

# PLANNING COMMISSION

Meeting Date: 09/21/20

## **ADDITIONAL ITEM ADDED AFTER DISTRIBUTION OF PACKET (# 2 )**

### **AGENDA ITEM # 2**

**Applicant/Project Name:** Kaiser Permanente P# SDP19-0005 & EIR20-003

**Brief Description:** Public Comment received

**Date** 09/21/20

**Time** 10:35 a.m.

September 21, 2020

**Via E-Mail**

Planning Commission  
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**Re: Kaiser Permanente Hospital – Final Environmental Impact  
Report Project No. SDP19-0005; EIR20-003**

Dear Planning Commissioners:

On behalf of Friends of San Marcos (FSM), this is to respectfully request that the Planning Commission DECLINE to certify the Final Supplemental EIR (SEIR) for the Kaiser Permanente Hospital Project referenced above (Project), and to refrain from approving a site development permit for the Project at this time. As set forth in the body of this letter, the Final SEIR does not meet the standards of adequacy under CEQA for disclosure, analysis, and mitigation of the Project's potentially significant environmental impacts, nor for responding to public comment on a draft EIR with good faith, reasoned analysis.

FSM is an unincorporated association of residents, taxpayers, property owners, and businesses in the City of San Marcos (City). FSM's constituents include residents who live and/or work in the vicinity of the Project, who will be impacted by any adverse, unmitigated environmental effects the Project may cause, both during its construction and operational phases. FSM previously commented on the Draft SEIR for the Project by letter dated June 22, 2020. That comment letter, which we incorporate in full by reference here, raised several concerns over the Draft SEIR's analysis of individual and cumulative impacts to biological resources, air quality and human health, greenhouse gas emissions, noise and traffic. As explained below, the Final EIR's comment responses are in many instances conclusory, perfunctory, and lacking in analysis, and as a result there is no substantial evidence to support the document's conclusions that the Project will have no significant environmental impacts after mitigation.

## BIOLOGICAL RESOURCES

### Rare Plants

In our comments on the Draft SEIR, we asked the City to provide the rationale for the conclusion that the timing of the botanical survey (conducted on one date, July 29, 2019) was appropriate for detection of Orcutt's brodiaea. In response, the City claimed that it had adhered to appropriate survey protocol standards, since the species is known to bloom in July. This response is misleading. The protocol standards call for visiting reference sites to determine whether the target plant species is identifiable at the time of the actual field survey. There is no evidence any reference site was surveyed.

In addition, in comment response F-6 the Final SEIR reveals, for the first time, a documented occurrence of up to nine Orcutt's brodiaea on the Discovery Village South Specific Plan Project boundary, approximately 0.25 miles from the Project site. This information was not disclosed in Draft SEIR. Although the Final SEIR now discloses presence of the species within the Discovery Village South Specific Plan Project boundary, it does not provide the specific dates the plants were detected. The dates that Orcutt's brodiaea plants have been detected within the Discovery Village South Specific Plan Project boundary has implications on the City's argument that the species would have been detectable on July 29, 2019.

Similarly, comment response F-7 claims that "Orcutt's brodiaea is not expected to occur on site because 2019 focused surveys were negative and the habitat and substrate are largely unsuitable. However, the Final SEIR's statement that "[s]oils within the Grangeville series are absent from the project site" conflicts with the Biological Resources Letter Report, which identifies Grangeville fine sandy loam as one of the four native soil types found within the Project study area.<sup>1</sup> Furthermore, the Final SEIR fails to explain why fine sandy loam in the Grangeville series is suitable for Orcutt's brodiaea, but very fine sandy loam in the Escondido series is "largely unsuitable" for the species.

### Coastal California Gnatcatcher

Our comment F-15 asked the City to provide the rationale for the Draft SEIR's conclusion that the Project would result in direct impacts to the coastal California gnatcatcher, but only if it proceeds prior to the Discovery Village South Specific Plan Project. The comment response states that the Draft SEIR's conclusion was incorrect, and that the Project *would not* result in direct impacts to the gnatcatcher.

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<sup>1</sup> Draft SEIR, Appendix B, p. 8.

The response states that the Draft SEIR's conclusion was predicated on the assumption that the Biological Opinion issued for the Discovery Village South Specific Plan Project would include take coverage for a pair of federally threatened coastal California gnatcatchers that is shared between the proposed Project site, the Discovery Village South Specific Plan Project site, and the North City (University District) Specific Plan Project area to the north.

The City's response is illogical for two reasons. First, the Draft SEIR was released two months *after* the Biological Opinion was issued. Therefore, the City was aware of its content before finalizing the Draft SEIR. Second, the response does not explain why the Draft SEIR's conclusion was contingent on which project was approved first, especially because the conclusion was formulated with knowledge that all gnatcatcher habitat had already been removed within the Discovery Village South Specific Plan and North City (University District) Specific Plan development boundaries.

Comment F-18 asked for the Biological Opinion issued by the USFWS for the Discovery Village South Specific Plan Project. That Opinion, appended to the Final SEIR, contains a substantial amount of new information that was not disclosed in the Draft SEIR. For example, the Draft SEIR suggests only one pair of coastal California gnatcatchers have been detected on the Discovery Village South Specific Plan Project site.<sup>2</sup> However, the Biological Opinion reveals that two pairs have been detected.<sup>3</sup> In addition, the Biological Opinion reveals that the observed use area for Pair 1 (i.e., the pair observed on the Project site) is approximately 5.75 acres—not 31 acres (as suggested in the DSEIR).<sup>4</sup> Under these circumstances, recirculation of a revised Draft SEIR that includes and addresses the Biological Opinion is required under 14 C.C.R. § 15088.5.

### **Cumulative Impacts to Biological Resources**

The Draft SEIR states that the Project in concert with future foreseeable projects would not result in significant cumulative impacts because all cumulative projects with similar impacts to biological resources would require mitigation. To illustrate this point, the Draft SEIR states: “mitigation was provided in the Final Mitigated Negative Declaration prepared for the Discovery Village South Specific Plan Project, which reduced all potentially significant impacts to less-than-significant levels.”

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<sup>2</sup> DSEIR, p. 4.1-16.

<sup>3</sup> Biological Opinion, p. 10.

<sup>4</sup> *Ibid*, p. 11. *See also*, DSEIR, p. 4.1-21.

Our comment F-19 asked the City to provide evidence (e.g., mitigation monitoring reports) that demonstrates mitigation associated with the Discovery Village South Specific Plan Project successfully reduced all potentially significant impacts to less-than-significant levels. No mitigation monitoring reports have been provided. Instead, the City provided a table that identifies: (a) the impact; (b) mitigation measure; (c) action required; (d) timing; (e) responsible parties; and (f) status of the mitigation efforts. The table fails to show that mitigation associated with the Discovery Village South Specific Plan Project successfully reduced all potentially significant impacts to less-than-significant levels. For example, even though mitigation for impacts to gnatcatcher habitat was supposed to occur prior to construction activities (which would include vegetation removal), the applicant is still only “in the process of acquiring off-site parcels, conducting conservation, and securing management” for the compensatory habitat. This not only violates the terms of MM-BIO-4, but also the Biological Opinion’s requirement that the applicant “identify and negotiate a suitable parcel(s) to offset project-related impacts to gnatcatcher and to secure conservation and management” by August 21, 2020.<sup>5</sup>

## **Nesting Birds**

Our comment F-22 pertained to nesting birds other than the coastal California gnatcatcher. The Draft SEIR stated: “[p]re-construction nesting bird surveys during the breeding season to avoid impacts to nesting birds in accordance with the MBTA and Fish and Game Code are a condition of project approval.” No additional information was provided. Accordingly, we asked the City to: (a) clarify the nesting bird survey requirements, (b) identify the avoidance and minimization measures that the City is requiring if nests are detected during the pre-construction surveys, and (c) identify the mechanism that would ensure those requirements are satisfied prior to any construction activities during the avian breeding season. The City did not provide this information. Instead, it removed the requirement for pre-construction surveys that would enable the Applicant to avoid impacts on nesting birds.

## **Mitigation Measure BIO-4 (Habitat Restoration Plan)**

The Final SEIR’s response to our comment F-26 confirms that the City is

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<sup>5</sup> The Draft SEIR at page 4.1-21 stated: “However, it is our understanding that all suitable coastal sage scrub vegetation within the Discovery Village South Specific Plan and North City (University District) Specific Plan development boundaries, comprising approximately 31 acres, has already been cleared in accordance with local, state, and federal agency approvals.” The City is the lead agency responsible for overseeing all mitigation measures for the University District project, as well as this one. This comment response suggests the City is unaware of the status of land clearance at the former project’s site. How can the public be assured that all mitigation actions that were required prior to and during vegetation removal were adhered to? If they were not, the Kaiser Project may as a result have significant cumulative impacts that have not been disclosed.

improperly deferring formulation of the Habitat Restoration Plan in several critical respects, including: identifying the plant species to be used, container sizes, and seeding rates; the planting schedule; a description of the irrigation methodology; measures to control exotic vegetation on site; criteria to judge success in meeting the performance standards; a detailed monitoring program; contingency measures should the performance standards not be met; and naming the party responsible for meeting the performance standards and providing for conservation of the mitigation site in perpetuity. As stated in our comment, deferral of these items precludes assurances that the habitat restoration would successfully mitigate impacts to less than significant levels. Because the Final SEIR does not establish any performance standards for exotic vegetation, there are no assurances that the Applicant would do anything to control exotic vegetation within the mitigation site.

#### Performance Standards for Gnatcatcher Use of Restoration Sites (Comment F-31)

Habitat at the Project site has supported a breeding pair of coastal California gnatcatchers. The Project would permanently or temporarily impact that habitat. The Final SEIR assumes the impacts are potentially significant.<sup>6</sup> As mitigation for the “temporary” impacts, MM-BIO-10 requires the Applicant to restore 1.95 acres of native upland communities on the Project site.

The Final SEIR revises MM-BIO-10 by adding the following performance standard: “resulting habitat at equal or better value to the impacted habitat.”<sup>7</sup> The Final SEIR fails to explain, however, how the Applicant would measure the habitat “value.” The response to comment F-31 confirms that the Habitat Restoration Plan will not include a performance standard for coastal California gnatcatcher use of the restoration area. This is a critical flaw because habitat is defined by presence of the organism (in this case the gnatcatcher); it is more than vegetation. Thus, if there are no metrics of gnatcatcher use of the restoration area, there is no ability to demonstrate that the restored “habitat” provides equal or better value than the impacted habitat. In other words, there are no assurances that the restoration area would actually function as habitat for gnatcatchers. As a result, impacts to 1.95 acres of gnatcatcher habitat remain potentially significant.

#### Mitigation Monitoring Methods (Comment F-32)

Comment F-32 asked the City to establish the mitigation monitoring methods, frequency, and duration. The City’s response fails to establish the mitigation monitoring methods and frequency. Instead, it references unspecified “industry

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<sup>6</sup> FSEIR, p. 4.1-21.

<sup>7</sup> FSEIR, pp. 4.1-29 and -30.

standards” and states: “[t]he specific strategies to attain the performance standards across all metrics will be developed at a later date in coordination with the City.”

#### Time Threshold for Success (Comment F-33)

Comment F-33 asked the City to identify a time threshold for success of the restoration efforts and identify the remedial actions the City will take if the restoration areas fail to achieve performance standards by that time threshold (i.e., despite implementation of contingency measures). The City provided the following response: “[i]f the restoration site has not met the performance criteria, the applicant’s maintenance and monitoring obligations will continue until performance criteria are successfully met, as established in the Habitat Restoration Plan.” The comment response indicates there is no time threshold for success of the restoration efforts. Instead, the City will allow perpetual failure of the habitat restoration efforts as long as the Applicant keeps maintaining and monitoring the restoration areas in an attempt to achieve the performance standards.

### **AIR QUALITY/HUMAN HEALTH**

In comments on the Draft SEIR, we asked the City to perform a Health Risk Assessment to evaluate potential health effects from exposure to diesel particulate matter (DPM) during both the Project’s construction and operational phases. The City declined to do so, claiming that there are no protocols or requirements for health risk assessments of short-term construction activities; that existing dust control mitigation measures would reduce DPM emissions during construction; and that the Project’s generators and boilers would comply with all applicable air district guidelines. The comment response does not justify the non-performance of a Health Risk Assessment for DPM exposure among sensitive receptors living near the site over the Project’s operational lifetime. The response is inadequate, and there is no basis to conclude such exposure would not have any adverse health effects.

### **NOISE**

We commented that the Draft SEIR should include an analysis of potential noise impacts. The comment response asserts that all noise impacts were evaluated in the 1992 SEIR, and that not the Project would not generate additional noise beyond what was assumed in 1992. The issue is not necessarily whether the Project itself would generate additional noise, though it plainly might, given the addition of siren noise from a new emergency department. The concern is whether there will be noise impacts to receptors near the site that were not present in 1992. The comment response is inadequate for failing to address this concern.

## **TRAFFIC**

As the Final SEIR correctly notes, on July 1, 2020, levels of service (LOS) and other traffic congestion-related criteria ceased to be CEQA-relevant, and lead agencies thenceforth are required to evaluate projects' traffic impacts using vehicle miles traveled (VMT) criteria. Comment response F-38, however, presents a classic "Catch-22" with regard to traffic impact analysis for this Project. On the one hand, it states that any concerns about the Draft SEIR's LOS-based traffic analysis became effectively moot as of July 1, 2020. On the other hand, the response declares that because the Draft SEIR was released over two months before that date, the City was under no obligation to evaluate impacts based on VMT criteria either. In essence, the City is claiming it had no duty to evaluate traffic impacts at all, under either LOS or VMT criteria, because of a quirk in timing. CEQA requires substantial evidence to support a finding on impact significance or lack thereof respect to traffic. By omitting necessary analysis, the Final EIR does not provide that evidence.

## **GREENHOUSE GASES**

We commented on the Draft SEIR that while greenhouse gas emissions impacts may have been a known concern in 1992, the fact remains that the 1992 SEIR did not evaluate the Project's GHG emissions impacts. The comment response simply re-states the Draft SEIR's assertion, arguing that because the Project is smaller than what was evaluated in the 1992 SEIR, there will be fewer GHG emissions and hence no impacts. This response is inadequate, since CEQA requires a lead agency to make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project. That effort includes evaluating a project against the requirements of an adopted local plan for reducing or mitigating GHG emissions. Here, the City adopted a Climate Action Plan in 2013, which it evidently is in the process of updating.

## **MISSING DOCUMENTS**

As the Final SEIR affirms, we asked for Appx A and E from 1992 SEIR on May 25, 2020, repeating the request in our Draft SEIR comments. The Final EIR's response states: "Refer to Response to Comment E-4." Presumably this is a typographic error and the reference should be to RTC E-3. Regardless, the requested appendices, despite the inference that they are not relevant, are part of the 1992 SEIR relied upon and must be produced. We also requested specific appendices to Appendix C and D of the 1992 SEIR, identifying each by title. The comment response in the Final SEIR incorrectly states that these separate appendices were provided to us. They were not. The comment response is inadequate under CEQA, and the record is incomplete without the requested materials.

## **CONCLUSION**

For the foregoing reasons, the Final SEIR does not meet CEQA's standards for responses to public comment on the draft SEIR, nor does it satisfy the disclosure, analysis, and mitigation requirements with respect to biological resources, air quality/human health, noise and traffic. It also contains significant new information requiring recirculation for additional agency and public review and comment.

We therefore respectfully urge the Planning Commission to decline to certify the Final SEIR or approve the Project at this time.

Thank you for your consideration of these concerns.

Most sincerely,

M. R. WOLFE & ASSOCIATES, P.C



Mark R. Wolfe  
On behalf of Friends of San Marcos

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