



Appeal of Final Subsequent Environmental Impact Report – Balboa Reservoir Project

DATE: August 10, 2020
TO: Angela Calvillo, Clerk of the Board of Supervisors
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RE: File No. 200804, Planning Case No. 2018-007883ENV
Appeal of the Final Subsequent Environmental Impact Report for the Balboa Reservoir Project
HEARING DATE: August 11, 2020

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

DEPARTMENT’S RECOMMENDATION: Uphold the SEIR certification and deny the appeal

INTRODUCTION

This memorandum is a response to the appellant supplemental letters to the Board of Supervisors (the “Board”) regarding the Planning Department’s (the “department’s”) issuance of a final subsequent environmental impact report (“final SEIR”) under the California Environmental Quality Act (“CEQA Determination”) for the Balboa Reservoir Project (the “proposed project” or the “project”). The appellant, to date, has submitted five supplemental letters (August 1, August 5, August 6 (three letters)), all of which missed the deadline for submitting supplemental materials to the Board pursuant to chapter 31 of the San Francisco Administrative Code.¹ Thus, the department is responding to the appellant’s supplemental letters for informational purposes.

Please refer to the department’s appeal response dated August 3, 2020, for a more detailed response to the appellant’s initial appeal letter dated June 18, 2020. The department’s response herein expands upon its response concerning alternatives (response 7) and COVID-19 (response 8) and continues the numbering found in the department’s prior appeal response for other responses. However, the department is not responding further to comments concerning existing conditions, secondary parking, and land use, as the department already responded to such comments in its prior appeal response (responses 1, 4, and 5, respectively).

¹ Ch. 31.16(5) states: “Members of the public, appellant and real parties in interest or City agencies sponsoring the proposed project may submit written materials to the Clerk of the Board no later than noon, 11 days prior to the scheduled hearing.” In this case, the appellant’s deadline was noon, Friday, July 31, 2020.

In summary, the appellant's letters repeat comments that the department already addressed in response to EIR public review processes and as substantiated by the department's appeal responses.

PLANNING DEPARTMENT RESPONSES

Response 7: The SEIR adequately evaluates a reasonable range of feasible alternatives (continued from department's August 3, 2020 appeal response).

The appellant contends again that the SEIR failed to evaluate a publicly owned 100 percent affordable housing alternative and now specifies that such an alternative would contain 500 units.

The department's August 3, 2020 appeal response thoroughly responds to these additional comments, with a focus on the reasons the department considered but rejected a 100 percent affordable housing alternative. The following discussion provides additional support to the department's original response as it relates to a 500-unit alternative (100 percent affordable or not).

The SEIR analyzes a reasonable range of alternatives, including a reduced density alternative: 800 units. The draft SEIR and RTC Response AL-4 (p. 4.F-24) explain the extent to which that alternative or a further reduced density alternative would meet project objectives or would reduce significant and unavoidable impacts. As stated, the 800-unit reduced density alternative would not avoid or substantially lessen any significant and unavoidable impacts of the proposed project. RTC Response AL-4 explains why a further reduced alternative was considered, but rejected. The Planning Commission rejected the reduced density alternative (and other alternatives studied in the SEIR) as infeasible at its May 28, 2020 hearing in approving the project for numerous reasons.

Further, the analysis of an additional reduced density (500-unit) alternative would be inconsistent with the CEQA Guidelines. A 500-unit alternative would reduce the project's housing units, and the SEIR analyzes other potentially feasible, specific mitigation measures and alternatives that provide comparable lessening of the project's significant and unavoidable impacts without reducing the proposed number housing units. Thus, the SEIR considers but rejects a further reduced density alternative, and it would be contrary to CEQA to fully analyze such an alternative. CEQA Guidelines section 15041(c) states:

With respect to a project which includes housing development, a Lead or Responsible Agency shall not reduce the proposed number of housing units as a mitigation measure or alternative to lessen a particular significant effect on the environment if that agency determines that there is another feasible, specific mitigation measure or alternative that would provide a comparable lessening of the significant effect.

As demonstrated below, the SEIR identifies several significant impacts, evaluates potentially feasible mitigation measures and alternatives to reduce significant and unavoidable impacts, and discloses all instances where significant impacts are unavoidable with or without mitigation. The Planning Commission confirmed the SEIR analysis in its certification of the SEIR.

- **Loading and the Lee Avenue Extension:** the SEIR conservatively identifies potential loading conflicts related to the project's extension of the currently dead-end street, Lee Avenue, under project and cumulative conditions. The project incorporates features (loading spaces) to reduce impacts, but the SEIR conservatively identifies the impact as unavoidable due to uncertainty on how Lee Avenue will operate in future. The SEIR identified no feasible mitigation measures to reduce impacts.

The SEIR identifies that the Reduced Density (800-unit) alternative and San Ramon Way Passenger Vehicle Access alternative would reduce impacts, but not to less-than-significant levels. Of note, RTC Response AL-4 states: “A further reduced alternative would reduce projected-generated traffic volumes at the Ocean Avenue/Lee Avenue intersection, however, it would affect existing freight loading activity and passenger loading/unloading, and could create potentially hazardous conditions to people bicycling or significant delay that may affect transit.” The significant and unavoidable impact would remain if an alternative included 500 units.

The appellant now contends that “extension of Lee Street (sic) through to the north end of the Project site would not be necessary [under a 500-unit alternative], as the current access road along the north end would provide sufficient vehicle access the much smaller number of vehicles.” The appellant provides no evidence to support this contention or a feasible design for how the site would function. Further, eliminating the Lee Avenue extension would not meet two of the project objectives related to creating new streets and sidewalks and pedestrian and bicycle amenities and connections. Lastly, the 2008 Balboa Park Station Area Plan Program EIR (“PEIR”) studied 500 units for the project site. At that density, the area plan PEIR envisioned an extension of Lee Avenue for “Future Reservoir housing ingress and egress” (area plan PEIR, figure 6). Lastly, per the California Fire Code, multi-family residential projects having more than 200 dwelling units shall be provided with two separate and approved fire apparatus access roads². Thus, it’s unreasonable to assume that such a reduced density alternative would not necessitate an extension of Lee Avenue (see response 12, below, for further discussion on this issue).

- **Transit delay (cumulative only):** the SEIR conservatively identifies a significant cumulative transit delay impact due to the unknown transit delay impacts from cumulative projects, including City College projects. The SEIR also conservatively identifies a cumulatively considerable contribution from the project due to the exponential nature of delay. The SEIR identifies potential capital improvements to reduce the project’s contribution to the cumulative transit delay below the two-minute threshold, and those improvements are included as Mitigation Measure M-C-TR-4: Monitor Cumulative Transit Travel Times and Implement Measures to Reduce Transit Delay. However, given the uncertainty of SFMTA approval of these capital improvement measures (or other similar measures) at the time of SEIR preparation, the SEIR identifies the transit delay impact as significant and unavoidable with mitigation.

The SEIR identifies that the Reduced Density (800-unit) alternative and San Ramon Way Passenger Vehicle Access alternative would reduce impacts, but not to less-than-significant levels. Of note, RTC Response AL-4 states: “The addition of vehicle and transit trips generated by a further reduced density alternative in combination with the [City College) facilities master plan projects and other cumulative development would increase transit delay and may exceed the four-minute transit delay threshold... Given the potential for exponential delay under cumulative conditions (refer to draft SEIR p. 3.B-95), a further reduced density alternative could contribute considerably.” Thus, the significant and unavoidable impact would remain if an alternative included 500 units.

² SF Planning Department email communications with SF Fire Department, August 10, 2020.

After certification of the SEIR, the SFMTA Board of Directors, at their June 16, 2020 meeting, adopted Mitigation Measure M-C-TR-4 as a condition of their approval for resolution no. 200616-055. Thus, the project would not result in significant and unavoidable impacts to cumulative transit delay impacts.

- **Construction noise and air quality:** the SEIR identifies significant and unavoidable with mitigation impacts to construction noise and construction air quality. No feasible alternatives would avoid or substantially lessen the construction noise impact or the construction air quality impact (assuming a three-year construction schedule), including a reduced density alternative. RTC Response AL-4 explains:

“Construction of any number of buildings at the site would result in significant and unavoidable project-level and cumulative impacts for air quality (compressed schedule) and noise (six year and compressed schedule). Regardless of the number of units (such as 350 or 400 units), construction would require the initial phase (Phase 0) to prepare the site. Phase 0 would include the demolition of the parking lot, west side berm, and north and east embankments, followed by grading, excavation, and construction of the site infrastructure. The installation of site infrastructure and finish grading would be required for any residential construction at the site.

Like Alternative B [800-unit Reduced Density], the type of construction equipment and use characteristics would not change because demolition, excavation, and construction activities, even though more limited, would still occur under a further reduced alternative. If housing is concentrated on the south side of the site, such an alternative may result in less construction-related noise impacts to Archbishop Riordan High School. However, the noise levels at the receptors nearest to the southern and western project property lines would still exceed the “Ambient + 10 dBA” standard. As stated on draft SEIR p.3.C-29, ‘it should be noted that the majority of construction activity would not occur at the closest project site boundary to these closest receptors. However, given the extended duration of these phases of construction ... this impact is considered significant and unavoidable with mitigation.’”

The SEIR studied a potentially feasible six-year construction schedule alternative to reduce the construction air quality impacts. The Planning Commission rejected the Six Year Construction Alternative as infeasible at its May 28, 2020 hearing in approving the project because the alternative would reduce the project’s flexibility to schedule construction phases in less than six years in response to market conditions and the availability of public subsidies for affordable housing and infrastructure improvements.

In conclusion, the SEIR studies a reasonable range of potentially feasible alternatives, including an 800-unit reduced density alternative, and the SEIR complies with CEQA for alternatives analysis. The SEIR does not need to analyze a 500-unit alternative, and the Planning Commission rejected the SEIR analyzed 800-unit reduced density alternative in its project approvals.

Response 8: The SEIR is adequate and complete, and complies with CEQA, the CEQA Guidelines, and chapter 31 of the San Francisco Administrative Code. The COVID-19 pandemic and shelter-in-place order does not result in new significant environmental effects (continued from response 8 in the department's August 3, 2020 appeal response).

The appellant contends again that the SEIR fails to address COVID-19 pandemic and now contends that it requires major revisions to the area plan PEIR.

The department's August 3, 2020 appeal response thoroughly responds to these additional comments. The following text provides additional support to the department's original response.

The department does not dispute that the COVID-19 pandemic has disrupted the City and region's public transportation systems and that SFMTA has confirms the disruption.

However, the appellant ignores the SFMTA's statements about the temporary nature of the current public health crisis and the long-term uncertainty of transit service changes in the blog post³ attached to one of the appellant's August 6, 2020 appeal letters. SFMTA describes that the current transit service disruptions are *temporary* due to physical distancing constraints brought upon by current public health guidance. SFMTA is also currently facing a transit service operator shortage, which is further affecting their ability to provide transit service.

Finally, the SFMTA states how transit service is allocated *long-term* is "uncertain":

"[A]s with everything else with this pandemic, how our service is allocated throughout the city beyond August is uncertain. It will depend on the physical distancing requirements and revenues. We are making many temporary changes to adjust to rapidly evolving circumstances. We know that permanent long-term service changes will require additional analysis and public input and we look forward to engaging on these issues with our elected officials and communities."⁴

Thus, it is speculative for the department to evaluate the long-term physical environmental impacts from COVID-19 as it relates to this SEIR. The SEIR satisfies the best effort requirement of CEQA and presents the best available information at the time. For the reasons stated in the SEIR and in this response, the SEIR meets the standards of adequacy of an EIR as set forth in CEQA Guidelines Section 15151.

Response 11: The SEIR transit delay impact analysis is supported by substantial evidence (continued numbering after response 10 in the department's August 3, 2020 appeal response).

The appellant contends that the justification for the use of a four-minute delay as a CEQA threshold of significance for transit delay does not constitute substantial evidence. The appellant also states the SEIR changed transit analysis with more favorable data that was collected during City College finals week (December 17-18, 2019).

RTC Response TR-4, Transit Significance Criteria Used in the Transit Delay Analysis, (p. 4.C-33), thoroughly responds to and explains that the transit significance criterion used in the transit delay analysis, and the threshold

³ <https://www.sfmta.com/blog/future-transit-service-through-health-and-budget-crisis>.

⁴ *Ibid.*

of significance used to evaluate that criterion, is based on substantial evidence. The criterion and threshold are consistent with the guidance in the San Francisco Planning Department's Transportation Impact Analysis (TIA) Guidelines for Environmental Review. The department led a several-year process to update its guidelines, including consulting with transit agencies and the Planning Commission, and completed the comprehensive update in 2019. The SEIR relies on the 2019 TIA Guidelines as a starting point for the more detailed scope and analysis therein.

As explained in RTC Response TR-4, a project would have a significant effect on the environment if it would substantially delay public transit. In particular, the project *could* have a significant transit impact if transit travel time increases on a specific route would be greater than, or equal to, four minutes or half of the existing headway [or frequency] for Muni service, whichever is less (the threshold of significance).

Substantial evidence for the criterion and threshold of significance is provided in Appendix I of the 2019 TIA Guidelines (p. I-26) and in a July 20, 2018 memorandum from the SFMTA included as RTC Attachment 5. As stated in the SFMTA memorandum, "transit delays of four minutes or more contribute to a decline in OTP [on-time performance] and should be considered an indicator of a potential significant impact, regardless of the scheduled headway. If a delay greater than or equal to four minutes or one-half headway, whichever is less, that is attributable to the proposed project is identified, this delay should be evaluated for significance on the basis of the type of route affected."

The four-minute threshold of significance is based on the adopted City Charter section 8A.103(c)1, which establishes an 85 percent on-time performance service standard for Muni. Muni considers vehicles to be late if they arrive more than four minutes beyond a published schedule time.

The 2019 TIA Guidelines, the SFMTA memorandum, and the SEIR acknowledge that delay by itself may not lead to physical environmental impacts. Instead, the delay could lead to a physical environmental impact if that delay leads transit riders to switch to automobile-based modes. The SFMTA memorandum cites research and local experience to support the relationship between transit ridership and transit travel time (delay).

The SEIR uses the threshold of significance to indicate if the project could substantially delay public transit. As explained in RTC Response TR-4, the department applies the transit delay threshold of significance within the study area boundaries. The transit delay analysis for the 43 Masonic line is clarified on RTC p. 4.C-35, which includes the segment between the City College Bookstore and Geneva Avenue/Howth Street to capture the geographic extent of project-related transit delays to the 43 line. The transit lines analyzed in the SEIR (K/T Third/Ingleside, 29 Sunset, 43 Masonic, and 49 Van Ness/Mission) have headways ranging between 9 to 12 minutes (see SEIR Appendix C4, Transit Delay Analysis and Capital Improvement Memorandum, included in RTC Chapter 5). The threshold is "a delay greater than or equal to four minutes or one-half headway, whichever is less," as described above. One-half headway for these lines would be four and a half minutes to six minutes. Therefore, the four-minute threshold of significance for transit delay is appropriate for those routes.

If a Muni line runs more frequently than every eight minutes, then the threshold of significance would be less than four minutes. As demonstrated in Table 3.B-18 (RTC p. 4.C-41 to 42), the Developer's Proposed Option would add a maximum of 1 minute and 40 seconds of delay to any transit route in any direction during existing plus project conditions. Thus, an affected transit route would need to operate at headways approximately every

3.5 minutes for the Developer's Proposed Option to potentially result in a significant impact. Such frequency doesn't exist in study area transit routes.

Under cumulative conditions, the department used the same threshold of significance to evaluate the potential for a significant cumulative transit delay impact. However, the department applied a more stringent threshold of significance to the project to identify if the project could result in cumulatively considerable contributions to a significant cumulative impact: two minutes of delay.

As explained in RTC Response TR-4, the SEIR conservatively identifies a significant cumulative transit delay impact due to the unknown transit delay impacts from cumulative projects, including City College projects. The SEIR also conservatively identifies a cumulatively considerable contribution from the project due to the exponential nature of delay. The SEIR identifies potential capital improvements to reduce the project's contribution to the cumulative transit delay below the two-minute threshold, and those improvements are included as Mitigation Measure M-C-TR-4. However, given the uncertainty of SFMTA approval of these capital improvement measures (or other similar measures), the SEIR identifies the transit delay impact as significant and unavoidable with mitigation.

Lastly, the SEIR presented data in the RTC that was collected in December 2019 and January 2020. The purpose of the data collection was to identify and analyze existing sources of transit delays to inform the SEIR's Mitigation Measure M-C-TR-4: Monitor Cumulative Transit Travel Times and Implement Measures to Reduce Transit Delay. This data was used only to inform the refinements made to this mitigation; the data was not used alter the transit travel time data identified in the draft SEIR and clarified in RTC Response TR-4 (p. 4.C-33). The transit travel time data presented in the SEIR was collected on Wednesday, January 31, 2018 and Tuesday, August 28, 2018.

City College was in finals but held evening classes during the p.m. peak period data collection (5-7 p.m.) on Tuesday, December 17, 2019 and Wednesday, December 18, 2019. City College was in regular session during the p.m. peak period data collection on Thursday, January 16, 2020. City College was in regular session during Thursday, January 23, 2020, off-peak (8-11 p.m.) data collection but not during Thursday, January 9, 2020 off-peak data collection. Off-peak travel time runs were compared to historical data to check that they were representative.

The department adequately assessed transit delay impacts in accordance with the methodology presented in the 2019 TIA Guidelines and is supported by substantial evidence. For the reasons stated above in the SEIR, including but not limited to the responses identified above, the SEIR meets the standards of adequacy of an EIR, as set forth in CEQA Guidelines Section 15151.

Response 12: The SEIR appropriately analyzes impacts associated with the Lee Avenue extension.

The appellant contends that the 2008 area plan PEIR rejected the Lee Avenue extension because it would result in substantial adverse transportation impacts, and that the PEIR's analysis has not been incorporated into the SEIR as it relates to transit delay.

The RTC document responds to the appellant's points regarding the area plan PEIR's conclusion and SEIR analysis. As explained on RTC Response TR-8: Vehicle Traffic Congestion and Associated Impacts on p. RTC-4.C-74, "The PEIR's conclusion regarding Lee Avenue is relevant to the proposed project in that CEQA allows subsequent project-level analyses to tier off of previous general-level analysis. The PEIR analysis is at an area

plan level, with different details than are available for the present project-level analysis. For example, the draft SEIR analysis uses more recent traffic counts to reflect existing baseline conditions than the PEIR, which was certified in 2009 [sic, 2008].⁵ Using newer and more relevant information allows for more accurate analysis and is consistent with the tiering approach for environmental analysis. Decision makers did not make any approval or take any action that prevented future extensions of Lee Avenue when they certified the PEIR and adopted the area plan.”

The impacts of the proposed Lee Avenue extension in relation to transportation, including transit delay, are analyzed throughout the SEIR, in the context of the currently proposed project and in comparison to current existing conditions. For example, project-generated vehicle traffic effects along Lee Avenue and Ocean Avenue/Lee Avenue intersection operations are analyzed under Impact TR-2 on SEIR pp. 3.B-65 to 3.B-70. As discussed in this section, the proposed project would not increase the frequency, duration, or length of vehicular queues along westbound Ocean Avenue such that it would increase instances of lane blockages at the City College Terminal or San Francisco Fire Department station 15, or substantially delay transit. The impact to loading conditions associated with the Lee Avenue extension including the proposed reconfiguration of southbound Lee Avenue between Ocean Avenue and the project site is analyzed under Impact TR-6b, on SEIR pp. 3.B-85 to 3.B-91, Impact C-TR-6b, on SEIR pp. 3.B-101 to 3.B-102, and Response TR-5, Loading Impacts, on RTC p. 4.C-53.

The appellant provides no new information to substantiate the claim that the SEIR did not appropriately analyze impacts related to the Lee Avenue extension. For the reasons stated above in the SEIR, including but not limited to the responses identified above, the SEIR meets the standards of adequacy of an EIR, as set forth in CEQA Guidelines Section 15151.

Response 13: The SEIR appropriately tiers from the 2008 area plan PEIR.

The appellant contends that the area plan PEIR didn’t identify impacts to City College and therefore this project’s SEIR reference to the PEIR as it relates to City College is inappropriate.

The proposed project at the Balboa Reservoir site is considered a later activity under the area plan program, and the SEIR evaluates the environmental effects of the proposed project relative to the program-level impact analysis in the certified PEIR. The SEIR appropriately tiers from the area plan PEIR and analyzes impacts associated with implementation of the proposed project. The RTC document thoroughly responds to comments concerning the tiering of the SEIR from the area plan PEIR in RTC Response CEQA-1 (p. 4.A-3). As stated there, the CEQA Guidelines sections 15152 and 15168 provides general guidance regarding tiering and explains that:

“A later subsequent EIR is required when the initial study or other analysis finds that the later project may **cause significant effects on the environment** that were not adequately addressed in the prior EIR.”
(**emphasis added**)

Thus, the SEIR must consider whether the currently proposed project causes significant effects on the environment that were not addressed in the area plan PEIR, and not whether the area plan PEIR adequately analyzed environmental impacts. The SEIR, including initial study, analyzes several topics that were not addressed in the area plan PEIR to address items such as changes in the CEQA Guidelines since PEIR certification

⁵ The RTC mistakenly wrote 2009 here, instead of the correct year of EIR certification, 2008.

in 2008. Examples include tribal cultural resources, mineral resources, agriculture and forest resources, and wildfire.

The SEIR appropriately identifies that the project would not have significant impacts on public services, including City College (e.g., see department response 4 in the August 3, 2020 memo). The appellant does not substantiate how the department did not appropriately tier from the area plan PEIR. For the reasons stated in the SEIR, including but not limited to the responses identified above, the SEIR meets the standards of adequacy of an EIR as set forth in CEQA Guidelines Section 15151.

CONCLUSION

For all the reasons provided in the department's appeal responses, the final 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 final 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 final SEIR and deny the appeal.