



Office of the City Manager

ACTION CALENDAR

November 29, 2006

To: Honorable Mayor and
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Dan Marks, Director, Planning and Development Department

Subject: Response to Draft Environmental Impact Report for Bevatron at Lawrence Berkeley
National Laboratory

RECOMMENDATION

Authorize staff to send comments to LBNL on the Draft EIR for demolition of Bevatron and Building 51 regarding cumulative impacts, transportation, air quality, compliance with health and safety regulations, and the need for LBNL to identify additional methods to recognize the site's historic significance; and request that the LBNL extend the public comment period on the DEIR to January 18, 2006 to allow the City Council adequate public input on the proposed project.

SUMMARY

This report provides staff recommendation to not oppose the LBNL proposal to demolish the Bevatron facility, as well as the City's comments on the DEIR.

FISCAL IMPACTS OF RECOMMENDATION

The amount and weight of truck traffic associated with the project are expected to adversely affect City streets, requiring City expense to repair. Staff recommends that the LBNL propose a financial mitigation for damage to City streets.

CURRENT SITUATION AND ITS EFFECTS

December 7, 2005 is the deadline for providing written comments on the Draft Environmental Impact Report (DEIR) released by the Lawrence Berkeley National Laboratory (LBNL) proposal to demolish the Bevatron and Building 51, the approximately 126,500-square foot structure that surrounds it. The DEIR was released on October 21, 2005.

On October 25, 2005, the City Council referred opposing recommendations to the City Manager to provide an opportunity to review the DEIR and report back to Council with a recommendation. The October 25th Council reports are attached. In brief, the Peace and Justice Commission recommended that the Bevatron Facility be preserved, while Councilmembers Wozniak, Moore, and Maio recommended that Council reaffirm its support for the full decommissioning, deconstruction and removal of the Bevatron, and referred the DEIR and Peace and Justice report to the City Manager for analysis.

On November 7, 2005, the Landmarks Preservation Commission (LPC) set a December 5, 2005 public hearing to initiate the Bevatron and Building 51 as a landmark.

BACKGROUND

On March 11, 2003, the City Council approved recommendations from the Community Environmental Advisory Commission to send a letter to LBNL requesting that environmental review be distributed prior to deconstruction of Bevatron, and asking for a summary statement of the goals of the project. The Council also approved a recommendation from Councilmember Wozniak asking that letters be written to expedite funding for decommissioning, deconstruction and removal of the facility in a timely manner acceptable to the public, that CEQA/NEPA reviews be conducted, and that LBNL develop a long-term plan for future uses of the site after deconstruction and removal is complete.

The attached Council reports provide background about Bevatron and LBNL's proposal that it be demolished. This report provides staff recommendation about the demolition proposal, as well as a preview of the issues that staff suggests be included in a letter with the City's comments on the DEIR. Following Council discussion, the letter can be drafted and, if necessary, placed on the December 6, 2005 agenda for action.

Demolition: The site is listed on the California Register of Historic Resources and has been determined eligible for inclusion in the National Register of Historic Places. Demolition is identified in the DEIR as a significant and unavoidable impact because it would cause a substantial adverse change in the significance of a historical resource pursuant to CEQA Guidelines. In recognition of the historic significance of the facility, a Historic American Engineering Record (HAER) report, which highlights the scientific achievements and significant persons associated with the facility from 1949 – 1993, describes the design of the building and accelerator machines and building, and includes historic photographs, was accepted by the National Park Service. The HAER report was provided to staff and to the LPC subcommittee, and is available in the Berkeley Central Library. The DEIR states that LBNL plans to commemorate Bevatron with a monument and/or display listing the historic discoveries that occurred there. LBNL has also completed an addendum to the HAER, which further describes what level and kind of recordation is required for the buildings as required by the Historic American Building Survey (HABS) division of National Park Service; however, this report is currently under federal review and has not been released for public or City review.

While staff recognizes and appreciates the historic significance of Bevatron, we do not recommend that the Council oppose demolition. LBNL's reasons for demolition are rational and, given limited resources, it does not seem reasonable to request that LBNL continue to maintain a building that is no longer functional. While there is a high cost to demolition, it will result in removal of radioactive and hazardous materials from the site.

However, as indicated below, staff recommends that more information be provided to the City as part of the EIR regarding documentation as will be required in the HABS report.

Comments on DEIR: As indicated above, LBNL has set December 7, 2005 as the deadline for providing written comments on the DEIR. LBNL will then prepare a Final EIR that includes all of the comments received during the public review period and which responds to all substantive environmental concerns regarding the DEIR. The Federal Department of Energy (DOE) is also preparing an Environmental Assessment (EA) for the project in compliance with the National Environmental Policy Act (NEPA). The Department of Energy expects to issue the Draft EA later this year. It will have a 30-day review and comment period.

The University of California (UC) is the Lead Agency for the project but in contrast to the process that UC used to approve the 2020 LRDP for UC Berkeley, the Board of Regents has delegated authority for certifying this EIR and approving the project to the LBNL Director. Because LBNL is a Federal facility, project approval requires compliance with both State (CEQA) and Federal (NEPA) environmental review requirements. The DEIR does not indicate whether the LBNL Director can approve the project before the NEPA environmental assessment is completed and approved by the Department of Energy. Moreover, the DEIR does not explain why LBNL and DOE did not prepare a single environmental document intended to meet both State and Federal requirements as the CEQA Guidelines (Section 15220 et. seq.) suggest. Aside from avoiding a time-consuming duplicative review process, it seems prudent for the CEQA document to incorporate any information included in the NEPA environmental document. On the other hand, if the NEPA document does not include any new information there is no apparent reason for delaying its release or preparing a single environmental review document.

The Council previously requested that LBNL develop a long-term plan for future uses of the site. According to LBNL Staff, the DEIR for the new LBNL Long Range Development Plan will not be available until 2006. If demolition of Bevatron were delayed to allow the new Long Range Development Plan to specify future uses for the property, the DEIR would also analyze such future uses. However, two of the stated objectives of the demolition project (eliminate potential hazards associated with the building, reduce the burden on LBNL maintenance resources - DEIR, p. III-2) support moving ahead at this time, as does the previous Council action supporting timely removal of hazardous materials.

To ensure that the project is carried out “in a manner acceptable to the public” as the Council requested in 2003, the DEIR should be revised to respond to concerns that Staff and members of the public have identified including the following:

1. The DEIR is “tiered” off three Environmental Impact Reports prepared between 1987 and 1997 that comprise the EIR for the LBNL’s 1987 Long Range Development Plan (LRDP) as amended. The CEQA Guidelines (Sec. 15168) specify the circumstances under which a previously certified EIR can be incorporated by reference to deal with regional influences, secondary effects, cumulative impacts and other factors. The project’s cumulative impacts on hydrology and water quality, traffic, and public facilities are of particular concern because of significant impacts that implementation of the UCB LRDP will have in these areas.

2. The analysis of cumulative impacts concludes that the project together with other proposed LBNL and UC Berkeley projects would have a less than significant impact on hydrology and water quality based, in part, on information that the impacts of implementing the UC Berkeley 2020 Long Range Development Plan will have less than significant impacts on the Strawberry Creek watershed. The information in the DEIR does not support this conclusion.
3. The cumulative impacts analysis specifically excludes the UC Berkeley Memorial Stadium Upgrade Project with the explanation that no detailed information about the project is available. On November 10, Chancellor Robert Birgeneau announced highlights of a master plan for the Stadium that begins with construction of a new student athletic center as well as a new law and business building on the west side of Gayley Road. Construction of the athletic center is scheduled to begin in December 2006 and would, therefore, coincide with the LBNL Building 51/Bevatron project. The DEIR needs to be revised to consider the cumulative impact of these UC Berkeley projects, especially on traffic and transportation facilities.
4. The transportation analysis in the DEIR is flawed because of reliance on an inappropriate threshold for determining which traffic impacts will be significant.
5. The DEIR acknowledges that the intersections at University Avenue/San Pablo Avenue, University Avenue/Sixth Street, and Gayley Road/Stadium Rim Way are already operating at LOS F and that the project in combination with planned, pending, or other reasonably foreseeable projects, including implementation of the UC Berkeley 2020 Long Range Development Plan and construction of the Tien Center would further degrade conditions. The DEIR, nevertheless, concludes that no mitigation is required because there would be no more than six truck trips per hour during the morning and evening peak commute hours and no more than 12 truck trips per hour at other times. As noted above, the DEIR did not, however, include analysis of the Stadium project's impacts.
6. The DEIR acknowledges that the proposed project would have a significant unavoidable impact on a historical resource as defined by the CEQA Guidelines. An addendum to the existing Historic American Engineering Record (HAER) to document the site's historic significance has been prepared, but this information is not included in the DEIR or otherwise available for public review. Even though such documentation cannot reduce the impact of the proposed demolition of an historic resource to less than significant levels, the LBNL should make all of documentation available for public review prior certification of the EIR. In addition to preparing a written and photographic record, LBNL should identify other ways to recognize the site's significance.
7. The DEIR indicates that electrical and low sulfur diesel power will be used on site for equipment associated with demolition. The City recommends that "ultra-low sulfur" be used, not low sulfur.

8. The DEIR states that project will generate about 34 one-way truck trips per day and 4,700 one-way truck trips over the 4-7 year period it will take to complete the job. These will be heavy trucks including flatbed and soil-haul trucks. About 5 percent may be overweight, the rest within "normal truck weight limits." The DEIR concludes that, even when considered together with other construction projects, the impact on City streets will be less than significant, and that no mitigation is required. The DEIR states that no damage to roadways is expected "beyond that which would be considered normal wear and tear" because the City's designated truck routes are designed and constructed to sustain regular use by heavy trucks.

The DEIR includes a mitigation measure stating that UC will reimburse the City for its fair share of costs associated with damage to City streets from University construction activities "provided that the City adopts a policy for such reimbursements applicable to all development projects within Berkeley". The DEIR fails to acknowledge that the City does, in fact, require private applicants to pay for improvements as a condition of approving projects that are subject to discretionary review under the Municipal Code. Therefore, the DEIR should include a mitigation measure to reimburse the City for damage to streets that will occur as a result of up to seven years of on-going heavy truck traffic. The specifics of the mitigation should be negotiated with the City prior to release of the FEIR.

9. The DEIR states that the 4,700 flatbed and dirt-haul trucks required to transport materials to and from the site would be diesel-powered, and that the exposure to the public of diesel particulate matter emissions would be greater than on-site exposure during demolition because the trucks would pass within approximately 30 feet of residences.

While Bay Area Air Quality Management District (BAAQMD) considers construction-related impacts to be less than significant if required dust-control measures are implemented, the proposed number of diesel-powered truck trips that will be routed through the City is extremely high. In addition, there are significant adverse public health impacts from particulate matter beyond those modeled for cancer risk. Since the science is not yet available to calculate the additional asthma attacks or death of sickly or elderly people along the transportation corridor, it would be prudent to take protective measures, similar to the ones identified for on-site diesel smoke generating activities. A mitigation should be required for all haulers to use only ultra-low sulfur or biodiesel for the trips to and from LBNL.

10. The DEIR relies on a number of mitigation measures from the amended 1987 LRDP EIR but does not include information to show that these measures have successfully mitigated the impacts they were intended to reduce. Such information should be available from the CEQA-mandated monitoring that LBNL is required to conduct.
11. The DEIR proposes self-assessment to ensure that the project is carried out in compliance with applicable health and safety regulations. Without oversight from the City or another

outside agency and in the absence of State regulators, it is questionable whether such analysis would be as vigilant as the City and its residents desire.

RATIONALE FOR RECOMMENDATION

Discussed above.

ALTERNATIVE ACTIONS CONSIDERED

The City Council could provide comments to be added to the letter to LBNL in response to the DEIR, including in regard to the historic significance of the facility.

CONTACT PERSON

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