

Clay E. Gaetie



June 7, 2019

Mr. Richard Williams
District Director, Facilities Planning and Construction
North Orange County Community College District
1830 West Romney Drive, Building A
Anaheim, California 92801-1819

Re: Comment on Draft Environmental Impact Report for the Sherbeck Field Improvements Project

Dear Mr. Williams:

I am writing to provide comment on the *Draft Environmental Impact Report for the Sherbeck Field Improvements Project*, dated May 15, 2019 (“Draft EIR”). Your Notice of Availability memo of the same date reports that the analysis provided in the Draft EIR determined that there would be no impacts or less than significant impacts related to aesthetics, and significant and unavoidable environmental impacts that cannot be mitigated to below a level of significance related to noise and transportation. (p. 1 of Notice of Availability memorandum dated May 15, 2019; some impact areas omitted from the list). I have reviewed the Draft EIR and the appendices, and find that these conclusions are incorrect. In particular, there are more significant impacts than are concluded; many of the impacts are not properly analyzed due to errors in methodology or assumptions; many of the improperly analyzed impacts are substantially higher than reported; and impacts that are significant can be avoided by an environmentally superior alternative which was incorrectly and inappropriately rejected from consideration.

I ask that you take these comments under advisement, and correct the erroneous procedures, assumptions, and methodologies in the Draft EIR before issuing it in final form.

General Inadequacies

The Draft EIR makes several incorrect fundamental assumptions, estimates, and oversights. These errors are used in analyzing the impacts across many of the environmental areas, calling into question the conclusions reached with respect to those areas. In addition to pointing out inadequacies in analyzing specific environmental impacts later, these fundamental errors are enumerated separately, due to their broad undermining of the approach taken by the Draft EIR.

The Utilization of the Stadium Is Significantly Underestimated

Based on Table 3-2 of the Draft EIR, in each of the three annual semesters, the stadium is subject to rental for between 12 and 14 hours a day, for a total of 94 hours per week. Additionally, the stadium can be used for 6 hours per week outside that rental time for evening classes, bring the total to 100 hours per week. In the Fall Semester, there is an additional possibility of 6.5 hours (total, not per week) outside that rental time.

Assuming the stadium is only used during the approximately 44 weeks that the semesters are in session, the total available use for the stadium is 4,406.5 hours, **more than 50% of the time**. This would be the equivalent of using the stadium continuously, 24 hours a day, 7 days a week, for **6 months**.

Furthermore, although the current plan would limit rentals to “private schools and organizations to host athletic courses and practice” (p. 1-7), there is no specific requirement of this limitation, either in the plan or in the MM-NOI-2 mitigation measure related to noise from operation of the planned project. Fullerton College could, at any time, change the plan and rent out the stadium for any purpose.

The Draft EIR significantly undercalculates the potential usage of the stadium. This miscalculation permeates several of the specific impacts analyzed, including noise, parking, and traffic.

The Capacity of the Stadium Is Significantly Underestimated

The Draft EIR specifies that the “[p]ermanent prefabricated aluminum bleachers [have] capacity for 4,417 spectators. . . .” (p. 3-1). Many calculations are made based on that capacity. However, the Draft EIR itself recognizes that events held at the stadium have the potential for many more people. For example, “[t]here are approximately 7,200 students and guests that attend the commencement ceremony. . . .” (p. 3-4). This is **63% more** than the crowd size of 4,417 used in all calculations. The EIR does not determine which or how many of the activities at the stadium would exceed the capacity of the bleachers, nor does it analyze any impacts from such excess. This error affects several of the specific impacts analyzed, including noise, parking, and traffic.

No Analysis of Simultaneous Usage of the Project and the FUHS Stadium Was Done

In its comment letter, the City of Fullerton asked for an analysis of a “worst-case scenario,” when both the proposed stadium and the Fullerton Union High School (“FUHS”) stadium are being used simultaneously. The City’s request was specifically related to traffic. (Appendix B – NOP Comment Letters, p. 160). In the Summary of Comments Received in Response to the NOP (Appendix B, pp. 3-4), the Draft EIR claims that the City’s concerns were addressed in Section 4.8, but there is no discussion of simultaneous usage of the two stadiums in any section.

In fact, the failure of the Draft EIR to analyze this worst-case scenario goes beyond traffic. Such simultaneous usage would affect noise, lighting, and parking as well. Furthermore, this “worst-case scenario” is not a theoretical, incidental possibility—based on the schedules of both stadiums, it is virtually certain to occur at least 5 times in the Fall Semester for Friday events.

The Draft EIR Equates Legally-Actionable Impact with Impact

In several areas, the Draft EIR quotes statutes, codes, and regulations which provide that the impacts caused by the proposed stadium are not legally actionable, or the rights impinged are not legally protected. For example, the City of Fullerton has specified sound level limits to allow its residents to have quiet enjoyment of their homes. The City then goes on to specify “Activities Exempt from Standards,” in Fullerton Municipal Code Section 15.90.040. Nearly all of the potential activities at the proposed stadium would fall within these exemptions. (p. 4.5-8).

To its credit, the Draft EIR does go on to analyze the impacts, and in several cases finds the impact to be significant. (“Therefore, the increase in noise associated with cumulative traffic and on-site activities would be cumulatively considerable and significant.” p. 4.5-24.)

However, what the Draft EIR appears to give, it then immediately takes away. Despite the finding of significant impacts, the Draft EIR brushes these aside because of the exemptions or exceptions provided by the law. The Draft EIR equates lack of legal redress with lack of significant impact, essentially saying that if we can’t be sued, there hasn’t been an impact.

This parallel is disingenuous and inconsistent. The Draft EIR itself recognizes that just because an impact isn’t legally actionable, doesn’t mean it isn’t significant.

Even with the flawed assumptions and methodology, the Draft EIR concludes that there will be significant impacts to the environment and the surrounding neighborhoods. The flaws would further increase the impact measured or calculated. In some cases, such as noise, these increases would be substantial. On the basis of these general insufficiencies alone, the Draft EIR should be considered inadequate and should be performed again—correctly.

Inadequacies in Specific Impact Analyses

In addition to the general inadequacies that pervade multiple environmental factors, the Draft EIR makes further mistakes in calculating and analyzing individual factors. These factors include noise, aesthetics, lighting, parking, traffic, and the suitability of an environmentally-superior alternative.

Noise

The Draft EIR does find that the noise from the stadium would create a significant impact (p. 4.5-18). However, the Draft EIR does not appreciate or report the true impact of the operational noise of the stadium, because of significant undercalculations of the impact.

The Draft EIR uses “the single measurement called the equivalent sound level (L_{eq})” to “describe the time-varying character of community noise.” (p. 4.5-1). L_{eq} is further described as “equal to the level of a continuous, steady sound containing the same total acoustical energy over the averaging period as the actual time-varying sound.” (p. 4.5-1).

The Draft EIR also uses the community noise equivalent level (CNEL), which is described as “a weighted average noise level for a 24-hour period.” (p. 4.5-1 to 4.5-2).

Neither of these two measures are appropriate to measure the operational noise impact from the stadium. Even if they were appropriate, the Draft EIR substantially undercalculates them.

CNEL and L_{eq} are not appropriate measures of the operational noise impact of the stadium

The CNEL and L_{eq} rely on two basic assumptions. First, that total acoustical energy over time is the appropriate measure of impact. Second, that all sounds having the same acoustical energy (even A-weighted) will have the same measure of impact to humans.

The Draft EIR, and in fact the use of CNEL and L_{eq} in general, rely on the assumption that no matter how a given amount of total acoustical energy is spread over a given time period, the impact is the same. This means that a continuous drone of a low, perhaps non-noticeable sound would have the same impact as a short but very loud sound. Borrowing typical sound levels of common activities from Table 4.5-1 from the Draft EIR, 24-hours of a “Quiet suburban nighttime” at around 35 dB would have roughly the same acoustical energy as several seconds of a garbage disposal at 3 feet. But it’s hard to imagine that anyone would consider those equivalent—in fact, most people wouldn’t even notice the quiet suburban nighttime at all.

Assuming for argument’s sake that the total acoustical energy over a given time is an appropriate measure, not all sounds impact humans equally. This is true even for sounds of a given frequency or set of frequencies. For example, a continuous drone of a range of frequencies in the band that human speech generally occupies will, over time, be able to be tuned out by most people. However, actual human speech will not. Or, in the best-case scenario for the analysis done by the Draft EIR, identical human speech that never changes (such as stop announcements on trains) may eventually be able to be tuned out by a percentage of people. But it will take much longer, and not everybody will be able to do this.

With the stadium, the loudspeaker system will be broadcasting music and speech that changes regularly. This will not allow people to tune it out, and the impact of even the same frequencies at the same time intervals and same acoustical energy levels will be greater than what is concluded by the CNEL and L_{eq} analysis.

The EIR substantially undercalculates the CNEL and L_{eq} of the operational noise from the stadium

Assuming, again for argument’s sake, that the CNEL and L_{eq} are appropriate measures, the Draft EIR still substantially undercalculates their values. The Exterior Acoustical Study Report conducted by Veneklasen Associates concludes that the “increase of sound level is primarily due to the conservatively predicted sound levels generated by the speaker / PA system proposed for the project.” (Appendix E: Noise Modeling, PDF p. 36; Acoustical Study page 22 of 38). This finding is repeated in the Draft EIR at page 4.5-17 and shown in Table 4.5-11.

The Acoustical Study uses a sporting event as the appropriate measure of the usage of the speaker / PA system. The study assumes that rock music will be played for 15 minutes of every hour, and PA speech for 20 minutes of every hour (Appendix E, PDF page 23; Acoustical Study page 9). However, there is no modeling of the planned classes, or of the rental activities (classes, practices, other events), and the utilization rate of the speaker / PA system. These could be substantially higher than the 25% or 33% utilization rates shown above.

Furthermore, while the currently planned activities of the stadium are limited, there is no legal restrictions on Fullerton College expanding those activities to concerts or other events with drastically higher utilization rates, higher crowd sizes, and more ambient noise such as fireworks. This possibility is not modeled or analyzed by the Draft EIR.

Aesthetics / Lighting

The Draft EIR points out that the California Environmental Quality Act (CEQA) “does not generally protect private views such as those available from residential lots located to the north and east of the project site.” (p. 4.1-10). Despite this, the Draft EIR does continue to analyze whether there would be an impact, whether legally actionable or not, to those residences. Surprisingly, the Draft EIR concludes there would not.

First, the Draft EIR recognizes that the proposed light stanchions would be taller than existing field lights at FUHS Stadium (65-75 feet) and existing streetlights and distribution poles (less than 60 feet). (p. 4.1-13). The Draft EIR carefully avoids using the more descriptive and accurate phrases “substantially taller” or “nearly twice as tall.” The Draft EIR then concludes that the “light stanchions would not substantially interrupt existing views.” (p. 4.1-11). It’s difficult to understand, and the Draft EIR doesn’t provide any explanation other than base conclusory statement, how a series of banks of lights, 100 to 120 feet in the air and pointed generally in the direction of someone’s house, would not impact their view.

To be fair, the Draft EIR does indicate that the “field lighting would be hooded and individual fixtures would be directed downward” (p. 4.1-15). However, the lighting at FUHS Stadium have similar features at roughly half the height, and their lighting is visible from residences north of the proposed stadium.

The glare and ambient light analysis on the northern side of the proposed stadium stops at (or very near) Berkeley Avenue. However, general illumination is different from the effect of point sources of light, for purposes of aesthetics and vision. For example, a flashlight may generally illuminate a dark area to a level similar to twilight. But if you’re staring straight into the flashlight, its effects on your view and your eyes are quite a bit greater. The Draft EIR fails to address this phenomenon.

Speaking of FUHS Stadium, and despite having sections entitled “Aesthetics – Cumulative Analysis” and “Lighting – Cumulative Analysis,” the Draft EIR does not ever analyze the cumulative effects of lighting or aesthetics of simultaneous usage of both the FUHS Stadium and the proposed stadium. These effects would be most impactful to residential lots north and northwest of the proposed stadium.

(Incidentally, the Draft EIR incorrectly characterizes the residential lots north of the proposed stadium as “[o]ne- and two-story single-family homes on 0.2- to 0.3-acre lots. . . .” (p. 4.1-4). Several homes, including our own, are on lots larger than that, and we, at least, have unrestricted views of both the proposed stadium and FUHS Stadium.)

Parking

The Draft EIR provides that “[p]arking would be provided at no charge for football game attendees.” (p. 1-6). However, the Draft EIR fails to count how many campus parking spaces exist and/or would be made available for such attendees. Nor does the Draft EIR conclude whether the available parking spaces would be sufficient to avoid impacts to the surrounding neighborhoods.

The primary streets bordering the proposed stadium are Berkeley Avenue, Lemon Street, and Chapman Avenue. Parking on two of these streets is limited, and non-existent on Lemon Street adjacent to Fullerton College. Overflow parking from Fullerton College therefore first extends to the neighborhoods to the north of the proposed stadium, on streets, “including (but not limited to) Dorothy Drive, Dorothy Lane, Sheppard Drive, Cannon Lane, and Harmony Lane.” (p. 4.1-4, in the section on Aesthetics). During busy times at Fullerton College, such as the start of a semester, these streets are completely full with overflow student parking. The Draft EIR fails to address whether this would occur on a more regular basis because of the additional seating at the proposed stadium.

Additionally, the Draft EIR fails to address the parking requirements for the rental activities, and whether Fullerton College does and would continue (or start) to accommodate non-Fullerton College students attending such rental activities.

Traffic

The Draft EIR states that “[t]he principal local streets serving the project site are Berkeley Avenue, Lemon Street, and Chapman Avenue.” (p. 4.8-1). While this may be true for streets that directly serve the project site, it ignores the neighborhood to the north, which plays an indirect but just as important role.

As stated in the previous section on Parking, the streets in the neighborhoods to the north of the stadium are the primary alternative for parking when Fullerton College lots are full. In addition to the parking issues, this creates significant traffic issues on those neighborhood streets and at the intersections within and entering/exiting those neighborhoods. The Draft EIR fails to address this in any way.

Compounding the problem, several of the 31 intersections analyzed in the Draft EIR’s traffic analysis are the primary entry and exit intersections from those neighborhoods. This includes several of the intersections that the Draft EIR itself identifies as the most significantly impacted. By ignoring analysis of the traffic on these neighborhood streets, the Draft EIR undercalculates the impact on those intersections.

Furthermore, the Draft EIR completely ignores the “worst-case scenario” of simultaneous usage of the proposed stadium and FUHS Stadium. (Appendix B – NOP Comment Letters, p. 160). This is shocking, because many of the intersections impacted by the proposed stadium are also impacted by usage of the FUHS Stadium. Ignoring the cumulative effect of this simultaneous usage—which has a high probability of happening on nearly half the weekends in the fall semester—renders the traffic impact analysis woefully incomplete and virtually useless. To claim otherwise is deceitful, and the City Traffic Engineer for the City of Fullerton should seriously question anyone or any entity relying on such an obviously inaccurate analysis.

Suitability of FUHS Stadium as an Environmentally-Superior Alternative

The Draft EIR also dismisses FUHS Stadium as an environmentally-superior alternative, citing the inappropriateness of the football field, the potential effect of higher capacity than the proposed stadium, and the unmet objectives of the project. Each of these statements is either incorrect or not properly justified. Further, the Draft EIR fails to address that the usage of FUHS Stadium would impact fewer homes than the proposed stadium.

Inappropriateness of the Football Field at FUHS Stadium

The primary reason for rejecting the FUHS Stadium alternative seems to be that it doesn’t meet a primary goal of the project, in that “Fullerton College would need to continue to find a non-high school field in compliance with Rule 1, Section 2 of the NCAA Football Rulebook for playoff games.” (p. 6-22). The Draft EIR further concludes that Fullerton College would continue to need a waiver, which it currently gets from the Southern California Football Association, for regular games to be played at FUHS Stadium. (p. 6-7).

The Draft EIR provides no support for these conclusions. And an analysis of the relevant rules indicates that the conclusions are wrong. The Draft EIR claims that “in 2017, the California Community College Athletic Association [(“CCCCAA”)] revised the bylaws applicable to football games, rendering high school fields unsuitable for college competition due to goalpost and field sizing requirements” (p. 6-6 to 6-7). However, the relevant rule (CCCCAA Bylaw 4.26A) simply refers to Rule 1, Section 2 of the NCAA Football Rulebook.

A careful reading of the field requirements of the NCAA (governing college football) and NFHS (governing high school football) reveals that there are only 2 areas that are inconsistent: the width of the goal posts and the width and appearance of the yardage hash marks. Both of these are easily addressable at FUHS stadium.

The goal posts mandated for high school football are 23’4” in width, while those for college football are 18’6” in width. These are clearly incompatible. However, goal posts are removable and replaceable. In fact, at the recent FUHS high school graduation, the goal posts at the eastern end of the field were removed. The Draft EIR provides no reason why this removal/replacement can’t be done for each game.

If removing and replacing the goal posts is infeasible, then permanent goal posts that adjust from high school width to college width are available. Bison, Inc., sells a product called “Combination High School/College Football Goalposts,” which contains the description “High school football Friday night, college game on Saturday afternoon...No problem with these versatile goals. . . .” (<https://www.bisoninc.com/product/field-sports/football/goalposts/combination-high-school-college-football-goal-posts/>). Therefore, the issue of the incompatibility of the goal posts can be solved in a number of ways.

As for the yardage hash marks, there are different requirements as to the positioning, width, and appearance between high school and college. However, FUHS Stadium itself provides the simple solution: dual markings. The field at FUHS stadium currently has permanent markings for both football and soccer. Having a set of permanent markings that also conforms to the college football requirements would be simple and straightforward. And the new markings would not be confusing to the players or officials, since they simply would be marking the longitudinal yardage at different lateral places on the field.

Remarking the field and removing/replacing the goal posts would be simple, straightforward, and far less impactful than a second stadium.

Effect of Higher Capacity of FUHS Stadium

The Draft EIR states that “shift[ing] from Sherbeck Field to Fullerton Union High School Stadium, which is a larger facility, and thus, could accommodate larger crowds [creates] the potential for greater noise impacts related to a larger crowd make this a similar noise impact.” (p. 6-24). This is the logical equivalent of saying that a Little League baseball game moving to Angels Stadium would suddenly draw 45,000 fans. It’s no surprise that the Draft EIR provides no justification for this ridiculous fallacy.

For this to be true, the events planned for the proposed stadium would need to be capacity-constrained. There is no indication that any of the events are currently capacity constrained, or that the capacity for football games would be insufficient. If the proposed stadium would not be sold out, then adding more seats would only add more empty seats, not more people.

If this statement is true, then it points out further flaws in the Draft EIR analysis. For example, presumably all events would have day-of-sale tickets. This means that traffic, noise, parking, and other effects due to travel to and from an event would increase due to the overflow and overcapacity. More people than the stadium could accommodate would travel to the stadium, strain the resources of the surrounding community, only to be turned away because the event is sold out.

Based on this, the Draft EIR needs to remove its unsupported statement that the excess capacity would necessarily be utilized, along with any analysis or conclusions that relay, in whole or in part, on that statement. Otherwise, the Draft EIR must revise its impact analysis to accommodate the excess demand.

Using FUHS Stadium Would Impact Fewer Homes

The proposed stadium is bordered on two sides by residential neighborhoods, and bordered on the other two by Fullerton College (and FUHS beyond Fullerton College to the west). However, FUHS stadium has a residential neighborhood on only one side—the north. To the east is Fullerton College, to the south is Fullerton Union High School, and to the west is commercial properties.

The Draft EIR focuses almost exclusively on the impact of the proposed stadium on the properties to the east, and occasionally mentions the properties to the north. Had it provided more analysis about these properties to the north (which are diagonally adjacent to the northeast of FUHS Stadium), then analyzing the impact of using FUHS Stadium as an alternative could be more complete. Sadly, the Draft EIR did not do this.

The Project Objectives Are Drafted Narrowly to Exclude Superior Alternatives

The project drafted its objectives very narrowly, and in such a way to exclude environmentally superior alternatives. For example, one of the objectives is to “[i]ninstall permanent bleachers so that Fullerton College can host regular season and playoff football games *at the college*.” (Table 6-2 on p. 6-28; emphasis added). By specifying “at the college,” any alternative not at the college would fail to satisfy the stated objective. Several other project objectives are similarly narrowly drafted, making any alternative, by definition, fail to meet those objectives as well.

However, no analysis was done whether one or more of the identified alternatives would substantially meet that objective. The FUHS Stadium is actually closer to Fullerton College’s Lemon parking structure than Sherbeck Field is. And it is closer to some Fullerton College buildings than it is to FUHS buildings. But because of the unduly narrow drafting of this project objective, and because the analysis was done on the strict reading of that objective, no possible alternative could meet that objective.

The only answer to the question whether a project objective is “Yes” or “No,” based on the strictest reading of the exact language of the objective. Because of this, any objective containing the phrase “at the college” leads to failure of any alternative site to meet that objective. This is regardless of whether the alternative site is across the street (as the FUHS Stadium site is), or whether it is 3,000 miles away. This strict black-or-white option allows the project objectives to be drafted in such a way to dictate a particular result, as opposed to minimizing the environmental impact.

The Project Objectives Appear to Be Drafted to Subvert the CEQA’s Purpose in Identifying Superior Alternatives

“An EIR must identify an ‘environmentally superior’ alternative; and, where the no project alternative is environmentally superior, the EIR is then required to identify an alternative from among the others evaluated as environmentally superior (14 CCR

15126.6(e)(2)). (p. 6-26). In this instance, the Draft EIR identified the no project alternative as the environmentally superior alternative.

Because of the unduly narrow drafting of the Project Objectives, each of the alternative sites failed to meet several objectives. The FUHS stadium alternative would have been the environmentally superior alternative that met as many or more of the Project Objectives as the other alternatives, but for the incorrect and misleading conclusions about the unsuitability of the field for college football. Having shown those to be false, the FUHS stadium alternative is at least as suitable, if not more so, than the other alternative sites.

However, because of the narrow drafting and incorrect analysis, the Draft EIR rejects the FUHS Stadium alternative, and instead designates the CSUF Site Alternative as the environmentally superior alternative. (p. 6-26). This alternative is then rejected, because of failure to meet enough Project Objectives. It appears that some Project Objectives were drafted specifically to reject the possibility of using the FUHS Stadium. This would necessarily lead to selection of CSUF as the environmentally superior alternative to no project. Then other Project Objectives were designed to reject that alternative, driving the conclusion that the only suitable alternative is the proposed stadium. This is clearly a subversion of the intent of the CEQA purpose and process. Instead, it is a blatant attempt to “game the system,” rather than provide an objective assessment of alternatives and their environmental impacts.

Conclusion and Call to Action

For the above reasons, the Draft EIR is inadequate, misleading, and erroneous. It vastly understates the true environmental impact of the proposed stadium. And it ignores suitable alternatives because of clever drafting and an understanding of how to subvert the EIR process mandated by CEQA. The Draft EIR and its conclusions should be rejected until these errors in the Draft EIR analysis and process are corrected.

As stated above, I ask that you take these comments under advisement, and correct the erroneous procedures, assumptions, methodologies and conclusions in the Draft EIR before issuing it in final form.

I am available to discuss this matter with you at your convenience, should you wish to contact me directly.

Sincerely,

A black rectangular redaction box covers the signature. A blue ink mark, possibly a checkmark or a flourish, is visible to the right of the box.

Clay E. Gaetje