIONS

1. CEQA requires public agencies to avoid or mitigate significant adverse environmental impacts caused by a project.
2. City College is a critical public service that serves the entire Bay Area. CCSF is the central economic, educational and cultural feature of the Reservoir vicinity. However the Balboa Reservoir Project has failed to acknowledge CCSF's primacy.
3. Housing on Balboa Reservoir is a component of the Balboa Park Station Area Plan, based on an Initial Study conducted in 2006, referenced in the BPS Final EIR.
4. The proposal of 425-500 units in the Reservoir was arbitrary. There was no documentation, evidence, or argumentation presented to support the proposal for 425-500 units in the 2006 BPS Initial Study/BPS Final EIR/BPS Area Plan.
5. The BPS Area Plan, Final EIR/Initial Study determined that, on the BPS Program-Level, that there would be no significant impact to school facilities.
6. The BR Project's 2014 AECOM Study incorrectly extended the Program-Level determination of non-significance to the Balboa Reservoir Project's Plan-Level. This has caused the BR Project to ignore adverse impacts that the Project will have on City College and neighboring schools.
7. The City Team has refused to acknowledge the reality that the use of the Reservoir for student parking is an existing public benefit. It is a benefit that helps provide access to quality education.
8. Instead, the Balboa Park Station Area Plan mischaracterizes the Reservoir as simply being an "unpleasant void in the neighborhood" despite the reality that it serves an important and needed public purpose for students.
9. The Balboa Reservoir Project can be characterized as constituting an **eviction of an important Bay Area-wide public service**--City College. A public good is being eliminated for the benefit of private developer interests.
10. The City Team operates on the unfounded assumption that housing on the Reservoir is of higher importance than the importance of City College to the community.
 - The City Team shifts the burden of mitigation of impending adverse impacts of the Project onto the surrounding neighborhoods and CCSF stakeholders. It addresses the BR Project's adverse impacts by calling for the impactees to bear the burden by practicing TDM ("**reduce single-occupant vehicle trips by college staff, faculty, students, and neighborhood residents**") and requesting Residential Permit Parking.

11. The City Team argues that it is too expensive to build parking. If the Reservoir were to be left as-is to provide student access to education, there would be no need to build new parking. It's cheaper to keep it as-is.
12. Eviction of CCSF from western Reservoir will harm student access to education.
13. The State Surplus Property Statute (Govt Code 54220) targets use of housing for those of "low" or "moderate" income (up to 120% of Area AMI). It was under this concept that San Francisco's Public Lands for Housing Program was originally formulated. The idea was for surplus public property to be used for the public good to create Affordable Housing (120% AMI).
14. The Development Parameters only require 33% to be State-defined Affordable Housing.
15. In reality 67% will be unaffordable housing. Although the City Team presents the Project as market-rate housing subsidizing affordable housing, this is an inversion of reality. In reality, the 33% affordable housing is cover for the reality that this transfer of public property will benefit private interests at the expense of the public. The reality is that the 33% "affordable housing" will be subsidizing private interests.

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."**

PARKING vs. TDM

1. The City Team argues that it is too expensive to build parking. If the Reservoir were to be left as-is to provide student access to education, there would be no need to build new parking. If construction cost is the consideration, then the best option is to leave the western Reservoir as-is.

2. TDM is the third component of the City's Transportation Sustainability Program. TDM requires new developments to provide on-site amenities that prioritize sustainable alternatives to driving.
3. The Balboa Reservoir Project will not exist in isolation from the surrounding neighborhoods. The TDM outcomes within the boundaries of the Project itself will probably be highly successful. However, BR Project's internal TDM success will come at the expense of the surrounding neighborhoods when BR residents park their privately-owned vehicles and drive their privately-owned vehicles outside the Reservoir Project's own boundaries.
4. FROM EARLIER SUBMISSION TO CAC REGARDING TDM:

- Most importantly: TDM Study is not a comprehensive and unbiased assessment of parking and circulation issues in the Reservoir vicinity; and it was never meant to be a comprehensive study. The scope/parameters of Nelson-Nygaard's study were very specific according to SFCTA documentation:
 - *The Planning Department and SFMTA are proposing a Transportation Demand Management (TDM) study in coordination with CCSF Ocean Campus to reduce single-occupant vehicle trips by college staff, faculty, students, and neighborhood residents.*

○ PROJECT DESCRIPTION AND BENEFITS

The Balboa Area Transportation Demand Study will develop clear strategies for reducing single-occupant vehicle trips and outline a coordinated framework for future TDM programs and policies between CCSF, the Balboa Reservoir project, and the City of San Francisco. Potential TDM activities will produce a wide-range of benefits to individuals and the transportation system as a whole, from reducing traffic congestion, vehicle emissions, and fuel consumption to supporting physical activity and enhancing safety. Additionally, TDM activities will make existing transportation investments perform better, extending the life of existing infrastructure and improving the outcomes for new transportation investments.

- **TDM Program:** *proposing TDM solutions unique to the area comprising CCSF Ocean campus, Balboa Reservoir and neighborhoods as consistent with emerging TDM policy.*

Bottom-line: TDM solutions, by definition and intent, exclude parking. Within TDM parameters, the issue of parking is given significance only via the TDM solution of making parking "more difficult and expensive." That's why the elimination of student parking is ignored. That's why the City Team promotes 0.5 parking spaces per residential unit.

- Fatuous TDM arguments:
 - "Parking Produces Traffic Congestion--Every parking space is a magnet for cars" and "If you build it.....they will come."
 - In earlier submissions I had written:

As I have pointed out in another e-mail, there are 3 main traffic magnets in our area: schools, freeway entrance/exits, and the BP Station transit hub. If reduction of car traffic in the area is the goal, these magnets need to be removed. Obviously, this is neither an appropriate nor realistic solution.

BP Station and freeway entrance/exits are part of transportation infrastructure. However CCSF is different. CCSF is not transportation infrastructure. People are not just passing through on the way to someplace else. CCSF is a destination in and of itself.

Rather than parking producing congestion, it's the existence of a desired destination that induces traffic. Parking is but a means to accommodate those who want to get to the desired destination.

Case-in-point: When school is not in session, there are very few cars in the Reservoir parking lot and there's very little traffic on Phelan. This demonstrates the falsehood of the "parking produces traffic congestion" premise.

Bottom line: Parking, in and of itself, does not promote congestion. Rather, congestion is the product of people trying to get to a desired destination. Student access to education, which includes driving and parking, should not be subordinate to the Balboa Reservoir Project.

- "Spillover [parking] from City College"
- Both Sunnyside Neighborhood Assn and Westwood Park Assn have made clear that the neighborhood supports CCSF and its students. The Nelson-Nygaard Study calls for preventing "spillover from City College" by making parking for them difficult via RPP and enforcement. Rather than making parking difficult for students, the neighbors have called for the Balboa Reservoir Project to provide adequate on-site parking for student needs.

Bottom line: Instead of shifting the burden of mitigation for the elimination of student parking by the TDM solution of "reducing single-occupant trips by college staff, faculty, students, and neighborhood residents", the Reservoir Project needs to take responsibility for replacing lost student parking.

--aj