



SAN FRANCISCO PLANNING DEPARTMENT

MEMO

Appeal of Planning Department Case No. 2014-002541ENV India Basin Mixed-Use Project

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DATE: September 21, 2018
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RE: Board File No. 180841, Planning Department Case No. 2014-002541ENV
 Appeal of the Final Environmental Impact Report for the India Basin Mixed-Use
 Project
HEARING DATE: September 25, 2018
ATTACHMENTS: None

PROJECT SPONSOR: BUILD
 San Francisco Recreation and Park Department
 Supervisor Cohen (legislative sponsor)
APPELLANTS: Steven Castleman on behalf of Greenaction for Health & Environmental Justice

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 BOARD OF SUPERVISORS
 SAN FRANCISCO

INTRODUCTION

This memorandum is a response (“Supplemental Appeal Response”) to a supplemental letter of appeal (“Supplemental Appeal Letter”) dated September 17, 2018 submitted by the Appellant, Steven Castleman on behalf of Greenaction for Health & Environmental Justice (“Greenaction”), to the Board of Supervisors (“Board”) regarding the Planning Commission’s (“Commission”) certification of the Final Environmental Impact Report (“Final EIR”) for the India Basin Mixed-Use Project (“Project”) under the California Environmental Quality Act (“CEQA”). The Planning Department (“Department”) submitted an appeal response memorandum on September 17, 2018 (“Original Appeal Response”) that addressed concerns raised in two appeal letters. The Original Appeal Response and the Supplemental Appeal Letter are available as part of Board File No. 180841.¹

The Department has prepared an EIR for the Project, pursuant to CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code. The purpose of the EIR is to disclose any potential impacts on the physical environment resulting from implementation of the Project, and allow a time for public review and comment, before decision-makers decide whether to approve or deny the Project.

¹ Available online at <https://sfgov.legistar.com/LegislationDetail.aspx?ID=3646252&GUID=CB4D0848-D2CF-4491-B350-86D5B0105801&Options=ID|Text|&Search=180841>.

The decision before the Board is whether to uphold the Commission's decision to certify the Final EIR and deny the appeals, or to reverse the Commission's decision to certify the Final EIR and return the Project to the Department for staff to conduct additional environmental review.

PROJECT DESCRIPTION

Please see the Department's Original Appeal Response, dated September 17, 2018, for a description of the Project.

APPELLANT'S ISSUES

Appellant claims that the Department failed in its duty to provide Limited English Proficient (LEP) communities with access to the Project's decision-making process through its failure to provide adequate translation services.

PLANNING DEPARTMENT RESPONSE

This Supplemental Appeal Response addresses specific concerns identified in the Supplemental Appeal Letter, dated September 17, 2018, filed by Steven Castleman on behalf of Greenaction.

Supplemental Response 1: As discussed in the Department's Original Appeal Response dated September 17, 2018, the Department's publication and distribution of the Notice of Preparation and the Draft EIR complied with the requirements of CEQA, the CEQA Guidelines, and Chapter 31 of the Administrative Code, did not exclude any limited- or non-English-speaking communities from meaningful participation in the CEQA process, and did not violate civil rights laws.

CEQA Requirement

CEQA Guidelines Section 15201 provides that "public participation is an essential part of the CEQA process" and that "each public agency should include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency's activities. Such procedures should include, whenever possible, making environmental information available in electronic format on the Internet, on a web site maintained or utilized by the public agency."

CEQA Section 21083.1 provides that "courts, consistent with generally accepted rules of statutory interpretation, shall not interpret this division or the state guidelines adopted pursuant to Section 21083 in a manner which imposes procedural or substantive requirements beyond those explicitly stated in this division or in the state guidelines."

Publication and Distribution of the Notice of Preparation and the Draft EIR

This issue was previously addressed in Response GC-1 of the Responses to Comments (RTC) document (RTC pp. 4-110 through 4-111) and in the Department's Original Appeal Response dated September 17, 2018 (Response 2, pp. 12-14).

The Department translated the Notice of Preparation of an EIR (NOP) into Spanish at the request of Greenaction on July 12, 2016. Due to an administrative oversight, the translated NOP was never distributed to Greenaction, the requestor. When the Department published the Draft EIR, the Department translated the Notice of Availability of the Draft EIR (NOA) into Chinese, Spanish, and Tagalog on the same day that it published the document and made it available in English, (September 13, 2017). In addition, BUILD translated the Executive Summary of the Draft EIR into Chinese and Spanish. These translated documents were posted on the Department's website (<http://sf-planning.org/environmental-impact-reports-negative-declarations>). The English-version NOA includes instructions for obtaining information about the Project in Chinese, Spanish, and Tagalog. The English-version NOA was mailed to occupants and owners within 300 feet of the project site and neighborhood groups within the Bayview neighborhood. Paper copies were also posted at local community centers and libraries within the surrounding neighborhoods. During the 47-day Draft EIR public comment period, nobody requested translation services or contacted the Department's designated interpreters for Chinese, Spanish, Chinese or Tagalog translation (confirmed by email on October 12, 2017).

As explained in the Department's Original Appeal Response, limited- and non-English-speaking individuals have had meaningful opportunity to participate in the CEQA process and provide comments on the EIR throughout this process, which has taken more than two years. First, they had an opportunity to participate in writing or in person during the public scoping meeting on June 16, 2016; then during the Draft EIR hearing on October 19, 2017; and then during the Final EIR certification hearing on July 26, 2018. While the Department did not translate the NOP prior to the June 2016 public scoping meeting (a mistake it has since acknowledged), by the time the public hearing on the Draft EIR was held on October 19, 2017, the Department had translated both the NOA and the Summary chapter of the Draft EIR. The Summary chapter of the Draft EIR is a 72-page document that provides a description of the Project, a list of the Project's potential impacts and mitigation measures, and brief descriptions of alternatives to the Project. Moreover, members of LEP communities will also have other opportunities to comment during additional public hearings on the approvals for the project separate from the CEQA process. At any of these times, these community members can request that interpreters be present at any public meetings and hearings if they require them by making such requests to the Department ahead of time. Therefore, the record reflects that limited- and non-English-speaking individuals have been provided opportunities for meaningful involvement in the CEQA process and that no violation of CEQA has occurred.

Translating the NOP and NOA into other languages is not required under CEQA, the CEQA Guidelines, or Chapter 31 of the Administrative Code. Although meaningful public participation is an essential part of the CEQA process, CEQA itself does not require agencies to provide language access services. In addition, CEQA Section 21083.1 prohibits the interpretation of CEQA in any manner that imposes additional procedural or substantive requirements beyond those explicitly stated in CEQA. Imposing language access services as a requirement of CEQA is explicitly prohibited by the statute, because such services are not explicitly required under CEQA. Nonetheless, the Department has provided translations of these materials as discussed above.

Appellant further claims that the City's alleged refusal to translate some documents and notices constitutes a violation of state and federal civil rights laws. First and foremost, these claims are not CEQA

claims, as the statute does not require translation. To the extent Appellant is arguing that the alleged failure to offer translation services has hampered the ability of limited- and non-English-speaking individuals to participate in the process, that claim is inaccurate for the reasons explained above. The Department also provided responses to Appellant's civil rights claims in its Original Appeal Response, which it now supplements, in order to address newly raised legal requirements brought by Appellant. In addition to the Equal Protection Clause, the Civil Rights Act of 1964, and the California Civil Rights Act, all addressed in the Department's Original Appeal Response, Appellant now argues that the City's actions violated the Bilingual Services Act ("BSA," Cal. Gov't Code Section 7290 *et seq.*) and the City's own Language Access Ordinance ("LAO," San Francisco Administrative Code Section 91.4). With respect to the first, although the BSA does set forth specific requirements for when state agencies must translate documents, it allows local agencies to determine for themselves when translations are necessary. (Cal. Gov't Code Section 7295). Moreover, the BSA does not contain any enforcement or penalty provisions. In fact, it states that its provisions "shall be implemented" only "to the extent that local, state or federal funds are available." (Cal. Gov't Code Section 7299). Under these circumstances, it appears that the Department's efforts to translate the notices, to make the Summary chapter of the Draft EIR available in translation through its website, and to offer interpreter services at all hearings, meet the requirements of the BSA.

The LAO mandates that departments translate "vital" documents into the language spoken by a substantial number of limited-English-speaking persons. (SF Admin. Code Section 91.5(a)). Notices, agendas and minutes are to be translated "only upon request;" interpretation or translation services at any public hearings or meetings are also to be provided "only if requested at least 48 hours in advance of the meeting or hearing." (SF Admin. Code Section 91.7). Here, the Department has met or exceeded these requirements. For the same reasons, Appellant's claims under Chapter 12A of the Administrative Code and the claims that the Department did not follow its own policies also fail. The Department did not discriminate against Appellant or anyone else, and it did not "refuse" to offer translations. On the contrary, as explained above, it provided a translated the NOA while the process was still unfolding and published a translated summary, providing ample opportunities for the community to engage in meaningful participation.

In light of the significant efforts made by the Department to provide translated documents to LEP community members, the Department's delayed translation of the NOP has not prevented these community members from participating in the CEQA review process.

This case is easily distinguishable from the situation in *El Pueblo Para el Aire y Agua Limpio v. County of Kings* (Cal. Super. Ct. 1991, 22 Env. L. Repr. 20357), which they cite. That case concerned a challenge to the construction of a hazardous waste incinerator. The court found the EIR deficient on several grounds, among them the failure to enable public participation by not translating a summary of the final document, in circumstances where more than 40 percent of the area residents were monolingual in Spanish and had expressed a strong interest in participating in the process. Here, the Project is not a hazardous waste incinerator, but a mixed-use development with residential, commercial, and open space uses. Moreover, while in that case the EIR process concluded without any language services having been provided, here the Department translated both the NOA and the Summary chapter

of the Draft EIR and provided interpreter services while the process was still ongoing and there was ample opportunity to learn about the Project and to participate in discussions at public hearings.

Meaningful public participation is an essential part of the CEQA process. The City has followed or exceeded all required guidelines and procedural steps to provide opportunities for meaningful participation to all members of the community, including translating the relevant documents and providing interpreter services so that members of LEP communities were afforded full opportunity to participate. No more is required.

CONCLUSION

For the reasons stated in the Original Appeal Response, and in this Supplemental Appeal Response, the Commission's certification of the Final EIR complies with the requirements of CEQA, the CEQA Guidelines, and Chapter 31 of the Administrative Code. The Department, therefore, recommends that the Board uphold the Commission's decision to certify the Final EIR and deny the appeals.