



## REPORT TO PLANNING COMMISSION

**SUBJECT: 397-400 Smith Ranch Road (San Rafael Airport Recreational Facility)** – Review of Final Environmental Impact Report (FEIR) published for a Zone Change, Master Use Permit and Environmental and Design Review Permit for proposed recreational sports facility project at the San Rafael Airport; APN: 155-230-10,11,12,13,14,15,16); Planned Development-Wetland Overlay (PD1764-WO) Zone; Bob Herbst, Applicant; San Rafael Airport, LLC, Owner; File Number(s): ZC05-01, UP05-08, ED05-15

### EXECUTIVE SUMMARY

At its November 15, 2011 meeting on the San Rafael Airport Final EIR (FEIR)/Response to Comments, the Planning Commission conducted a public hearing, closed the hearing. Following closure of the hearing the Commission directed staff to prepare additional responses to questions and comments raised at the meeting. City staff and its environmental consultants have provided the requested additional responses, and conclude that: a) the answers provided in this report sufficiently clarify all of the questions, comments and concerns raised at the November 15 hearing; b) they confirm that the FEIR has adequately identified all potential environmental impacts of the project in compliance with California Environmental Quality Act (CEQA); and, c) it provides the Planning Commission with all necessary information to thoroughly evaluate and consider the impacts of the development project.

This report addresses all of the pertinent questions with regard to the land use declaration that is recorded for the airport property, applicable zoning provisions, visual and biological concerns, levee hazards, airport and site hazards, water quality, noise and traffic, climate change analysis and alternatives discussion. The report represents the work of City staff and its environmental consultants. The FEIR has been completed in compliance with all requirements of CEQA, and provides the decision-makers and the public with all pertinent information regarding the potential impacts of the development project in the manner and location proposed. Staff recommends that the Planning Commission consider this additional report as part of its deliberations on the project, take action to recommend certification of the FEIR, and direct staff to schedule the project entitlements for review and consideration at a future public hearing.

The Commission may also provide the public an opportunity to comment on the information contained in this report. However, the DEIR public comment period required by CEQA has closed and, therefore, this meeting is not intended to solicit additional new comments on the project or EIR. No additional response to any further comments provided on the topics covered by the EIR is required. There will be additional hearings held for the public to comment on the merits of the project, which will also include consideration of the environmental effects identified for the project by its CEQA document.

### RECOMMENDATION

Staff recommends that the Planning Commission take the following actions:

1. Open the public hearing in order to accept comments on any new information contained in this staff report.

2. Recommend to the City Council Certification of the FEIR for the San Rafael Airport Recreational Facility Project by adopting the attached Resolution (**ATTACHMENT 1**).
3. Direct staff to schedule a hearing on the project for the Planning Commission to review and provide its recommendation to the City Council on the project merits (i.e., PD Rezoning, Use Permit, and Environmental and Design Review Permit).

The Commission must consider certification of the FEIR *before* it may consider project entitlements.

**PROPERTY FACTS**

<b>Address/Location:</b>	397-400 Smith Ranch Road	<b>Parcel Number(s):</b>	155-230-10,-11,-12,-13 155-230-14,-15,-16*
<b>Property Size:</b>	16.6-acres of 119.5-acre site	<b>Neighborhood:</b>	Smith Ranch
Site Characteristics			
	General Plan Designation	Zoning Designation	Existing Land-Use
<b>Project Site:</b>	<b>Airport/Recreation</b>	<b>PD1764-WO &amp; W</b>	<b>Airport &amp; Assoc. Use</b>
North:	P/OS, Cons, Low Den Res	P/OS	McInnis Park
South:	P/OS, Cons, Low Den Res	Unincorporated	Santa Venetia Res.
East:	P/OS, Cons, Low Den Res	Unincorporated	Santa Venetia/Bayland
West:	Medium Density Residential	PD1626-WO&PD1399	Contempo/Capt. Cove

\*Although the airport property is only one subdivision parcel, a portion of which crosses into County jurisdiction, the site has been assigned multiple tax parcel numbers by the County Assessor. APN's -10 through -13 are within the City limit and -14 through -16 are in County jurisdiction. The existing airport facilities and runway are within -11 and the subject recreational facility development is within -12. See Vicinity Map (**ATTACHMENT 2**).

**BACKGROUND**

At its November 15, 2011 hearing on the San Rafael Airport FEIR/Response to Comments, the Planning Commission directed staff to provide information addressing further questions, comments, and requests for clarification received either in written correspondence or during public testimony at the meeting. Consistent with this direction, City staff and its environmental consultants have addressed these items, which provide further clarification and responses in the following areas:

- 1) Addressing questions regarding the FEIR responses that were provided to comments on the Draft EIR (DEIR).
- 2) Correcting discrepancies and augmenting some of the FEIR mitigation measures.
- 3) Addressing some new questions or comments that, while not required to be addressed in the FEIR, this information would be useful for the public and Commissions deliberation on the project.

Staff notes that CEQA does not require the City to provide further responses to any additional or new comments received, before it certifies an FEIR. However, due to the substantial amount of information contained in the FEIR, this additional discussion should help assure the information is adequately considered and that further clarification is provided where needed.

Since the previous hearings on the EIR have been closed, this meeting is not intended as an opportunity for submitting new comments. However, consistent with the City's policy to provide maximum public participation in the process, staff further recommends that the Commission allow the public to briefly comment on the information contained in this staff report. It should be noted that comments on project merits should be reserved for a future meeting date, which shall be scheduled for that purpose.

## ANALYSIS

The comments and letters received at the November 15, 2011 meeting raised issues on a number of topics. The topics raised and addressed in this report include discussion of Land Use, Aesthetics, Biological Resources, Geology & Soils, Hazardous Materials, Air Safety Hazards, Hydrology and Water Quality, Noise, Transportation and Traffic, Climate Change, Alternatives, and Other topics. There are also comments that overlap in similar topic areas. The major comments raised in these topic areas are identified below, and followed by responses. The complete record of the November 15, 2011 meeting is available online at: <http://www.cityofsanrafael.org/meetings/>

### 1. Land Use and Airport Property Deed Restriction

The additional land use discussion provided below addresses the following:

- *What are the facts surrounding the original 1983 restriction, including its purpose and intent? The restrictions were originally proposed as mitigation for development at other locations (Embassy Suites, Autodesk, Marin Lagoon housing development)*
- *Would ancillary uses such as a café and sports shop fit within the definition of recreational use?*
- *If the use were proposed to be changed to another use, what kind of review would be required?*
- *Why aren't all the land uses that would be permitted with the approval of the project identified? The EIR must analyze the impacts of other potential uses, such as an ice rink.*
- *Why has there been an increase in use of the airport (e.g., more flights, larger planes, night flights)? Is this increase in compliance with the Airport Master Use Permit?*
- *Does the proposed recreational facility require a determination of Public Convenience or Necessity by the City and State Alcoholic Beverage Control (ABC) in order to serve alcohol?*
- *Why does the FEIR not discuss the impacts of alcohol consumption and the appropriateness of this activity with a recreational use?*
- *Does alcohol use conflict with zoning regulations regarding no alcohol sales near parks?*
- *The use is not consistent with Section 14.13.030 of the municipal code (recreational uses near wetlands should be low intensity).*

#### *Intent of the Airport Property Deed Restriction*

There has been a substantial amount of inquiry and speculation regarding the purpose and intent of the 1983 land use restriction placed on the San Rafael Airport property. It has been purported that the land use restriction was originally proposed as either mitigation or to transfer development rights from the airport property onto the Civic Center North Master Plan project (*i.e., lands west comprised of Embassy Suites, Autodesk, and Marin Lagoon housing development*). Some of this confusion is understandable, given the complex history of the Civic Center North development project, which included many meetings and required City, County and LAFCO actions. However, City staff has exhaustively reviewed the record, identified areas where potential confusion may have arisen, and confirmed that the subject development request, as proposed, may be processed under the terms of the 1983 land use restriction. A summary of pertinent facts found in the administrative record on this topic have been provided in **Attachment A** to this report.

At the time that the San Rafael Airport Recreational Facility project application was filed with the City in March 2005, the City Community Development Department staff and City Attorney's office reviewed the request for conformance with the property's recorded land use restriction; which is a contractual

agreement between the City, County and property owner to limit the land uses on the property. It was determined that the proposal to develop the site with a private recreation land use (aka, "recreational facility")<sup>1</sup> would be consistent with the property's land use restriction. This decision is consistent with the General Plan 2020 airport/recreation land use category (Policy LU-23) that applies to this property, and it is within the City's purview to make this determination. General Plan 2020 Policy LU-23 has been discussed in more detail in the DEIR, and DEIR Appendix C – Zoning Compliance Table.

After a discretionary zoning application has been accepted by the City as complete, the project must be properly evaluated under the requirements of the California Environmental Quality Act (CEQA). Therefore, the City has appropriately conducted CEQA review of the project being proposed by the applicant. It is important to note that CEQA environmental review does not result in a final determination regarding a project's land use compatibility or with regard to any other land use or general plan policy questions. A decision regarding the appropriateness of the project, including its proposed development intensity, must be made during review and consideration of the land use entitlements required for the project (aka, project merits). Nevertheless, City staff has strived to provide pertinent background regarding the property land use restriction, as an informational item, during the project environmental review process and EIR preparation.

The administrative record summarized in Attachment A confirms that the land use restriction would not preclude the proposed private recreational facility project. City staff has been processing this application over the past six years with the understanding that Marin County staff reached the same conclusion; that is, that the land use restriction does not preclude consideration of the proposed private recreational development project. In the opinion of City staff, the discussion on this project at the Board of Supervisors meeting in April 2006, and December 28, 2009 letter from David Zaltsman, Marin County Counsel implied that this understanding was correct. In the December 2009 letter, Zaltsman stated that like the City Attorney's Office, Zaltsman's office also reviewed this declaration, and agree with the City Attorney's conclusion that **"...it means what it says – it is a restriction on the potential land uses for the property."** Zaltsman added a caveat that the land use restriction will exist in perpetuity, since it runs with the land. Zaltsman further recommended that the City should reference the land use restriction in any project conditions of approval applied to the proposed project. This letter was received *after* the DEIR comment period closed and, therefore, was included as an attachment to the November 15, 2011 FEIR report. Thus, in further providing recommended conditions of approval for the project, the City believed that County Counsel had reaffirmed an implied understanding that the private recreational development project being considered by the City could proceed under the terms of the land use restriction.

Thus, since the April 19, 2006 Marin County Board of Supervisors (BOS) meeting at which the project was discussed, City staff understood that County staff and the Board of Supervisors agreed that it was appropriate for the City to consider and process this private recreational land use request, and would not raise an issue in this respect moving forward. Again, City staff understood that Marin County Counsel and the Board of Supervisors implicitly supported this conclusion by, i) providing recommendations on the scope of the environmental review that should be required for the project, and ii) recommending conditions of project approval. The Marin County Parks and Open Space staff had previously raised this concern prior to the 2006 Board of Supervisors meeting. After the 2006 BOS discussion, questions regarding applicability of the deed restriction to the project were deemed to have been resolved. As such, the County Parks and Open Space staff no longer raised this as a concern either during the subsequent DEIR scoping, preparation of the DEIR, or an issue in their DEIR comment letter (DEIR Comment Letter 4). In light of this history, the recent November 15, 2011 letter from Marin County Parks

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<sup>1</sup> The term "recreational facility" has been consistently used to refer to the entire private recreation development project, and its meaning is *interchangeable* with "recreational uses" and/or "recreation use". This usage is consistent with the adopted City Zoning Code definition for "recreation facility"/"recreational facilities" and the "recreation uses" land use types listed in the zoning land use tables.

and Open Space District appeared to be re-introducing as a concern whether the project is consistent with the intent of the land use restriction.

Due to renewed confusion regarding County staff's position on the applicability and intent of the deed restriction, of which the County is a party, City staff asked that Marin County Counsel and Marin County Parks and Open Space District staff clarify and reaffirm their position regarding whether the land use restriction applies to this proposed private recreation project. Zaltsman has provided a formal response letter, January 5, 2012, reporting that the County Board of Supervisors and County of Marin takes no position as to whether the project as currently proposed is within the allowed uses of the Declaration. However, so long as the project remains precisely as currently proposed, the County will not challenge the project administratively or judicially based upon the Declaration. Zaltsman states that this does not mean that the County agrees that the project is consistent with the Declaration, but that the County will not be addressing or pursuing this issue so long as the project remains as currently proposed (**ATTACHMENT 3**).

Essentially, the County defers to the City with regard to implementation of the deed restriction for the airport lands located within the City's jurisdiction. Zaltsman's letter does however confirm that the County of Marin would not challenge the private recreational project currently being considered by the City. This is important confirmation as the project analyzed in the FEIR being proposed by the applicant includes the following components and a building (described in greater detail in the EIR):

- An 85,700 square foot multi-purpose recreational building with ancillary uses, and
- Outdoor sports fields.

The County would maintain its right to object to any land use that they deem to be in conflict with the land use restriction. No conflict is anticipated by City staff because the land use restriction runs with the land and any land use on-site must be listed as an allowable land use type. Thus, the EIR Land Use analysis discussion that considers a recreational facility with structures remains appropriate.

Based on its detailed analysis, City staff has found the record confirms that, a) the deed restriction applies to the project, and b) the proposed private recreational use would be allowed under the "private and public recreational uses" terms of the land use deed restriction. Of course, the City maintains purview over how that land use is implemented. If the 1983 land use restriction had been intended to preclude further development of the property, this was not established by the recorded declaration of restriction, as reviewed by both the City and County. Staff reiterates that its review of the entire and complete record reveals that the deed restriction was not required to preclude further development, but rather to limit the types of future land uses that may be allowed on the property.

Staff further notes that review of the administrative record does not support a conclusion that the land use restriction was required to transfer development intensity from the airport property to the Civic Center North development project. Rather, throughout review of this prior project, the Civic Center North development project was required to stand on its own merits. The subdivision TS82-5 Condition (j) reinforces that a limited scope of review was required for the subject parcel map; which was necessary to separate the Civic Center North development area from the airport lands. The only reference to environmental protections is reflected on the Parcel Map, which required that the westerly end of the airport property (Parcel B), designated for right of way and a habitat area offered to the City for purchase. Again, there is no discussion that this was required as either mitigation nor intended to transfer development from the airport parcel.

The record for the Civic Center North project further does not substantiate a belief that a density transfer had been required or occurred. The record shows that the Planning Commission had actually recommended a *reduction* in density proposed for the multi-family portion of the Civic Center North development. The project approval allowed that the project density could achieve its originally *higher* proposed density if it were made more affordable and resolved design issues. This decision was made solely based on the project area proposed for development of Civic Center North. The airport property

was not included in this analysis and had no bearing on the decision-making process. Staff identified that the Civic Center North property owners did explore an increase in the permitted residential density in 1984, *after* the Civic Center North project was approved in 1983. The deed restriction also had been recorded on the airport property by this time. Thus, again there was no relationship between this inquiry and the airport property, other than continued common ownership of both lands.

The opinion that the declaration was intended to preclude further development seems to have arisen from a few statements made in the record on the Civic Center North project, which were made prior to its approval. In particular, the 1983 Board meeting minutes recorded a statement from the applicant's representative that the land use restriction would "prohibit any further development of the property". Also, there is a statement recorded in City Council meeting minutes on the Civic Center North project, wherein a group of persons that were interested in purchasing the airport property indicated that they would maintain the land for open space (this group did not subsequently purchase or secure the property). However, a review of the specific terms of the recorded land use agreement and corresponding actions taken by the City and County on both the agreement and Civic Center North project entitlements adequately clarifies that additional development on the airport site could occur with the limitations being imposed strictly with regard to the types of land uses that would be allowed.

During its most recent review of the record, City staff also read the prior 1983 zoning ordinance in order to determine whether "recreation use" at that time would have precluded development of a recreation use with structures, and found that it would not. In fact, the 1983 zoning description for recreation includes uses that require a building. The 1983 zoning definition is substantially similar to the current zoning definition and related land use category (see the *Recreational Land Use and Project Compatibility* discussion below). Thus, there has been no significant change in the City's definitions, and its usage of the terminology "private and public recreational uses" would include uses that require a location within a building.

City staff also asked County staff to review its zoning code definitions in effect at the time the land use restriction was drafted and executed. This was done in order to ascertain whether County residents and staff had a different definition of "private and public recreational uses". According to Neal Osborne, Marin County Planner, the County did not have a definition for "Recreational Use" circa 1983. However, with regard to the portion of the site that lies along the Gallinas Creek (within the County), it is designated Bay Front Conservation District (BFC); which would allow recreational development and access to the shoreline marshes for such uses as fishing, boating, picnicking, hiking and nature study. This County designation is substantially similar to the City's -WO district land use limitations, which applies to those portions of site that are in or near wetlands and for creek setback areas (see the *Wetland Overlay District Compliance* discussion below). Therefore, an understanding of how the County may have defined private and public recreational uses in 1983 cannot be provided. However, it is evident that there was no conflict between City and County codes, and would stand to reason that the City definition should take precedence. The City and County regulations with regard to recreational use within waterfront and wetland areas appear to be compatible. Since the project avoids these areas, no inherent conflict between the City and County standards has been identified in this case, either.

This discussion is not a CEQA-related issue, and is pertinent to the project merits review. At time of project merits review, the City may further consider the proposed intensity of land use. As recommended by Marin County Counsel, City staff agrees that referral to the County should continue to be conducted for any further land use entitlements. This should assure that Marin County Counsel is aware of proposed land use changes, in order to identify any concerns with conflict with the land use restriction. Consistent with this policy, City staff will continue to make referral on this project to the County which shall include a referral of the draft resolutions of project approval. Thus, should the County find any land use condition that they believe conflicts with the deed restriction, the issue may be raised for discussion during the public hearing process.

### *Recreational Land Use and Project Compatibility*

The General Plan "Airport/Recreation" land use category allows additional development that would be consistent with the 2002 Master Use Permit, as governed by the land use restriction, including: airport and ancillary airport services and light industrial uses; private and public recreational uses; and public utility uses. The PD District provisions are intended to apply to large sites of 5 or more acres that can accommodate a mix in land uses. The site requires adoption of a Planned Development (PD) District amendment in order to establish additional zoning standards to accommodate further development that would be consistent with the General Plan 2020. The PD zoning allows for some flexibility to deviate from conventional zoning standards, but could not be used to allow a use that is not consistent with the General Plan and land use restriction. Consistency with the General Plan 2020 has been analyzed in the EIR, and the General Plan Consistency Table was included as DEIR Appendix C.

Existing conventional zoning standards are considered when developing the PD standards for a project. This helps assure consistency with the General Plan, and provides the baseline for developing any flexibility or deviation from the conventional standards. The San Rafael Municipal Code zoning ordinance contains a land use classification and standards for "*Public-Quasi Public – Public parks, playgrounds and recreational facilities*"; which would typically implement an underlying General Plan 2020 recreation land use designation. Recreation facility is further defined in the San Rafael Municipal Code Section 14.03.030 as follows:

**"Recreational facilities" may include, but are not limited to, community centers, swimming or wading pools, spas, court facilities (such as tennis, basketball, or volleyball), picnic or barbecue areas and enclosed tot lot facilities with play equipment."**

As noted previously, a similar description of this land use is found in the City codes in effect when the 1983 land use restriction was imposed.

For purposes of CEQA review, project consistency with the Zoning Ordinance has been discussed on DEIR page 4-19. Consistency with the General Plan 2020 and specific development standards established for protection of environmental resources, such as the –WO zoning district, were also identified and discussed. This analysis would be updated and presented to the Planning Commission prior to review of project merits. Existing conventional zoning standards that would be applicable to the subject project would be incorporated into the PD ordinance, as appropriate. It is possible for the PD zoning to be approved in a manner that would allow a similar level or less intensive level of development than that evaluated by the FEIR.

### *Wetland Overlay District Compliance*

Comments have been made that the use would not be consistent with Section 14.13.030 of the municipal code (e.g., "recreational uses near wetlands should be low intensity"). However, as noted in the FEIR Response to Comments, including Responses 45-11 and 78-2, the requirements of Section 14.13.030 have been analyzed and would be addressed for this proposal. The standards allow recreation facilities, private (indoors and outdoors) within the –WO overlay district, as permitted by the open space management plan and/or park plan conforming to the wetland use regulations. If a plan has not been adopted, then –WO district land use regulations (A), (B), (C) and (D) would be applied to the project, as appropriate, through the issuance of a Use Permit. The San Rafael Airport Recreational Facility project includes a request for use permit, and there are no structures or fill proposed within delineated wetland areas. Adequate 50-foot setbacks have been established from the delineated wetlands on-site to the project development boundary and 100-foot minimum setbacks are provided from the Gallinas Creek bank. The wetland areas have been confirmed by US Army Corp of Engineers, and the use has been evaluated by a wildlife biologist, with adequate controls and design requirements identified to have minimal adverse impact on wetland habitat. All of the necessary permit approvals have

been required for the project development. Therefore, the project adequately addresses the pertinent – WO district standards, sufficient for CEQA analysis. This would be further documented as part of the project merits review.

#### *Ancillary, Alternate and Additional Recreational Uses*

Another issue was raised whether the ancillary uses café and sports shop uses would be compatible with a recreational land use. Accessory structures and uses that are customarily incidental to a permitted use and contained on the same site are typically permitted under the Zoning Ordinance Land Use Tables. The “Accessory Use” definition (Section 14.03.030) states that the use must be clearly subordinate or incidental and directly related to a permitted use or conditionally permitted use. The general thresholds for considering whether a use is an accessory use include whether a) the floor area dedicated to the use is less than 25% of the total floor area, b) the amount of business, revenue or activity generated by the use is less than 25% of the main use, c) hours of operation and intensity of operation are similar to the primary use, and d) [whether or how] uses are composed in separate and demised tenant spaces. Staff has determined that ancillary café and sports shop services would be compatible with the primary recreation use. These serve demands generated by users of the facility, allowing them to remain on-site for refreshment or to obtain any needed/missing equipment during use of facilities, and eliminate unnecessary vehicle trips to/from the site. This is not an unusual mix for recreational facilities, as demonstrated by the nearby McInnis Park which includes a pro-shop for golfers and a full-service restaurant that provides on-site food service and recreational supplies for the convenience of its users.

Commenter’s also inquired as to why all the [recreational] land uses that would be permitted with the approval of the project have not been identified; such as an ice rink. The EIR analyzed a multi-purpose recreational facility with a mix of recreational tenants that would generate high traffic and parking generation rates. It is reasonable to anticipate that this may include any recreational use that satisfies the Zoning Ordinance definition of “Recreation facility”, as identified in the conventional zoning standards; which may be further restricted by the Planning Commission during review of project zoning entitlements. Indoor/outdoor fields and gymnasium courts may accommodate various sports activities. Thus, the FEIR provides a conservative level of analysis an adequately evaluated the intensity of a mix of recreational activities. This is similar to the level of analysis that would be required for a multi-tenant shopping center, in which a mix of retail, service and restaurant uses is anticipated.

City staff would review all proposed recreation tenant occupancies to confirm they are compatible with the recreation uses addressed under the EIR analysis; i.e., prior to issuance of building permits or business license required to establish the use. Tenant occupancies that would generate higher than anticipated traffic, parking or noise impacts (such as a single use sports arena or auditorium) have not been proposed or considered. A change in use of the facility to another non-recreation use would require an amendment to the current entitlements, which would require a separate environmental determination pursuant to California Environmental Quality Act (CEQA) guidelines. In any event, all uses must remain consistent with the General Plan 2020 land use designation and the property land use restriction.

#### *Compatibility of Alcohol Sales*

Alcohol consumption associated with a café use, and appropriateness of this activity with a recreational use is not an environmental topic that requires evaluation under California Environmental Quality Act (CEQA). There is no evidence that shows any increased physical environmental impacts would occur as a result of this ancillary use component. This matter is a land use merits decision that will be made by the City as part of its review of the requested project entitlements. The State Alcoholic Beverage Control (ABC) would not require a determination of Public Convenience or Necessity (PCN) to be issued by the City for on-site consumption ancillary to a food service use with table service; i.e. a Type 41 ABC license. Typically, ABC grants an ancillary beer and wine license to a bona-fide food service use. This approach is consistent with the land use provisions established City-wide for food and beverage service use; which

allow ancillary beer and wine service as permitted with food service. A City-issued PCN determination is typically triggered as a result of a request for a new off-sale beer & wine or liquor license, or for new full service cocktail lounges (i.e. in a separately demised bar area or service provided outside of dining hours).

The proposed use is private, and is regulated by the City Use Permit process; therefore, it is not subject to regulations applicable to public parks. However, it is reasonable to consider the public park standards when evaluating a similar private recreation use providing similar facilities. Alcohol consumption at City parks is regulated pursuant to SRMC Section 8.10.030. A permit is required for a private activity and event within a City park, and the event must specify whether alcohol will be provided for consumption. Section 8.18.030 makes it an infraction to drink in the park, unless a permit has been issued from park director for any person or group. As noted, this section would not be applicable to a private recreational facility, and instead would be controlled through the City's use permit process.

### *Existing Airport Use Permit and Airport Operations*

The current Master Use Permit (MUP) allows continued operation of a private use airport for small aircraft. The use is limited to 100-based aircraft. There is no restriction on the number of daily flights to/from the airport. Therefore, larger private planes, increased flights, and night flights (takeoff/landings) at the airport are not prohibited by either the current airport Master Use Permit or State Department of Transportation (DOT) Airport Permit. A detailed description of the permitted airport use, the applicable state regulations, and the "fly-friendly" policy adhered to by pilots were provided in the DEIR, beginning at Page 4-3 and again at DEIR page 10-3. See the **Air Safety Hazards – Limits on Aircraft Use of Airport** discussion below for more information regarding size of airplanes that can operate at the facility. Nighttime use is also further discussed in this category, under **Nighttime Flight Limitations**.

According to Bob Herbst, the airport manager, there has not been an increase in the number of day or night flights, and the mix of aircraft types has been relatively unchanged over the past 10 years. Herbst has informed City staff that he has worked with the pilots over the past 10 years to make them aware of and be sensitive to the surrounding residential neighbors, and encourages them to fly in a manner that minimizes their noise signature. Herbst noted that the City has rarely received complaints during this time period. Herbst also indicates there are federal preemptions on imposing limits on the aircraft and flights. Staff notes that the question of whether federal regulation preemptions limit enforcement of current MUP conditions is a subject that may require subsequent City review and consideration.

## **2. Aesthetics**

The additional Aesthetics discussion addresses the following:

- *Measure Aesth-1b should be revised to clarify that the entire landscape plan must return to the City Design Review Board (DRB) for all site landscaping, not just for filling in the gaps of Eucalyptus trees.*
- *The 10' barrier fence required by mitigation measure MM Bio-2a was not shown in the visual simulation. Discuss how this would affect the visual impacts evaluated by the FEIR, and what this would look like.*
- *Discuss why the photo-simulations do not show the DRB recommended palette.*
- *How can the FEIR be certified if the Board has not reviewed the outdoor field lighting?*
- *Why is there no evaluation of the project looking north from Santa Venetia?*
- *Why does the FEIR not consider impacts to boaters' use of waterway, and change in the tranquil wildlife open space experience?*

### *Landscape Plan Review*

Measure MM Aesth-1b shall be changed to address the Commission recommendation, as follows:

**Revised MM Aesth-1b: Design Review Board Materials and Colors and Landscape Plan Approval:** Consistent with the recommendations of the Design Review Board subsequent to an earlier review, the DRB shall also review and approve the proposed building materials to ensure that the proposed project is designed with non-reflective and/or tinted glass to minimize potential daytime glare impacts pursuant to the Design Review Permit criteria established in the San Rafael Municipal Code Title 14 (zoning), Chapter 25 (Design Review). Additionally, the DRB shall review and approve the project final landscape plans for the entire site. The plan shall show the area where the DRB requested the gap in the Eucalyptus row to be filled in. Replacement species shall be consistent with City tree guidelines.

### *Visual Impacts Analysis*

Visual simulations were prepared for the project to visually demonstrate the massing of the project for study purposes of City staff, its boards and environmental consultants. The visual simulations are not intended to serve as a supplement to the story poles that were erected on the site. The Design Review Board has recommended a color and materials palette for the building, which would be implemented as a condition of project approval. The visual simulation is not required to illustrate final building colors and materials. Further, the prominent public views that would be affected by the project were identified and selected during the public hearings relied on to develop the scope of work for the FEIR. These were the vantage points used for the FEIR analysis (DEIR Figure 5-1). There were no public views from the Santa Venetia neighborhood that would result in obstructed views of the Bay, Mt Tamalpais or significant hillsides as a result of the development project. The DEIR does discuss private view impacts, starting at Page 5-9. However, this is provided for informational purposes in the DEIR. The discussion of private views includes two private views from Santa Venetia (See DEIR Appendix A, Exhibit 1 Key to Location of Photosimulations). Thus, views from Santa Venetia looking north toward the site have been identified and discussed during preliminary project review and this information could be considered by the Commission as part of its review of the project merits.

Views from waterway were also considered and discussed during preparation of the visual analysis, and result in visual impacts similar to those experienced by users of the nearby public trail. As shown on the Initial Study Checklist (see DEIR Appendix A), under the CEQA Guidelines there is no established threshold of significance for evaluating potential adverse effects of the project on boaters/kayakers using the adjacent waterways for recreational purposes and/or for observation of wildlife in those areas. Rather, the DEIR and FEIR both address the types of impacts that development of the project site as proposed could have on those adjacent sensitive areas, including extensive discussion of potential project-related effects on wildlife in the vicinity of the project site and of potential noise effects associated with construction and operation of the proposed recreational facility. Evaluation of Biological Resources in the EIR indicated that the project-related disturbance on wildlife can be reduced to a less-than-significant levels through implementation of EIR mitigation measures. Disturbance to recreational boaters could also be considered less-than-significant with effective implementation of the mitigation measures intended to reduce wildlife disturbance.

With regard to the 10' barrier fence that is proposed to minimize errant soccer balls from leaving the developed site areas, this fence is proposed behind the existing tree line. The recommended design would consist of 6-foot high cyclone plus an addition 4-foot height of netting, which has been suggested by staff to be similar in appearance to the taller netting/fencing used for McInnis Golf Driving Range. This fencing would not result in a solid barrier and would occur behind an existing mature tree-line, thus, the visual impact would be negligible.

### *Lighting Impacts*

In fulfilling its role of providing advice and guidance on design matters, the Design Review Board (DRB) is often asked to review and comment on lighting fixture details and proposed lighting levels. The DRB has provided guidance regarding the lighting details of the building and parking area, and associated lighting levels deemed appropriate. However, DRB review and recommendation on the potential environmental impacts of lighting is not required under CEQA. The threshold used for the EIR environmental review has been identified and established based on City policy applied to other properties over a long period of time. The lighting threshold applied to this project is one (1) foot-candle maximum intensity at the edge of the property line or conservation easement (whichever is more restrictive). This low lighting threshold is consistent with relatively low lighting levels required of projects throughout the community. Overall, the lighting intensity proposed and recommended for this site is much lower than in-fill project locations that are surrounded by other developed urban properties.

### **3. Biological Resources**

The discussion below addresses the following:

- *Quantify the size of the permanent conservation area that would be required as part of the project. Show this on a map and specify how this would be implemented in the MMRP.*
- *The term “without limitation” in Measure Bio-2d appears to be an incorrect statement. Please clarify if this should be stricken from the measure, given that the measure includes and identifies limitations.*
- *Measures Bio 4c, 5a and 5b should explicitly state surveys shall be conducted by a “qualified biologist” to avoid confusion.*
- *General Plan policy CON-5 on diked wetlands covers this site and is not adequately addressed. Buffer zones are not addressed. The EIR says the –WO district does not apply, but it does.*
- *How will staff retrieve errant balls from the buffer zone? Will they be adequately trained to do so?*
- *Why is a deed restriction proposed instead of an easement for the conservation area?*
- *Measure Bio-4b has an inconsistent construction end date discrepancy. Please check and explain or correct this measure.*
- *Measure Bio 9 appears to have an inconsistency with regard to less restrictive construction dates that needs to be cleaned up in the FEIR.*
- *The DEIR is incorrect. The clapper rail will not become habituated to this much of an increase in human activity. Also, the FEIR does not evaluate the impact on Clapper Rail due to use of the road. The access road will be proximate to where Clapper Rails are located, and they will flee.*
- *The FEIR does not discuss impacts of lights on migrating birds. For example, glare from new lighting at LGVSD caused the crested herons to vacate the area and they have not returned.*
- *The FEIR does not study the salt marsh harvest mouse.*
- *The FEIR does not assess impact to birds due to window strikes*
- *The threshold of impact for Clapper Rail has not been quantified in the FEIR.*
- *Information on biological resources needs to include outreach and feedback from CDFG, USFWS. No comments were obtained from these other agencies.*
- *The additive/cumulative impacts on wildlife were not analyzed. How will Clapper Rail be monitored for negative effects and who will pay for monitoring and enforcement?*
- *The FEIR needs to analyze impacts of noise on nocturnal birds.*

### *Setback Buffers and Diked Wetlands*

Pursuant to MM Bio-2b, establishment of a permanent conservation area for the 100-foot upland buffer area is required, adjacent to the North Fork of Gallinas Creek. The property runs 955.27 feet in length along the property creek frontage; per Civil Plan Sheet C1. Based on these dimensions, approximately 95,527 square feet, or 2.2 acres, of land would be encumbered by the minimum required 100-foot setback and conservation area. However, staff would recommend that the conservation area be expanded to incorporate the jurisdictional wetland areas and the 50-foot wetland setback buffers. Thus, the final acreage for this area has not been definitively established, but staff roughly estimates 4-acres of airport property are located between the proposed recreational facility improvements and the property line at the creek bank. The Mitigation Monitoring and Reporting Program (MMRP) would require the conservation area restriction to be recorded before issuance of building permits for the project. Further, the City Attorneys office recommended that the encumbered area be designated as a conservation area as opposed to an easement. An easement implies some form of access is being granted to a third party, which is not the case here. The effect of the protection is equivalent, particularly with the City included as a party to the restriction.

The EIR further clarifies that the project does not propose development or fill within a delineated wetland and provides adequate 50' setbacks from wetlands and 100' creek buffer zones in accordance with the –WO overlay district standards. Barrier fencing is recommended between the development and jurisdictional wetland/creek setback buffer zone. It is intended that the barrier fencing would be placed at the outer edge of development, and define the separation between development and protected buffer areas. Limited access to this area is encouraged to maximize protection and buffers provided between the project and nearby wildlife in the creek. As shown on the project civil plan sheet C1, the actual setback from the creek exceeds 100-feet and the proposed fencing and trees would be located between the field and creek area. Thus, there is little if any chance that errant soccer balls would travel into the creek bank or marsh areas. The barrier fencing and access limitations would primarily serve to further enhance required setback buffer zones.

It is also noted that General Plan Policy CON-5 on diked wetlands and –WO district requirements have been adequately addressed. CON-5 (Diked Baylands) states “Protect Seasonal Wetlands and associated upland habitat contained within undeveloped diked baylands, or restore to tidal action. Support and promote acquisition from willing property owners.” As proposed, the project is consistent with this policy. The project site has been documented to contain jurisdictional wetlands which have been delineated in accordance with US Army Corp of Engineers requirements and adequate 50-foot setbacks are provided. Further, Monk & Associates, the City’s wildlife biologist, has evaluated the WRA report initially prepared for the site by the applicants consultants, have performed their own field visits, and have provided the mitigation measures for sensitive wildlife and habitat near the project site located on the exterior levee wall adjacent to the creek. The required buffer zone setbacks have been identified and thoroughly discussed on DEIR page 7-12 and FEIR responses 45-14 and 49-9. As further discussed in the FEIR, at this time the applicant has not expressed interest in providing any portion of the property for wetland or bayland reclamation. However, the current project would not prevent future acquisition of remaining undeveloped lands for this purpose, if the owner decides to pursue this in the future.

### *Clapper Rail Sensitivity*

Monk & Associates (M&A) reports that multiple protocol surveys indicate that Clapper rails have established territories along Gallinas Creek during the nesting season. This suggests that Clapper rails are successfully nesting and reproducing in the marsh habitats along this creek, despite the high level of disturbance occurring on both sides of Gallinas Creek in the vicinity of the project site. Wildlife, and birds in particular, are able to habituate to human beings and associated disturbances, especially when the stimuli is predictable (routine or repeated sounds) and when the disturbances that are “nonthreatening”

(i.e. not directed toward the bird), as illustrated by Knight and Temple 1995<sup>2</sup>, Knight and Cole 1995<sup>3</sup>, and Riffell et. al. 1996<sup>4</sup>. The fact that Clapper rails have persisted in this area over at least several years of study, and have been repeatedly detected during the nesting season, demonstrates that the Clapper rail must be successfully reproducing. In fact, the increased Clapper rail counts reported by Avocet Research Associates (Jules Evens), ARA (2009), likely indicate these rails are thriving. Given the high levels of ambient human activity in the immediate vicinity of the project site, one could also logically assume that the clapper rails in the area are accustomed to this relatively high level of human and human related disturbances. Survey data indicate that they likely nest adjacent to a pedestrian walking path with frequent human/dog traffic.

The proposed project would also improve the existing access road to the airport and recreational facility. Clapper rails that inhabit Gallinas Creek in the project area are currently unaffected by traffic and other disturbance on the existing access road. The road alignment is set below the existing minimum 6 foot tall levee located along Gallinas Creek. Clapper rails in the marsh habitats within the channel do not now, nor would they in the future, have direct line of sight to the road or recreational facility site. On certain occasions that can be considered uncommon, rails that access the top of the levee would have direct line of sight to the construction project; however, rails would be unlikely to access the top of the levee as there is no cover on the levee to provide escape from predators. Equally important, rails which are naturally shy would be unlikely to access the top of the levee during periods of high human activity such as when the proposed project would be under construction.

The levee not only provides a visual buffer, but also provides a sound buffer blocking direct noise that could affect the rails. It should be noted that the opposite side of Gallinas Creek (north side) does not have a similar levee and clapper rails that nest and commonly frequent the north side of Gallinas Creek have direct line of sight of parking areas, a dog park, a golf course, and sports fields. Similarly, the section of roadway from Smith Ranch Road to the existing bridge crossing to the airport is also unprotected by a visual/sound berm. Yet Clapper rails commonly occur in the adjacent areas on the north side of Gallinas Creek that are relatively unprotected, high disturbance areas. This provides testimony to the rail's ability to acclimate to disturbance. Further evidence is provided at the San Francisco International Airport where one of largest populations of clapper rails in the San Francisco Bay Area occurs in marshes immediately south of the runways of this airport. Accordingly, M&A does not believe that the reconstruction of the access road to the airport that is set below a levee would cause clapper rails to vacate Gallinas Creek in the vicinity of the proposed project.

Further, the DEIR presents thresholds of significance to quantify impacts on Clapper Rails, pursuant to Appendix G (Environmental Checklist Form) of the CEQA Guidelines. The thresholds of impacts are generally evaluated as: 1) significant; 2) potentially significant; 3) less-than-significant. All project related impacts that could impact the clapper rail were evaluated within these thresholds of significance. With respect to the DEIR Impact Bio-2 states that: "indirect impacts to California clapper rails could result from noise generated during project construction and as part of project operation. Unless mitigated, these impacts would be *potentially significant*.... The noise impacts from the pile-driving could result in: (1) nest abandonment; (2) loss of young; (3) reduced health and vigor of eggs and/or nestlings (resulting in reduced survival rates). These impacts would be considered *significant* and adverse unless the proposed mitigation measures are implemented... however, these *impacts could be mitigated to a level considered less than significant*."

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<sup>2</sup> Knight and Temple 1995. Chapter 6: Origins of wildlife responses of recreationists, *Wildlife and Recreationists: Coexistence Through Management and Research*. Editors: Richard L. Knight and Kevin J. Gutzwiller, Island Press, 1995 Washington, D.C.

<sup>3</sup> Knight and Cole 1995. Chapter 5: Factors that influence wildlife responses to recreationists, *Wildlife and Recreationists: Coexistence Through Management and Research*. Editors: Richard L. Knight and Kevin J. Gutzwiller, Island Press, 1995 Washington, D.C.

<sup>4</sup> Samuel K. Riffell, Kevin J. Gutzwiller, Stanley H. Anderson. 1996. *Ecological Applications* Vol 6, No. 2 (May 1996). Pp 492-505

### *Salt Marsh Harvest Mouse*

The salt marsh harvest mouse, a federally-listed endangered species, was discussed in the DEIR (p. 7-48 to 7-49), which included detailed impact and mitigation measures in the event of any indirect impacts (Impact Bio-7, MM Bio-7). Salt marsh harvest mouse was also discussed in the FEIR response to comments. M&A concludes that: "Protective buffers that are well over 100 feet from the top-of-bank of the North Fork of Gallinas Creek ensure that there would be no impacts to the salt marsh harvest mouse from implementation to the proposed project." The recreational facility development area within the existing airport site does not provide conditions or characteristics that would be regarded as suitable salt marsh harvest mouse habitat. It also should be noted that the proposed bridge reconstruction project would not impact any marsh habitat within or adjacent to Gallinas Creek that could support the salt marsh harvest mouse. Rather all reconstruction activities would be within the existing road alignment and would otherwise be above top-of-banks in existing road surface areas.

### *Migratory Bird Impacts*

With regard to impacts of lights on migrating birds, no egret or heron rookery is known to occur adjacent to or near the proposed recreational facility. Thus, there would be no impacts to rookeries from the proposed project. The potential light and glare impacts of the project on the surrounding community are analyzed in Chapter 4: *Aesthetics*, of the DEIR. Chapter 4 notes that the Applicant proposes a state-of-the-art, environmentally friendly lighting system designed by Musco Lighting that uses 50 percent less electricity and produces 50 percent less spill and glare than traditional fixtures. This would keep light impacts to the Gallinas Creek channel minimized to an extent that the impact is not considered significant. The Mitigation Measures presented below would be implemented as part of the proposed project to minimize lighting impacts and to protect the habitats associated with the North Fork of Gallinas Creek, and its associated migrant bird population.

Pursuant to MM Bio-3a Nocturnal Lighting, lighting of the outdoor soccer field located near the North Fork of Gallinas Creek would be designed to have focused illumination areas that would ensure that there is no direct lighting of off-site areas, such as the North Fork of Gallinas Creek. All lighting fixtures on the perimeter of the project shall be outfitted with hoods and cut-off lenses so that the light source itself is not visible to the naked eye from neighboring properties, thereby avoiding direct light "trespass" into adjacent habitat areas. This shall be verified by the Design Review Board when it reviews the final lighting plans prior to the issuance of building permits, and verified again at the project site during the inspection occurring 90 days following lighting installation. Pursuant to MM Bio-3b Lighting Curfew, the recreational facility shall establish a 10:00 p.m. outdoor event lighting restriction. When there are evening outdoor soccer events, the 10:00 p.m. end time would ensure that light generated from the recreational facility would not disrupt nocturnal wildlife species' activity patterns, allowing nocturnal migration movements through the project area after that time. Implementation of measures MM Bio-3a and MM Bio-3b would reduce potential nocturnal lighting impacts to a level considered *less than significant* pursuant to CEQA.

In consideration that much of channel area of Gallinas Creek on the project side of the creek would be partially or completely shielded from direct light by the existing minimum 6 foot earthen berm levee along Gallinas Creek, and that there would be a 100-foot creek setback/buffer established along Gallinas Creek as part of the proposed project, the Musco Lighting system would reduce lighting impacts to Gallinas Creek to the greatest extent possible. Since there are no known egret or heron rookeries on, adjacent or near the project site, and since Gallinas Creek would be largely shielded and buffered from direct light intrusion, lighting impacts are expected to be less than significant.

Lastly, the impact to birds resulting from "window strikes" is expected to be a less than significant impact. However, in consideration of this concern, decals should be applied to the new recreation building

windows to help birds see the windows and avoid striking the glass. Staff would recommend incorporating this into the project as a condition of approval.

#### *State and Federal Regulator Contacts*

It has been suggested that the information on biological resources needs to include outreach and feedback from CDFG, USFWS, and that there were no comments obtained from these other agencies. However, the FEIR includes discussion and analysis that is based on direct contact with these agencies, as follows:

**USFWS:** M&A requested authorization to conduct a protocol clapper rail surveys in a formal request submitted to Mr. Ryan Olah of USFWS on January 25, 2007. M&A's request described the proposed project. Mr. Jim Browning of USFWS responded to M&A's request requiring modifications to M&A's proposed survey plan that included increasing the number of calling stations and biologists conducting surveys at any one time. After resubmitting the revised survey plan to Mr. Browning, M&A received permission from USFWS via email on February 5, 2007 allowing M&A to conduct protocol clapper rail surveys following the methods described in the 2000 USFWS *Draft Survey Protocol for California Clapper Rail* (USFWS January 21, 2000) in order to determine presence or absence of clapper rail breeding activities in the North Fork of Gallinas Creek located adjacent to the project site. The *Clapper Rail Survey Report* was submitted to the USFWS in July of 2007.

**CDFG:** The applicant coordinated directly with CDFG regarding the proposed bridge reconstruction project. The applicant received a 1602 Lake and Streambed Alteration Agreement (SBAA) from CDFG on June 9, 2006 (Notification Number: 1600-2006-0266-3) for the bridge reconstruction project. City staff also contacted and confirmed CDFG requirements regarding the proposed bridgework (see discussion of **Impact Bio-9** below).

In addition to direct contact made during the preparation of the environmental report, preliminary referrals were also made to these agencies during the environmental scoping and review process, and the DEIR was directly distributed to these agencies for review and comment during the formal public review period. Neither USFWS or CDFG submitted comments on the DEIR during the public review period. Had these agencies had questions or comments on the DEIR, such comments to the DEIR would be required to be addressed in the FEIR. Thus, staff and its environmental consultants have made every effort to assure the environmental and regulatory interests of these agencies have been identified and addressed.

#### *Cumulative Impacts*

There were concerns expressed regarding additive/cumulative impacts on wildlife analysis and monitoring of Clapper rail for negative effects. According the M&A, the proposed project would not impact marsh habitats or adjacent upland habitats along the North Fork of Gallinas Creek; therefore, there would be *no direct impacts* to the California clapper rail. Further, M&A has concluded that the proposed project would not result in significant impacts to sensitive wildlife habitats. No direct take of sensitive wildlife species is expected to occur from implementation of the proposed project. There would be impacts to common wildlife species that would be displaced by the recreational facility; however, such impacts would be regarded as less than significant. Past projects are part of the baseline for analysis of project impacts, and were taken into consideration in the cumulative impacts analysis. As discussed in the FEIR, page R-40, ***“Biological impacts in the area are localized to the site, and none of the past, present or foreseeable future project identified in the area, as listed in Table 14-1, would have incremental impacts on the sensitive environmental resources identified onsite. Thus, the project would not make a cumulative considerable contribution to any significant cumulative biological impacts.”*** There are no other proposed projects in San Rafael near the proposed project site that would incrementally add cumulative impacts to wildlife.

To ensure that the marsh habitat and the upland buffer along the North Fork of Gallinas Creek is protected, EIR mitigation measures require that a fence shall be installed around the perimeter of the proposed project area, and human access into this buffer area would be prohibited except as required by maintenance/operation personnel for continued levee maintenance and other required airport operational tasks that are routinely practiced today. In addition, signs would be posted stating that public access into the buffer area is strictly prohibited owing to the sensitivity of the marsh habitat and to ensure the continued use of this habitat by special-status wildlife species. The applicant shall designate the marsh habitats along the North Fork of Gallinas Creek and the 100-foot upland buffer area on the project site adjacent to the North Fork of Gallinas Creek as a permanent “conservation area.” The City shall have review and approval authority over the deed restriction language and ability of the owner or subsequent owners to make any modifications to the restrictions, hence the City would enforce the preservation of this wildlife conservation area to ensure that the Clapper rail would not be negatively affected by the proposed project.

As required by the CEQA Guidelines, a Mitigation Monitoring and Reporting Program (MMRP) must be prepared for the project, prior to consideration of approval of the project by the City. The MMRP establishes the timing and enforcement responsibility for implementing project mitigation measures. CEQA provides that the City may require fees for mitigation monitoring. Staff may recommend payment of mitigation monitoring fees deemed necessary to cover cost of enforcement. The City shall have the primary responsibility of enforcing its conditions of approval, including the MMRP. This is the standard and established procedure for implementation of CEQA for a project.

#### *Mitigation Measure Modifications*

There were additional minor clarifications and corrections to Biological mitigation measures suggested to eliminate some discrepancies with construction period dates and requirements. As a result, the following additional revisions have been identified:

**Revised MM Bio-2d California Clapper Rail and California Black Rail – Avoidance Measures:** Disturbances to clapper rails and black rails can be minimized during the construction of the proposed recreational facility by implementing the following avoidance measures:

Pile driving associated with the recreational facility building shall not commence until September 1<sup>st</sup> and shall be completed by February 1<sup>st</sup>. Outside of pile driving, exterior construction of the recreational facility shall be allowed between July 1<sup>st</sup> and February 1<sup>st</sup> ~~without limitation~~. Interior work shall ...

**Revised MM Bio-4b:** Exterior construction of the recreational facility shall be allowed between July 1 and February 1<sup>st</sup>, when most raptors are expected to have completed their nesting cycles. In cases where a nest fails during egg-laying or early incubation, adults may recycle, laying a second set of eggs. In such cases the completion of the nesting season may be delayed until August. While this is rare, it can occur and thus out of an abundance of caution, a mitigation measure is provided ~~below~~ to account for late nesting raptors.

*(Staff notes that prior to this revision to **MM Bio-4b Nesting Raptors** it stated that construction of the recreational facility shall occur from July 1 through October, when most raptors are expected to have completed their nesting cycles.... The discrepancy lies in that construction should be allowed for all non-nesting periods. Thus, the construction period has been lengthened accordingly, to be consistent with the remainder of the mitigation measures.)*

**Revised MM Bio-4c Nesting Raptors – Pre-construction Nesting Surveys:** A pre-construction nesting survey shall be conducted by a “qualified biologist” ...

Revised **MM Bio-5a Western Burrowing Owl – Nesting Surveys**: Pre-constriction Survey. A preconstruction survey of the project site shall be conducted by a “qualified biologist” ...

Discussion of **Impact Bio-9 Impacts to CDFG Jurisdiction**, notes the applicant received a 1602 Lake and Streambed Alteration Agreement (SBAA) from California Fish and Game (CDFG) on June 9, 2006 (Notification Number: 1600-2006-0266-3) for the proposed bridge work. The SBAA details the authorized activities, and provides specific terms and conditions for this project. These terms include that work on the bridge project shall be restricted to July 15<sup>th</sup> through October 15<sup>th</sup> during periods of low stream flow and dry weather. Although the CDFG SBAA allows bridge construction between July 15<sup>th</sup> and October 15<sup>th</sup>, all work associated with the new bridge, including the demolition of existing bridge deck, installation of the new deck, and other bridge improvements, shall be restricted to August 1 through the end of the allowed SBAA work period of October 15 to account for California clapper rails or black rails, and other special-status birds, that could nest in the marsh habitats along the creek in the immediate area of the bridge. This “avoidance window” is outside of the California clapper rail, California black rail, and other special-status bird breeding seasons, thereby eliminating the potential that bridge reconstruction activities would disrupt breeding attempts. The work on the bridge deck may be extended beyond the October 15<sup>th</sup> date allowed in the SBAA to February 1<sup>st</sup> under the condition that CDFG and the City provide approval for this extension and appropriated weather related BMPs are implemented. Work up until February 1<sup>st</sup> is likewise outside of the Clapper rail, California black rail, and other special-status bird breeding seasons.

The bridge pile-driving dates are restricted to occur from September 1 through October 15<sup>th</sup> when potentially occurring anadromous fish are not expected to occur in the channel. While as permitted by CDFG, bridge decking work may continue after October 15<sup>th</sup> until February 1<sup>st</sup>, no work shall be allowed including pile driving, constructing abutments, or any other construction related activities that could otherwise negatively affect fish habitats between October 15<sup>th</sup> and September 1<sup>st</sup>. Therefore, it is appropriate to revise and replace the first bullet of this measure with two new bullet items that accurately identify the broadened time frames, as follows:

Revised **MM Bio-9 Impacts to CDFG Jurisdiction – Banks of the North Fork of Gallinas Creek**: Construction of the proposed bridge shall be restricted to the terms and activities consistent with the approved CDFG 1602 Lake and Streambed Alteration Agreement (Notification Number: 1600-2006-0266-3), including but not limited to the following:

- All work associated with the new bridge, including the demolition of existing bridge deck, installation of the new deck, and other bridge improvements, shall be restricted to August 1 through October 15 to account for California clapper rails or black rails, and other special-status birds, that could nest in the marsh habitats along the creek in the immediate area of the bridge. This “avoidance window” is outside of the California clapper rail, California black rail, and other special-status birds breeding seasons, thereby eliminating the potential that bridge reconstruction activities would disrupt breeding attempts. The work on the bridge deck may be extended beyond the October 15<sup>th</sup> date allowed in the SBAA to February 1<sup>st</sup> under the condition that CDFG and the City provide approval for this extension and appropriated weather related BMPs are implemented. Work up until February 1<sup>st</sup> is likewise outside of the Clapper rail, California black rail, and other special-status bird breeding seasons.
- The bridge pile-driving dates shall occur from September 1 through October 15<sup>th</sup> when potentially occurring anadromous fish are not expected to occur in the channel. While as permitted by CDFG, bridge decking work may continue after October 15<sup>th</sup> until February 1<sup>st</sup>, no work shall be allowed including pile driving, constructing abutments, or any other construction related activities that could otherwise negatively affect fish habitats between October 15<sup>th</sup> and September 1<sup>st</sup>.

- No work shall occur below the top-of-bank or the normal high-water mark (i.e., the mean higher high tideline) of the stream.
- All conditions in the authorized SBAA shall also be made a condition of the project .

Implementation of the terms and conditions of the SBA, as required by **MM Bio-9**, will reduce impacts to CDFG jurisdictional areas to a level considered *less than significant* pursuant to SBAA and therefore, CEQA.

#### 4. Geology & Soils

The discussion below addresses the following:

- *The analysis ignores the Hayward fault risks.*
- *The levee analysis is inadequate because it only examines a 300 foot stretch of the 12,000 foot long levee and does not include discussion of rodent infestation. Further, it does not include information prepared by Kleinfelder for the levee along the south fork of Gallinas Creek that was prepared for County Flood District 7. The Kleinfelder study is available and should be used.*
- *Little is known about the condition of the levee and no letter is provided from Questa summarizing their peer review conclusions.*
- *The FEIR inadequately evaluates the impact of building on fill, including settlement that will continue to occur as the site dewaterers.*
- *Discuss impacts of vibration from driving piles. Pile driving affects re similar to 3.8 magnitude earthquake.*
- *The US Army Corps of Engineers (USACOE) requires a drivability analysis. The FEIR does not include this analysis.*

##### *Hayward Fault*

As indicated on **Table 9-2** on DEIR page 9-7, the nearest point of the Hayward Fault is located approximately 7 miles, and the nearest point of the Rogers Creek Fault is located approximately 5 miles from the project site. There are no known faults which pass through the project site. The DEIR indicated on page 9-1 that between 2001 and 2030, there is a 27 percent chance of a Richter Magnitude  $\geq 6.7$  earthquake along the Hayward-Rogers Creek Fault. Potential impacts associated with such an earthquake are addressed on DEIR page 9-27, which indicates that compliance with current building code requirements would be expected to reduce potential impacts associated with risk of loss, injury or death as a result of ground rupture or seismic ground shaking to a level considered less than significant.

##### *Levee Condition and Maintenance*

The existing conditions and maintenance practices of levees were addressed in FEIR **Master Response 12** (pages C&R-27 through C&R-31). The levee analysis conducted by John C Hom (JCH), Geotechnical Engineer, for the EIR provided a representative sample of existing levee conditions on the project site, in order to confirm the assumptions regarding the condition of the levees and potential flooding hazards that could impact the site<sup>5</sup>. The JCH analysis indicated that the fill material that was used to construct the levees should perform adequately during earthquake-induced ground shaking, and the potential of seismically-induced ground failure is less-than-significant. The entire levee system is comprised of fill.

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<sup>5</sup> The JCH analysis of the levees has been peer reviewed and confirmed by Questa Engineering Corporation ( "Comment 11. Seismic Stability of Levees" in letter from Sydney Temple, P.E., Principal Senior Hydrologist and Willard N. Hopkins, Senior Engineering Geologist, Questa Engineering Corporation, to John Courtney, Lamphier-Gregory, March 15, 2010).

Thus, sampling near the site is an accurate representation of conditions for the entire levee system. A detailed analysis of the entire length of the levee has not been deemed necessary to confirm the assumptions used by the EIR, and potential impacts on the site.

As noted in the EIR, the levee currently provides flood protection for the project site. The project applicant and County of Marin are legally responsible for the ongoing maintenance of their respective portions of the levee system. Should levee failure and subsequent property damage, injury or loss of life occur as a result of failure of either responsible party to provide adequate maintenance along the segment of the levee within their responsibility, that party would be required to address any resulting legal claims. This legal responsibility provides sufficient incentive to maintain their portions of the levee in good condition. However, as noted in the FEIR, the project has been designed appropriately to address potential flooding impacts in event of a levee failure. Thus, the project would not result in any new significant impacts.

According to Tracy Clay, Principal Civil Engineer, Marin County Department of Public Works, Kleinfelder Geotechnical and Civil Engineers have been hired by the County to provide a study of the levees in the area, but the report is not final. On December 6, 2011 City staff spoke with Neal Conatser, Assistant Engineer with Marin County Department of Public Works. Conatser informed City staff that Marin County hired Gregg Drilling & Testing to conduct a Cone Penetration Test<sup>6</sup> (CPT) investigation and borings of County owned levees east of the runway, and around Santa Venetia. However, a detailed analysis of the airport levee system has not yet been prepared. The County study focuses on the Santa Venetia levee system, and completion of the report for this work was still in progress at the time of this writing. Conatser has confirmed that rodent infestation of the levee system surrounding the airport site has been an ongoing maintenance issue, but that this has not caused larger instability or leakage issues. The County has been addressing the problem through trapping and filling holes with slurry or backfill, as needed. More information regarding the Las Gallinas Creek Levee Evaluation can be found on the County website at <http://www.marinwatersheds.org/zone-7-levee.html>.

The County also has published a study of Gallinas Creek (County Service Area #6), i.e., "Channel Maintenance Dredging study", prepared by Winzler & Kelly, February 26, 2010; which is also available online at <http://www.marinwatersheds.org/docs/2010-02-26-PSR-Final.pdf>. At page 14 of the referenced report it states:

"Kleinfelder has been retained by the County of Marin Department of Public Works to perform a geotechnical exploration and provide consulting services relative to the levee system along the Santa Venetia/Gallinas Village Subdivision adjacent to Las Gallinas Creek. The exploration includes Cone Penetration Tests (CPT's) and borings performed in November 2008 which, at the time of this report, are still being analyzed for inclusion into the dredging project geotechnical evaluation report. The explorations performed include 10 borings (KC-1 to KC-10) performed along the crest and one boring (KT-3) performed at the toe of the levees of the subdivision. The exploration also includes five CPT's performed in the residential streets at the front of properties with frontage of the levees. Additionally, the study includes two borings and two CPT's (KAP-1 and -2 and KCPT-A1 and -A2) performed at the northern end of the airport property across Las Gallinas Creek from the residential development.

The borings through the levee crest range in depth from approximately 9 to 20 feet in depth. The borings encountered levee fill over Young Bay Mud. The levee fill logged is typically about 10 feet thick, though it is as thick as 15 feet and as thin as 5 feet. In general, the borings indicate the upper approximately 5 feet of the levee fill generally consists of medium stiff to stiff

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<sup>6</sup> A CPT consists of a cylindrical probe with a cone-shaped tip with different sensors that allow a real time continuous measurement of soil strength and characteristics by pushing the probe into the ground at a speed of 2 cm/s.

clays over coarser soils including poorly graded sands and gravels as well as clayey sands and clayey gravels. Some of these coarse fill materials are described as loose and have blow counts of 5 or less. The borings performed at the airport were approximately 13½ feet and 9 feet deep. Boring KAP-1 encountered about 9½ feet of fill over Young Bay Mud. The fill in this boring was medium stiff clay with approximately 3 feet of loose clayey gravel starting at a depth of about 5 feet. Boring KAP-2 was terminated at a depth of 9 feet within the fill.

The fill at this boring was about 4 to 5 feet of medium stiff to hard silt and clay over soft to very soft Bay Mud fill. The CPT's in the residential development range from approximately 60 feet to 82 feet in thickness. In general, these CPT's indicate the soil profile consists of fill over soft Young Bay Mud over relatively stiffer silts and clays. The Young Bay Mud in these CPT's ranges from approximately 40 to 55 feet in thickness. At the airport, the two CPT's were advanced to depths of approximately 60 feet. The soil profiles in the airport CPT plots are similar to the other CPT plots. The fill ranges from approximately 3 to 5 feet and the Young Bay Bud thickness ranges from approximately 30 to 35 feet.<sup>7</sup>

This analysis confirms that the entire levee system is of similar material and that its construction, compaction and assumed stability conditions are relatively universal along its entire length.

#### *Building Foundations and Settlement Analysis*

The DEIR (pages 9-28 through 9-32) provides extensive discussion of the potential impacts associated with the construction of foundations at the project site, which can be mitigated to a level considered less than significant through implementation of **MM Geo-1: Geotechnical Engineering Recommendations**. Effective implementation of this mitigation measure would require that, prior to the issuance of a grading or building permit, written verification of conformance with recommendations a) through m) shall be submitted by the project geotechnical engineer to the City of San Rafael. Compliance with these recommendations would effectively reduce the risk of property damage that could result from possible future settlement at the project site to a level considered less than significant.

#### *Vibration Analysis*

Vibration effects at and near the project site associated with pile driving are addressed on DEIR pages 12-25 and 12-26, as well as in FEIR Response 31-1 (page C&R-153). As indicated in the DEIR discussion, the Federal Transit Administration recommends a vibration threshold criterion of 0.2 in/sec PPV for fragile buildings (U.S. Department of Transportation, Federal Transit Administration, 2006), and this threshold is appropriate to apply to any construction activities occurring during the daytime hours. At the project site, the estimated construction vibration would be less than 0.1 in/sec PPV at 200 feet and even lower at greater distances. Therefore, it was identified in the DEIR that the potential for off-site cosmetic or structural damage to result from project construction would be low and impacts related to construction-related vibration would be less than significant.

In terms of comparing vibration associated with pile driving to that associated with a magnitude 3.8 earthquake, distance from the earthquake epicenter and soil conditions are the key variables in influencing how earthquake-related vibration is perceived at any given location. As indicated in an article presented at the Member's Conference of the Deep Foundations Institute, October 14-16, 1998 ("Prediction and Calculation of Construction Vibrations" by Dr. Mark R. Svinkin, <http://www.vulcanhammer.net/svinkin/prediction.php>), "Waves generated in the ground by construction sources have higher frequencies and smaller wavelength in comparison with waves from earthquakes and propagate mostly in the upper soil strata close to the ground surface." The article goes on to say that vibration (at a single point) depends on physical parameters related to the vibration source (pile

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<sup>7</sup> Winzler & Kelly, "Channel Maintenance Dredging study" February 2006

impedance, length and transferred energy to the pile, for example), frequency, distance from the source and variation of soil stratification at the site, and that for various pairs of widely separated points on the ground surface, vibration values can differ more than an order of magnitude.

Given the distance of the project site from the nearest active or recorded fault line (as indicated on **Table 9-2** on DEIR page 9-7, the nearest point of the Hayward Fault is located approximately 7 miles, and the nearest point of the Rogers Creek Fault is located approximately 5 miles from the project site), and the anticipated project-related pile driving vibration level of 0.1 in/sec PPV at 200 feet, it is unlikely that anyone beyond the project site would actually experience vibration similar to what would be experienced during a 3.8 magnitude earthquake on one of the nearby earthquake fault lines during pile driving at the project site.

Although a drivability analysis may be required for USACOE projects where pile driving is anticipated, the proposed development of the project site is not a USACOE project, and requires no permit from the USACOE. For this reason, no drivability analysis is required in order to pursue this project as proposed.

#### *Questa Peer Review*

The peer review letter provided from Questa Engineering to John Courtney for preparation of the FEIR response to comments is attached to this report (**ATTACHMENT 4**).

### **5. Hazardous Materials**

The discussion below addresses the following:

- *Provide closure on the request contained in the letter from the State Department of Toxic Substances Control (DTSC) recommending a Phase I assessment to identify any potential for unknown site contamination issues.*
- *Provide information regarding solvents use to clean the artificial turf and impacts to water quality.*
- *What contaminants will be generated by the turf field and how will this be addressed?*
- *The runoff water and soils should be tested for contamination. Foamy water has been observed.*
- *The analysis of lead gas impacts is inaccurate. Lead will not be phased out by 2017. The levels are much higher than quoted in the FEIR. This needs to be corrected and identify health effects on users of the facility.*

#### *Existing Contamination Hazards*

As indicated on page 10-15 of the DEIR, aside from sheep grazing there has not been any commercial farming at the airport in the last forty years. Thus, there would be no potential project-related impacts associated with the exposure of the public to pesticides, contaminated soils or other hazardous farming-related materials. The project site is not included on a list of hazardous materials sites maintained by the State Department of Toxic Substances Control (DTSC). Given the distance of the project site from the hangar area, airport operations are unlikely to have resulted in any substantial contamination of soils at the project site. Given these and other considerations, soil testing for contaminants has not been conducted at the project site.

The State Department of Toxic Substances Control (DTSC) DEIR comment letter reiterated several specific areas of concern that prior land uses and potential contamination from the nearby airport operations could have impacted the site. DTSC staff recommended soils and groundwater sampling should be performed to identify whether current or past chemical use may have resulted in release of hazardous substances. The FEIR/Response to Comments explains why further study in this area was

not necessary. The DTSC followup comments on the FEIR suggested that a Phase I environmental assessment should be conducted to confirm the concerns of DTSC were addressed. Staff responded to this letter explaining that the FEIR contains the necessary information required for a Phase I level assessment. This included a review of the DTSC maintained lists of hazardous waste sites and facilities, review of project plans showing site relationship to surrounding uses, review of historic City files and aerial maps, and review of fire department records of hazardous waste generators, sites and contamination exposure in the area. This review demonstrates that there were no prior uses of the vacant project site area that could have potentially resulted in contamination, that there are no current or prior hazardous waste generators in the area that would have affected the site, and that the airport facility operations are located far enough from the site that the operations would not impact the vacant project site area.

Information reviewed by City staff has included a review of prior fill permits issued by the City, a prior CEQA environmental review completed in 1999 for the airport Master Use Permit, and fuel spill remediation that occurred on the airport property some years ago. A February 23, 2007 "No Further Action" letter from the California Regional Water Quality Control Board (RWQCB) documented a prior corrective action and remediation taken at the airport facility. This work was monitored and completed in compliance with state requirements (copy included with comments at Page C&R-835). FEIR Response 49-33 also responds to concerns with pollutant runoff from the runway, which is equivalent to a minor roadway in terms of its usage and runoff characteristics. Based on the detailed site analysis, review of local records and state databases, there are no known or anticipated contaminants associated with the site, any fill materials, or resulting from ongoing airport operations.

On November 28, 2011, David Murphy of DTSC staff reiterated that he had expressed concern that contamination might have migrated from operational areas of the airport to the project area. Mr. Murphy acknowledged receipt of the citations provided by City staff to specific sections of the FEIR and City staff conclusion that there is no significant possibility of contamination originating from the operational areas of the airport to the project area. He has concluded that, assuming that the City has documented its research in arriving at this conclusion, DTSC has no further concerns and no need for a Phase I that would repeat the review undertaken to prepare the FEIR (**ATTACHMENT 5**). City staff has conducted and documented its research, thus, accepts this response by DTSC as confirming that the concerns they have raised have been addressed. Nevertheless, in order to satisfy any remaining public or Commissioner concerns staff has had a Phase I analysis prepared to confirm the FEIR analysis (**ATTACHMENT 6**).

#### *Turf Field and Water Quality*

Cleaning of the artificial fields is not necessary, thus, there are no residual runoff issues that require further consideration in this respect. The field can be power-washed if desired to remove any debris and can be mechanically raked. This topic is covered in FEIR Response 39-11. It is anticipated that use of turf fields will be safe, and provide some beneficial environmental effects through elimination of water demand, pesticides and mowing. Internet research also suggested that artificial fields can result in fewer field related injuries (due to its ability to maintain an even field surface). The crumb rubber technology used for artificial fields has also been reported as improving, with increased product stability, thus further minimizing concerns that the product could result in groundwater leachate with trace amounts of harmful chemicals. The use of high quality, state of the art field technology would be required as a condition of project approval to further minimize any concerns.

Water quality in the vicinity of the project site is addressed on DEIR pages 11-7 through 11-12. As indicated in this discussion, no site-specific measured data regarding stormwater runoff quality exists for the project site, although the expected pollutants in the existing-condition stormwater runoff could potentially include sediments, nutrients, oxygen-demanding substances, heavy metals, petroleum hydrocarbons, pathogenic bacteria and viruses (see also **Table 11-1: List of Pollutants for San Pablo**

Bay on DEIR pages 11-10 and 11-12). Although no testing of runoff water samples from the project site has been conducted, it is reasonable to assume that the types of pollutants that might be identified if such testing were to be conducted would be those already noted above (e.g., sediments, nutrients, oxygen-demanding substances, heavy metals, petroleum hydrocarbons, pathogenic bacteria and viruses). Further, to the degree that there are any existing water quality issues in the vicinity, the DEIR analysis illustrates that the project would not increase or compound any existing issues.

#### *Lead Gas in Aviation Fuels*

Regarding use of lead in aviation fuels, the Environmental Protection Agency (EPA) confirmed in July 2010 that there is no formally established phase-out date for leaded aviation fuels (see letter from Margo Tsigotis Oge, Director, Office of Transportation and Air Quality, U.S. Environmental Protection Agency to Mr. Robert Hackman, Vice President, Regulatory Affairs, Aircraft Owners and Pilots Association, July 27, 2010) (**ATTACHMENT 7**), and that setting such a date would be an FAA responsibility (as EPA has no authority over aviation fuels). The Federal Aviation Administration (FAA) subsequently responded that regulating lead levels in aviation fuels is indeed an EPA responsibility. In light of this information, the text of the second paragraph on FEIR page C&R-534 has been modified to read as follows:

~~“Leaded gasoline for automobiles was phased out in the early 1990s. The aviation industry was given an exemption for 100LL, but EPA has announced a proposed rulemaking scheduled for 2010 that would phase out 100LL by 2017, eliminating General Aviation aircraft as a source of airborne lead.”~~

Further, the 4<sup>th</sup> paragraph on FEIR page C&R 534 should be modified to read as follows:

~~The strength of the emission associated with airport operations is quite small. 100LL avgas contains a small fraction of the lead that was contained in automobile gasoline before its use was phased out, and~~ The airport averages only 20 landing and take-offs per day. Only emissions taking place near the ground can affect neighboring properties, so emissions from aircraft in the air make little contribution to exposure.

Use of 100LL avgas represents a fractional contribution to atmospheric lead. Until January 1986, regular automobile fuel contained a maximum of 1 gram of lead per gallon. The lead content in 100LL (avgas) is considerably higher than that in unleaded gasoline for automobiles (100LL is reported to = 1.2 to 2 grams of lead per gallon, while regular auto fuel can contain a maximum of 0.1 gram of lead per gallon, although some unleaded regular and premium auto fuel may contain only 0.001 gram of lead per gallon). However, there is no evidence to indicate that airborne lead levels at the project site are currently higher than that discussed in the response covering this topic; Response 45-42 (FEIR pages C&R-533 through C&R-535). There is no information that avgas presents an undue exposure hazard to persons using the proposed recreational facility.

Due to the extensive history of lead use in human activities it is essentially present in every human environment. There is scientific consensus that there is no demonstrable threshold dose for the manifestation of lead toxicity – in other words, there is no exposure level below which lead appears to be safe. The Occupational Health and Safety Administration (OSHA) has established health protection standards intended for the Prevention of adverse health effects for most workers from exposure to lead throughout a working lifetime. The California Code of Regulations, Title 8, Section 1532.1 establishes a permissible exposure limit of 50 micrograms of lead per cubic meter of air, averaged over an 8-hour workday. However, the U.S. Environmental Protection Agency (EPA) has declined to specify a Reference Dose (that is, a level of exposure not likely to lead to adverse effects) for lead. The U.S. Agency for Toxic Substances and Disease Registry (ATSDR) has not developed Minimum Risk Levels for lead. Because thresholds have not been demonstrated for the most sensitive effects of lead on humans, any exposure may be of potential concern.

While no “safe” level of lead exposure has been determined, the EPA has established a National Ambient Air Quality Standard for atmospheric lead at 0.15 micrograms per cubic liter of air, and has designated a portion of Los Angeles County as the only lead non-attainment area in California. Due to the limited number of takeoffs and landings at this private facility, lead emissions would be minimal relative to what you’d expect for lead emissions at busier public General Aviation airports (Gross Field was reportedly generating an estimated 339 kg/yr of lead emissions in its operations in 2002), and the exposure limit at the San Rafael Airport is considered to be negligible with respect to general exposure to atmospheric lead levels in San Rafael and the San Francisco Bay Area air region. Thus, based upon the established thresholds and the known and anticipated exposures, the level or density of criteria pollutant emission along the runway (including emissions of lead) over the course of an operational day would not be anticipated to pose a significant potential hazard to persons using the proposed recreational facility.

## 6. Air Safety Hazards

The discussion below addresses the following:

- *Would posting a sign limiting occupancy in the warm-up area for zone 2 be workable and adequately address the occupancy limit requirement for that area? If so, how would this be enforced?*
- *Explain how the clear space above the end parking row would be managed and enforced to assure vehicles could not be parked that would violate the ascending clear zone. Are there other recommendations for assuring vehicles could be parked without violating the safety zone?*
- *Provide more information on the patterns of crashes near this type of airport, including explaining the single sided flight path. Further explain the risk area associated with buildings near an airport, particularly with respect to any increased risk for crashes in this area.*
- *Discuss if there is any additional flight hazard due to the varying abilities of pilots and quality of the aircraft associated with the users at this airport.*
- *Discuss the six safety reduction features and why only the two safety features were identified as required, and the others were not required for this proposal.*
- *Provide a larger history of airport crashes and locations near the airport and project area, e.g., history the past 10 years.*
- *Look at the obstruction mitigations to clarify if there are other ways to reduce the potential encroachment into ascending clear zones to eliminate the need to post signs or require compact parking in the parking lot.*
- *Confirm and clarify the accuracy of the single-acre intensity calculation in Appendix H; i.e., why 130 outdoor users are deducted from the 475 maximum number of facility users to result in the 216 persons per single acre intensity concentration within the building.*
- *Are there other recreational uses that would create higher intensity of use within the building than soccer and dance? If so, how would this be addressed under the FEIR?*
- *Would large outdoor events be prohibited based on the analysis in the FEIR?*
- *Stadium lights were not considered by Mead & Hunt. Please explain and clarify.*
- *Please identify and discuss any FAA jurisdiction and any federal pre-emption applicable to the airport operations.*
- *Discuss if there are any limits on the types and size of planes that can operate. What is the largest plane that can be based at the airport?*

- Explain if there any limits on nighttime use of the airport or other limits on use of the airport for aircraft flights (e.g., nighttime take offs/landings, etc.)
- The FEIR does not have a mass casualty plan in the event of a crash.
- The FEIR hazards analysis does not mention or discuss the quality of the building construction.
- The open field adds a safety factor in the event of crash. Is the risk of injury due to crash increased without this feature/with structure in this area?
- Further discuss the need for and use of obstruction lights for the facility.
- Discuss whether nighttime flights pose any increased risks associated with the use.

#### *Enforcement of Occupancy and Parking Limits*

The occupancy limit sign recommended for the warm-up field would serve the same function as maximum occupancy signs posted in buildings. These signs indicate the maximum number of people that can be safely accommodated in a room or outdoor area. Enforcement on a day-to-day basis would be the responsibility of Airport Sports Center staff. It is further noted that the operator intends to limit access to the sports and warm-up fields through the building. Also, fixed seating would not be allowed or provided within the outdoor field areas. These additional constraints would help to assure the occupancy limitations applicable to the warm-up field are not exceeded by uncontrolled access through the parking lot. As noted in the FEIR, the use of the warm-up field would be reasonably limited to two teams prior to start of their game. Thus, an exceedance of the occupancy limitation is not anticipated, and these constraints may be included as conditions of project approval.

The technical report prepared by Mead & Hunt, Inc., *San Rafael Airport Sports Center Aeronautical Safety Review*, provided as DEIR **Appendix H**, recommends designing the parking stalls nearest to the airfield for compact vehicles or adding signage. It is worth noting other options would be to relocate the entire row of parking to another location on the project site, in order to meet the parking demand generated by the use (e.g., adjacent to the dance/gymnastic studios), and/or further lower the grade slope at this end of the lot to increase the vertical clearances. Enforcement on a day-to-day basis would be the responsibility of Airport Sports Center staff. FEIR Response 33-8 further clarifies that the ascending clear zone provides clearance increasing from an elevation of 5-feet up to 8-feet above the parking spaces. Thus, the actual spatial clearances provided should provide sufficient clearance for most vehicles, which would not exceed the minimum 5-foot clearance provided at the nose of the space. Compact vehicle spaces would limit the potential that significantly large and taller vehicles, such as full-size trucks, vans or SUV's could comfortably be parked in these locations. Thus, Mitigation Measures identified in the FEIR are considered to be enforceable and adequate to assure this threshold would not be violated.

#### *Crash Patterns and Risk Assessment*

The National Transportation Safety Board (NTSB) categorizes aircraft mishaps as an accident or incident. An *accident* is defined as an occurrence in which people on board or on the ground sustained serious or fatal injuries or in which the aircraft incurred substantial damage to the extent that it could no longer be considered airworthy. Other mishaps are classified as *incidents*. In reviewing NTSB records, there have been six accidents and one incident at or in vicinity of the San Rafael Airport between 1983 and 2011. Most of the mishaps occurred on or near the runway. The precise location of these on-airport accidents or the footprint of scattered debris is not documented in the NTSB reports. However, the FAA establishes design criteria for clear areas around runways to account for aircraft veering off the runway. The proposed Airport Sports Center would be located outside of these runway clear areas referred to as Runway Safety Area and Runway Object Free Area.

Two accidents occurred off the airport site; in 2004 and most recently in 2011. In both instances, the pilots lost engine power on initial takeoff from Runway 04 and made a forced landing in the marsh east of the Airport. One aircraft was an experimental amateur-built airplane and the other was a single-engine aircraft.

The National Transportation Safety Board (NTSB) is the primary repository of aviation accident data in the United States. The *California Airport Land Use Planning Handbook (Handbook)* published by the Caltrans Division of Aeronautics provides an examination of the NTSB database to assess off-airport aircraft accident location patterns. The *Handbook* depicts suggested sets of up to six safety zones applicable to various categories of general aviation, air carrier, and military airport runways. The shapes and sizes of the zones are largely based on the historical spatial distribution of aircraft accidents near airport runways and on the manner in which aircraft fly as they approach and depart airports. Each safety zone is characterized by a risk level that is distinct from the other zones. In general, the safety zones nearest to the runway ends—particularly the runway protection zone or Safety Zone 1—represent locations having the highest degree of risk of being involved in an aircraft accident. Other zones have more moderate risks (e.g., Safety Zones 5 and 6).

The *Handbook* provides five examples of different safety zone configurations for different types of general aviation runways. Each example is based on a set of aeronautical assumptions noted in Figure 3A of the *Handbook*. Selection of the applicable set of generic safety zones is based upon the physical and operational characteristics of a particular airport (e.g., runway length, approach visibility minimums, traffic patterns, etc.). In some cases, the zones might be quite suitable as is. In most instances, however, some degree of adjustment of the generic safety zones is necessary in recognition of the unique physical and operational characteristics of the airport.

As indicated in the technical report prepared by Mead & Hunt, Inc., *San Rafael Airport Sports Center Aeronautical Safety Review*, provided as DEIR **Appendix H**, the generic safety zones for a short general aviation runway (Example 1) were applied to San Rafael Airport's runway. Safety Zone 1 was adjusted to reflect the dimensions for the Runway Protection Zones (RPZs) as defined by FAA criteria in Advisory Circular 150/5300-13: Airport Design. As indicated in Example 4 of the *Handbook*, the generic safety zones may be adjusted to reflect San Rafael Airport's single-sided traffic pattern. However, in lieu of adjusting the generic safety zones, Mead & Hunt's technical report simply identifies the primary flow of aircraft traffic. Note that the generic safety zones in Example 4 of the *Handbook* assume a longer runway (length of 4,000 to 5,999 feet). Thus, these sample safety zones must be reduced in size similar to those provided in Example 1 if applied to San Rafael Airport.

Open areas, particularly those that are relatively level and free of large obstacles, potentially allow a greater amount of open land toward which a pilot can aim. The premise, however, is that the aircraft is under some degree of control when forced to land. The disadvantages of the presence of a building are:

1. It allows an increased number of people to be in the potential impact area of an uncontrolled crash;
2. There is less of a chance for people to see a plane approaching; and
3. A building offers less exiting options in which to vacate the impact area.

To minimize the risk that an aircraft accident poses to people and property on the ground near airports, no development would be allowed in the airport vicinity. For most airports, however, this is clearly not a practical approach to land use compatibility planning. As indicated in the *Handbook*, buildings can provide substantial protection from the crash of a small airplane, particularly when the aircraft is still under control as it descends. If a building fire subsequently ensues—historically, a relatively infrequent occurrence—it is unlikely to engulf the entire building instantly. Additionally, buildings typically result in a concentration of people in one portion of the site leaving other areas as open space. See the *Building Safety Features* discussion below for further information on this concern.

For the purposes of the San Rafael Airport Sports Center project, the building is proposed to be situated within Safety Zone 5, *Sideline Zone*. This zone is characterized by having low to moderate risk level. About 3% of off-runway general aviation accidents near airports happen in this zone. This area is not normally overflowed by aircraft. The primary risk is with aircraft—especially twin-engine aircraft—losing directional control on takeoff; which have resulted in crashes along or at the end of the runway. The very small number of twin-engined aircraft operating at San Rafael Airport further reduces the risk of accidents in Safety Zone 5.

#### *Varying Abilities of Pilots*

Regarding the ability of pilots, all pilots must be certified by the Federal Aviation Administration (FAA) in order to fly an airplane. An FAA-issued pilot certificate and current medical certificate are evidence that an individual is duly authorized to exercise piloting privileges. The FAA is also responsible for issuing airworthiness certificates indicating that an aircraft meets its approved design and/or is in an airworthy condition. The National Transportation Safety Board (NTSB) accident records provide various types of information regarding the pilot and aircraft. NTSB reports typically include information on the pilot's age, pilot certificates/ratings, airworthiness of aircraft and the last date the aircraft was inspected. No agency has attempted to analyze aircraft accidents in terms of varying abilities of pilots or the quality of the aircraft.

#### *Selection of Building Safety Features*

As noted in FEIR Response 22-1 the list of recommended special risk reduction features represent those features that may be considered, as determined to be appropriate for the project. The technical report prepared by Mead & Hunt, Inc., *San Rafael Airport Sports Center Aeronautical Safety Review*, provided as DEIR **Appendix H**, identifies these various methods for enhancing public safety. In consultation with City staff, the most cost-effective risk-reduction measures were selected based on the following considerations:

1. Majority of project site is located in a relatively low risk zone (Safety Zone 5) and satisfies the average acre usage intensity limit recommended by Caltrans Division of Aeronautics.
2. Although the project exceeds the single-acre limit recommended by Caltrans Division of Aeronautics in the 2002 *Handbook*, the overage is minimal at approximately 56 people (see occupancy calculation below). Additionally, the technical report indicates that the single-acre calculation methodology typically overstates the actual peak intensity of a facility. Lastly, the maximum allowable intensity of the building and project site may be monitored and enforced by Airport Sports Center staff and City through the conditions of the Use Permit and signage.
3. The project may include vulnerable occupants (children). Emergency exits and enhanced sprinkler system were recommended to enhance the safety of the building. Additional measures may be required as a condition of approval.

#### *Occupancy Calculation Methodology*

The single-acre calculation considers where the most intensively used one-acre portion(s) of a development site would occur. For the San Rafael Airport Sports Center, the highest concentrations of people in a one-acre area are anticipated to be inside the recreational building. Calculation of the single-acre intensity depends upon the building footprint and the maximum number of people anticipated in the building. As provided the technical report prepared by Mead & Hunt, Inc., *San Rafael Airport Sports Center Aeronautical Safety Review*, provided as DEIR **Appendix H**, the building is anticipated to accommodate 345 people during peak use (i.e., 475 people on site – 130 people in outdoor areas). The calculation assumes 195 people would be associated with use of indoor, outdoor and warmup fields based on the following assumptions:

1. 65 people associated with use of the indoor soccer area (which includes two smaller fields). Based on 44 players on the two fields (20 players plus 2 goal keepers on each field) plus 21 people on sidelines (other players, coaches, and few spectators). It is assumed that most of the spectators would be in the upstairs viewing area. These people are accounted for in the calculation for the Mezzanine Area.
2. 65 people associated with use of the outdoor soccer field area. Based on 22 players on the field plus 43 people on the sidelines (other players, coaches and spectators).
3. 65 people associated with use of the warm-up area. This figure is higher than anticipated by the current project, but represents a conservative approach based on another full outdoor field usage. Persons outdoors would be congregating within and/or moving between the buildings/field/parking areas during peak usage.

These figures on field usage are used to derive the number of persons anticipated to be concentrated within the structure. The footprint of the building is 70,000 square feet (1.6 acres). The single-acre intensity is calculated by dividing the total number of building occupants by the building footprint in acres. Thus, the single-acre intensity of the proposed recreation building would be 216 people (i.e., 345 building occupants ÷ 1.6 acres).

It should be noted that the technical report prepared by Mead & Hunt evaluated the Airport Sports Center against intensity limits recommended in the *California Airport Land Use Planning Handbook (Handbook)* published by the Caltrans Division of Aeronautics (Division) in January 2002. In October 2011, the Division published a new edition of the *Handbook*. In most cases, the 2011 *Handbook* increases the intensity limits applicable within the six basic safety zones from those provided in the 2002 edition. For comparison purposes, the table below identifies the intensity limits (maximum number of people per acre) included in the 2002 and 2011 editions of the *Handbook* for Safety Zones 2, 5 and 6. The recommended intensity criteria are established for airports located in a suburban area similar to the environs of San Rafael Airport.

	<b>2002 Handbook</b>		<b>2011 Handbook</b>	
	<b>Average Intensity</b>	<b>Single-Acre Intensity</b>	<b>Average Intensity</b>	<b>Single-Acre Intensity</b>
<b>Safety Zone 2</b>	25-40	50-80	40-60	80-120
<b>Safety Zone 5</b>	80-100	160-200	70-100	210-300
<b>Safety Zone 6</b>	150	450	200-300	800-1200

As can be seen in the table above, the project slightly exceeds the 160-200 single-acre criterion in the 2002 *Handbook*. However, under the 2011 *Handbook*, the 216 people per single-acre intensity of the project is well within the 210-300 single-acre intensity acceptable range.

Based on the information provided in the *California Airport Land Use Planning Handbook (Handbook)* published by the Caltrans Division of Aeronautics, assembly areas (e.g., auditoriums, stadiums, gaming floors such as keno and slots) would generate higher occupancy levels within a building than the proposed multi-purpose gymnasium; dance and gymnastics studios and indoor soccer field. As noted in the **Land Use - Ancillary, Alternate and Additional Recreational Uses** discussion above, a highest and best recreational use of the facility has been analyzed; with youth oriented dance and gymnastics and soccer. Such higher intensity assembly uses (auditoriums, stadiums, etc.) have not been considered or proposed. The mix of recreational uses that would be permitted within the recreational facility would normally be controlled by City parking standards. In this case, the use shall also be controlled through a Master Use Permit, which would include establishment of a maximum allowable trip allocation, as well as the parking requirements to control capacity. If desired, the conditions of approval could further specify

the maximum number of people permitted in the recreational building and outdoor fields. Based on the single-acre intensity limits recommended in the 2011 *Handbook*, the allowable intensity range for each component use is as follows:

- a. 336 – 480 people in the recreational building (210 – 300 people x 1.6-acre building footprint)
- b. 336 – 480 people in the outdoor soccer field area (210 – 300 people x 1.6 acres)
- c. 104 – 156 people in the outdoor warm-up area (80 – 120 people x 1.3 acres)

Note that uses with high-risk users (e.g., children or infirm) should be toward the lower end of the range.

#### *Large Event Impact Assessment*

The total number of people permitted on the project site at any time, except for rare special events, would not be anticipated to exceed the indicated average- and single-acre usage intensity limits provided in the *California Airport Land Use Planning Handbook (Handbook)* published by the Caltrans Division of Aeronautics in October 2011. Rare special events are ones (such as an air show at an airport) for which a facility is not designed and is normally not used and for which extra safety precautions can be taken as appropriate. The use of the facility would be dictated by available parking capacity, and large events are not anticipated nor could they likely be accommodated on the site. Special events other than tournament sport and recreation events within permitted facilities could be considered subject to separate review and approval of a temporary use permit. However, such events would not be permitted to exceed parking supply or occupancy limits established for the building. A condition of project approval could be considered to require that the Use Permit specify the maximum number of people permitted in the recreational building and outdoor fields (see maximums indicated above). Consideration should be given to the total number of people expected on the site and if high-risk users are anticipated (e.g., children).

#### *Assessment of Lighting Hazards*

The technical report prepared by Mead & Hunt, Inc., *San Rafael Airport Sports Center Aeronautical Safety Review*, provided as DEIR **Appendix H**, includes a brief discussion of the parking lot lights and outdoor soccer field lights. The report included a mitigation measure recommending that the parking lot lights and outdoor soccer field lights be shielded so that they do not aim above the horizon. A flight check at night, after the lighting has been installed, to ensure that the outdoor lights do not create glare during landings and takeoffs was also recommended. Although Mead & Hunt's analysis did not conduct a detailed review of the lighting plan, the subject lighting details were considered and included in the DEIR as Appendix C, and there is no conflict between lighting details and conclusions of the study.

#### *FAA Jurisdiction and Regulatory Controls*

The authority to regulate aeronautical activity at San Rafael Airport is shared between the Federal Aviation Administration, Caltrans Division of Aeronautics, City of San Rafael, and the airport owner. These roles are explained below.

**Federal Aviation Administration (FAA)** – The FAA is responsible for ensuring the safe and efficient use of the nation's airports and airspace. The FAA has jurisdiction over a wide variety of aviation activities including aircraft design, pilot certification, *flight procedures*, and airport design. When owners of public-use airports accept funds from FAA-administered airport financial assistance programs, the airport owners must agree to certain obligations (or assurances). The FAA enforces these obligations through its Airport Compliance Program. The program serves to protect the public interest in civil aviation and ensure compliance with applicable Federal laws, FAA rules, and policies. The Airport is not designated as a public-use facility (i.e., not open to the

general public) and does not utilize federal funding. Therefore, FAA rules and regulations in the operation and design of the San Rafael Airport are applied and enforced by Caltrans.

**Caltrans Division of Aeronautics** – As a general rule, it is unlawful to operate an airport in the State of California without a State Airport Permit. State Airport Permit requirements are promulgated in the California Public Utilities Code (PUC), Section 21001 et seq., otherwise known as the State Aeronautics Act, and the California Code of Regulations (CCR), Title 21, Sections 3525-3560, Airports and Heliports. The Division considers the following before issuing an Airport Permit:

- The site meets or exceeds the minimum airport standards specified by the Department's rules and regulations.
- *Safe air traffic patterns are established for the airport and vicinity airports.*
- Safe "zones of approach" are established in compliance with Federal Aviation Regulation (FAR) Part 77, *Safe, Efficient Use, And Preservation of the Navigable Airspace.*
- Imposing permit conditions to ensure conformity with state requirements.
- Review potential environmental impacts.

The Airport Permit for San Rafael Airport classifies the facility as a "Special-Use Airport." This type of facility is defined as "an airport not open to the general public, access to which is controlled by the owner in support of commercial activities, public service operations and/or personal use." The Airport Permit establishes the following conditions:

- Right traffic for Runway 22, left traffic for Runway 04, and a traffic pattern altitude of 1,000 feet above airport elevation.
- Airport is approved for *day and night* use.
- White "Rs" are to be displayed on each end of the runway to denote the airport is privately owned and is not open to the general public.
- The permit shall remain in effect so long as the airport meets the conditions under which the permit was issued or until action is taken by the Division to suspend, revoke, correct, or amend the permit pursuant to the California Public Utilities Code or The California Code of Regulations.

**City of San Rafael** – The City of San Rafael regulates the types of land uses property owners may have on their property. The City requires that some uses be conditionally permitted, through the issuance of a Use Permit, for uses that are considered to be suitable only in specific locations and require special consideration in their operation or layout to ensure compatibility with surrounding uses. This circumstance applies to the subject property, which is designated PD zoning. The Master Use Permit currently established for the San Rafael Airport operations contains the following restrictions:

- Maximum of 100 based aircraft
- Use of airport is limited to based aircraft (no transient or guest aircraft are permitted to use the airport)
- No flight training or commercial flight activity

The Master Use Permit also includes conditions that regulate, among other things, the airport flight pattern. There is no limitation on night flights established by the City granted use permit. Thus, the state permit controls that activity, and allows 24 hour operation. Any changes to the conditions of approval established by the City, including changes as a result of any demonstrated state or FAA pre-emption of authority, would require modification to the project conditions of approval.

The site is further limited by the property land use restriction that limits the use of the property to the list of land uses established in the deed. The City of San Rafael and the County of Marin, as mutual parties to the agreement, have authority to enforce the terms of the deed restriction.

**Airport Owner** – San Rafael Airport, LLC, (owner) has control of access to the Airport and overall responsibility of ensuring compliance with the provisions of the State Airport Permit issued by Caltrans Division of Aeronautics and the Master Use Permit issued by the City of San Rafael. Failure to comply with the conditions of the Airport or Use Permits may result in penalty fees or revocation of the permits.

#### *Limits on Aircraft Use of Airport*

The Airport's runway length and pavement strength are the principal factors limiting the type and size of aircraft that can be accommodated at the airport. The San Rafael Airport has a short runway at 2,140 feet in length and a weight bearing capacity of 7,000 pounds for aircraft with a single-wheel landing gear configuration. These physical constraints limit use of the Airport to mainly small, light general aviation aircraft.

Airport staff indicates that there are between 80 to 90 based aircraft, most of which are single-engine aircraft (Pipers, Cessnas, Bonanzas). There are 3 single-engine turboprops (PC-12, Caravan, and Meridian) and a couple of twins (Barons). Approximately 20% of the total based aircraft are in the experimental, light sport and ultralight aircraft categories. There are no jets. Under the Master Use Permit issued by the City of San Rafael, only based-aircraft may operate at the San Rafael Airport.

#### *Mass Casualty Plan*

The Federal Aviation Administration (FAA) requires Part 139 air carrier airports to develop an emergency response plan to identify how local fire, police, and emergency crews would respond to an aircraft accident. There are no federal or state requirements for the preparation of these types of plans for private airports. A mass casualty plan for an aviation accident would be similar to a local or regional emergency response plan for natural disasters or other catastrophes.

The FEIR does not include nor identify need for a mass casualty plan in the event of a crash. No such plan has been deemed necessary for the facility by the City of San Rafael Police and Fire Departments emergency responders, which considered the number of occupants and casualties in event of a major incident on-site or in the vicinity. There are no high occupancy structures or facilities within the community that could warrant any such emergency plan. A standard evacuation planning approach was deemed appropriate and applied to this project.

#### *Nighttime Flight Limitations*

There are no established restrictions which would preclude nighttime takeoffs or landings by based-aircraft at the San Rafael Airport. The Airport is open 24-hours per day. The runway is a visual facility; all flights are conducted under visual conditions without the aid of straight-in instrument approach procedures. The runway is equipped with medium-intensity runway edge lighting which enables pilots to land and/or depart the runway at night. Approximately 15% of the Airport's activity (2,250 annual operations) occurs during evening and nighttime hours (7 pm to 7 am). Poor weather conditions (i.e., low visibility) would be the principal factor deterring pilots from operating at the Airport during nighttime, as well as daylight, hours.

Based on information provided in the *California Airport Land Use Planning Handbook (Handbook)* published by the Caltrans Division of Aeronautics, nighttime increases the propensity for accidents to occur beyond the runway environment, particularly for airports with long runways that are equipped with straight-in instrument approaches. As noted above, San Rafael Airport has a short visual runway and minimal nighttime activity. The proposed Airport Sports Center lies primarily within Zone 5, one of the less risk-sensitive safety zones. As noted above, about 3% of off-runway general aviation accidents near

airports happen in this zone. Additionally, nighttime flights represent a small fraction of the activity as San Rafael Airport. Approximately 15% of the Airport's activity (2,250 annual operations) occurs during evening and nighttime hours (7 pm to 7 am).

#### *Building Construction Quality*

The proposed Airport Sports Center building must satisfy building code regulations. In most instances, standard building practices are expected to provide sufficient protection from a crash of a small airplane. Additionally the types of aircraft flying at San Rafael Airport are small, light general aviation aircraft flying at relatively low speeds. These types of airplanes are less likely to penetrate a building or cause major damage compared to larger, faster aircraft seen at many general aviation airports. Furthermore, Page 5 of the technical report prepared by Mead & Hunt, Inc., *San Rafael Airport Sports Center Aeronautical Safety Review*, provided as DEIR **Appendix H**, outlines risk-reduction features that can be incorporated into a building's design to further enhance the safety of the occupants.

#### *Additional Safety Factors*

As indicated in the above response to *Crash Patterns and Risk Assessment*, buildings can provide substantial protection from the crash of a small airplane, particularly when the aircraft is still under control as it descends. However, the advantage of the outdoor fields is that the users have a better chance of seeing a plane in distress and have more directions in which to escape the area of potential impact. Additionally, the project does not include fixed seating such as bleachers which restrict the ability of occupants to get out of harm's way, yet do not provide the protection offered by a building. As such, spectators would not be confined in a small area with limited exits.

#### *Obstruction Lighting*

The technical report prepared by Mead & Hunt, Inc., *San Rafael Airport Sports Center Aeronautical Safety Review*, provided as DEIR **Appendix H**, recommends adding the small blinking red obstruction lights (like those at Gness Field in Novato) to various project features (fence, corners of building, stadium light) to make them more conspicuous to pilots. As noted in the technical report, the project applicant is required to submit to the Federal Aviation Administration (FAA) a completed FAA Form 7460-1, *Notice of Proposed Construction or Alteration*. As part of this aeronautical review, the FAA and/or Caltrans Division of Aeronautics may recommend appropriate marking or lighting of potential obstructions to ensure continued safety of air navigation and to maintain a valid Airport Permit. If final building plans demonstrate the building features would not pose a hazard to air navigation, the Caltrans Division of Aeronautics may determine that the obstruction lighting could be eliminated.

Further, the FEIR response to comments notes that the anticipated encroachment into the ascending clear zone has been assumed based on the runway elevation indicated on the plan site section. However, this section was provided to illustrate the ascending clear zone, and did not include surveyed grade elevations. In fact, the runway grade is slightly raised, thus, the anticipated encroachment may not be realized. It would be a simple matter to make adjustment to the plans prior to submittal for construction permits and eliminate any minor encroachment into airspace. This can be verified using the surveyed plan information for preparation of building permit plans, and requiring that finish grade and building elevations be surveyed during construction.

As noted above, Caltrans makes the final decision regarding need for obstruction lighting. There are various factors that they consider, including another shallower imaginary surface. Thus, being lower than the Part 77 transitional surface does not mean that project would not require obstruction lighting. Consultation with Caltrans would be required on final construction plans to get input on requiring or eliminating the need for obstruction lights.

## 7. Hydrology and Water Quality

The discussion below addresses the following:

- *Clarify if the levee system provides protection to Contempo Marin.*
- *Provide a status update of the county dredging project for Gallinas Creek, and the relationship of that project with this project.*
- *How will users be protected from flooding hazards?*
- *What is the datum used to determine there is adequate freeboard to accommodate potential sea level rise?*
- *Who is liable for flooding on the site and cost of levee maintenance? What is the City/County liability?*
- *Discuss the need for removal of buildings in the event the use is abandoned over time as a result of sea level rise. How would this be assured and/or enforced?*
- *The FEIR should address the cost of improving the levee for sea level rise.*
- *The FEIR has to analyze the impacts of a grass field.*

### *Levee Elevation Datum*

The levee was established using NGVD29 Mean Sea Level (MSL) datum at 9 feet elevation. This was confirmed by the City under the terms of the existing airport Master Use Permit. In the NGVD datum, Mean Sea Level equals zero feet. Under NGVD29 the FEMA 100 year flood elevation is 6 feet and the airport levees are at 9 feet. Recently, as pointed out in the FEIR Master Response 11 (HYD-1) (page C&R-26) the NAVD88 has replaced NGVD29 MSL as the official datum; which changed the numerical values by 2.67 feet; thus Mean Sea Level is now measured as 2.67 feet versus 0 feet. The change in datum value is simply a numerical conversion and does not represent nor is it based on new hydrologic conditions.

For the DEIR, the datum value was stated as +6 NGVD, which was modified in the FEIR to +8.67 NAVD (see Master Response 14 on FEIR page C&R-33). Project-related effects associated with anticipated rise in sea level are addressed in Master Response 14 (FEIR pages C&R-33 through C&R-35). Were sea level to rise by the now-predicted 12 to 18 inches above the +6 NGVD flood elevation (+8.67 NAVD) before 2050, the potential inundation impacts at the site would be greater than if the sea level rise were only 6 inches during the same period (as assumed in the DEIR, based on the 1995 EPA estimate). However, the existing flood control features which provide protection from inundation at the project site would be expected to remain in place and continue to operate as they do today; including the 9-foot tall levee system at +8 NGVD elevation at top of bank (+10.67 NAVD), and pump station that ejects the drainage from the site into the North Fork of Gallinas Creek. Therefore, the potential impacts related to an incremental sea level rise of this magnitude would continue to be reduced to a level of less-than-significant.

### *Levee System Protection*

The combined levee system that protects the Contempo Marin, San Rafael Airport and SMART right of way in between the two properties is illustrated in the attached *Plat, Flood Protection Facilities and Flood Protection* description (**ATTACHMENT 8**). This diagram shows the location of the levees that protect Contempo Marin and the airport site from flooding. Oberkamper & Associates prepared the plans for construction of Contempo Marin and provides civil engineering services for the airport property.

Contempo Marin includes areas which are as low as elevation 3 NGVD29, which lies several feet below the 100 year flood elevation of 6 NGVD29. The railroad embankment is at elevation 4 and constructed of permeable ballast material, thus does not provide any flood protection. The levee elevations along the westerly side of Contempo Marin are at elevation 6, which provides little or no freeboard with respect to the 100 year flood elevation. The southerly boundary of the property adjoins a hillside. The westerly boundary extends from the hillside to the levee along the North Fork of Gallinas Creek, and then continues to the railroad right of way. The easterly boundary adjoins the railroad right of way, which has embankments as low as elevation 4 NGVD. The San Rafael Airport is located east of Contempo, and is protected by a levee system which is the extension of the levee along the North Fork of Gallinas Creek and extends to San Pablo Bay then back along the South Fork of Gallinas Creek to the hillside which adjoins the southerly boundary of Contempo Marin. Collectively, these systems provide protection for Contempo Marin against flooding from outside the project to the 100 year flood level of 6 NGVD. Thus, there is mutual protection of the airport and Contempo Marin by the combined levee system which surrounds each property. Both properties have an essential interest in the continued integrity of the entire system, as well as the portion of the system adjoining the individual properties.

#### *Financial Responsibilities*

The purpose of an EIR is to evaluate the environmental impacts of a project, as well as feasible ways to reduce any identified significant impacts. The EIR document is neither designed nor required to analyze the fiscal costs of project elements or mitigation. That said, the costs of maintenance of the levee system identified in ATTACHMENT 8 shall be borne by the owners of the levee system; which include the airport owner, County of Marin and Contempo Marin. The costs for maintaining the existing levee primarily consist of the purchase of fill material and labor; thus are anticipated to be relatively inexpensive. Of course, costs can vary based on extent of work required, access to equipment, materials and labor. Staff is not able to predict future levee maintenance costs, which may or may not include upgrades for sea level rise. The City has no liability associated with the levee maintenance.

#### *Site Flooding, Sea Level Rise and Building Abandonment*

As explained in the DEIR and the FEIR, sea level rise is expected to continue, although the precise forecasting is not possible. Given the available forecasts, the existing flood control features which provide protection from inundation at the project site would be expected to remain in place and continue to operate as they do today (including the 9-foot tall levee system at +8 foot NGVD elevation at top of bank (+10.67 NAVD), and pump station that ejects the drainage from the site into the North Fork of Gallinas Creek) such that the potential impacts related to an incremental sea level rise of this magnitude would continue to be reduced to a level of less than significant at least through 2050.

Over time, a gradual rise in sea level can be monitored, and as increases in sea level occur, any necessary measures to upgrade existing facilities intended to reduce the risk of possible inundation at the site can be implemented when considered appropriate by the property owner. Additional protective measures to address anticipated sea level rise and levee protection would be required to protect both the currently existing airport site improvements and Contempo Marin residential development. Thus, the proposed recreational facility would not change the fact that there are existing developed conditions on and around the property that already necessitate ongoing maintenance and repair (as needed) of the levee and pump station stormwater and flood protection systems. Further evaluation of these systems in this project EIR have been conducted in order to verify that they would continue to protect the existing site, along with the proposed additional property improvements and people that would be on-site using the proposed facilities, for the duration of the project life.

Sea level rise impacts may be considered beyond the scope of CEQA environmental review required for the project. However, it is important to note that this is also being considered at a community-wide level. The City Climate Change Action Plan recommends a countywide levee study and working with the Bay

Conservation and Development Commission to develop adaptive measures to respond to this condition, over time.

The DEIR addresses flooding hazards associated with development of the project site as proposed on pages 11-30 through 11-33. In the FEIR, Master Responses 11, 12 and 13 (pages C&R-26 through C&R-32) also address flooding concerns. The implementation of **MM Hyd-2a** and **MM Hyd-2b** (DEIR pages 11-32 and 11-33, as modified on FEIR pages R-9 and R-10)) would enable the proposed project's impact associated with the risk of loss, injury or death as a result of levee failure to a level considered less than significant. No assessment has been required nor prepared as part of the FEIR for removal of the buildings in the event that the site is inundated as a result of sea level rise or levee maintenance issues. Likewise, as noted in the **Land Use - Ancillary, Alternate and Additional Recreational Uses** discussion above, if the use is abandoned for any other reason, it could be re-utilized consistent with the terms of the land use restriction and subject to City approvals. If there remain concerns with potential abandonment of the use and building, this should be discussed during review of the project merits.

#### *County Dredging Project Status*

As noted above, the County published a Channel Maintenance Dredging study, prepared by Winzler & Kelly (W&K), February 26, 2010; which is available online at <http://www.marinwatersheds.org/docs/2010-02-26-PSR-Final.pdf> (for County Service Area #6). The study had identified San Rafael Airport as a site alternative for staging and placement of dredge material. However, as noted in the study, the airport is not a permitted upland dredged material beneficial reuse site and neither state nor local permits have been pursued to utilize the site for this purpose. Thus, the use of the airport site has not been pursued for this purpose.

The County dredging project purpose is to remove and dispose of creek sediments and provide a navigable waterway channel for boating and recreational use. The County proposes to dredge the South Fork of Gallinas Creek channel to meet the following objectives:

- To provide a navigable waterway for recreational purposes.
- To comply with Federal, State, and regional regulations through appropriate design and permitting of the project.

According to a December 14, 2011 email response from Neal Conaster, Assistant Engineer with Marin County DPW the W&K report identified sediment removal via clamshell with in-bay disposal as the preferred project alternative. However, construction costs (over \$3m) currently are greater than available funding. The County is looking into larger, multi-faceted projects that would increase the chances of receiving outside funding for the dredging and other flood control and watershed improvement opportunities identified for the Las Gallinas watershed. The County will be seeking ways to investigate opportunities to pursue these improvements in the watershed.

#### *Water Quality Impacts of Grass Fields*

As currently proposed, development of the project site with outdoor field lighting would result in the use of Field Turf for the regulation-size outdoor soccer field. However, if outdoor field lighting is not approved the field would be covered in grass. The warm-up and stretching area would not have lighting, and would be grass (DEIR, pages 3-12 and 3-13). While the project Applicant has indicated that outdoor field lighting is necessary to generate enough income from outdoor field use to support the high installation cost of Field Turf (since this installation cost is approximately five times the installation cost of a comparable grass field), the construction of a regulation-sized grass outdoor soccer field at the project site remains a possibility. The types of impacts associated with installation and use of a grass regulation-size soccer field are addressed in the discussion of the effects associated with the installation and use of Field Turf (see Response 39-11 on FEIR pages 197 and 198).

On-going maintenance of a grass field (and the grass warm-up and stretching area) would require the periodic use of fertilizers and herbicides, which could have adverse effects on water quality. Grass areas would require periodic mowing, which could result in the generation of air and water pollutants by the mowing equipment, grass clippings that would require disposal, and energy use associated with operating the mowing equipment. Grass areas would also require periodic irrigation, which would increase the demand for water at the project site.

With respect to the potential water quality impacts, MM Hyd-1 shall ensure the following specifications are met:

- The Stormwater Pollution Prevention Plan (SWPPP) and Stormwater Management Plan (SWMP) will be designed to ensure that there are no significant impacts to water quality in the North Fork of Gallinas Creek resulting from project construction or post-construction storm water discharges.
- Prior to being discharged, storm water generated on the project site, including the parking lots, shall be treated via a comprehensive set of onsite treatments BMPs to remove urban contaminants from the runoff.

Additionally, conditions of approval would be implemented to require the following:

- Landscape areas surrounding inlets shall be graded in a swale and landscaped to promote filtration.
- Direct parking lot runoff into landscape swales and inlets. Raised concrete curbs shall be designed with frequent cuts to allow free-flow from paved areas to swales.

Therefore, the impacts of the grass fields are less than significant.

## 8. Noise

The discussion below addresses the following:

- *There is concern with the timing proposed for conducting the noise analysis under MM N-1. Hours of operation need to be established up front based on the use and noise constraints.*
- *Provide information regarding any history of noise complaints or issues associated with the fields at Pickleweed Park.*
- *Concerns were expressed regarding effects of installation of a soundwall.*
- *The FEIR fails to consider noise impacts from people congregating after close of facility.*
- *How would N-1 be monitored and enforced? Do police officers have a decibel reader?*
- *Did the noise study identify the closest residential property and from what point on the project site is this established, i.e., edge of project, field or building?*
- *The impact statement for MM N-1 identifies a significant impact from vehicles and needs to be clarified.*
- *Does the noise study consider noise from inside the building including if windows are open for air circulation and is soundproofing included or proposed?*
- *Would combined noise result in a cumulative increase in noise? How does noise “build” on itself?*
- *The noise measure needs to clarify who the noise study will be submitted to at the city and what that person will do with the information.*
- *Explain how monitoring of noise after certification will be accomplished and if that is in compliance with requirements of CEQA.*
- *What is the cumulative noise impact of proposing to drive all piles simultaneously?*

- *The FEIR fails to provide data for measurement at locations LT2 and LT3 for ambient nighttime noise levels. Residents keep windows open in evenings to cool the house. What would be the increase in noise levels after 6PM?*

### *Nighttime Noise Impacts*

It was noted at the November 15 meeting that DEIR page 12-15 and FEIR pages R-10 and R-25, text of **Impact N-1** should be modified to accurately reflect the statement on DEIR page 12-21, that the project-related contribution to traffic noise would be considered less than significant, as follows:

“Operation of the proposed recreational facility would have the potential to increase noise levels on the project site, which could adversely affect nearby residential uses. ~~In addition, operation of the facility would increase traffic on local streets providing access to the site, which also could affect residential uses located adjacent to these streets.~~ This impact is considered **potentially significant**.

On page 12-3, the DEIR indicates that the closest residential receptor is 750 feet from the south edge of the soccer warm-up area (Santa Venetia). The nearest residence on-site is the caretaker’s residence located at the entry to the airport site. McInnis Park Golf Center is located approximately 400 to 600 feet north of the project site, but active recreational uses at the park are not considered to be noise sensitive.

The City nighttime noise threshold applies to the period between 9PM and 7AM Mon-Thurs and 10PM to 7AM Fri-Sat. Impact N-1 notes that outdoor field use after 9PM may cause City noise ordinance exterior threshold of 40 dBA Leq (continuous) to be exceeded by 1 decibel at the closest residences in Santa Venetia. Although this threshold is below the normally acceptable range for residential use (as shown by DEIR Figure 12-1), a more restrictive standard established by the City Municipal Code must be met and therefore, this has been applied as the CEQA threshold for the project. DEIR Figure 12-2 shows the noise measurement locations LT-1, LT-2, and LT-3 which were used to monitor site noise.

As noted on DEIR page 12-2, the continuous noise levels at 225 feet from the center of runway are low at 35 to 45 dBA Leq (more precisely, ambient noise levels range from 40-45 dBA from 6pm to 11pm and 35-40 dBA from 11pm to midnight). This noise level range is equivalent to suburban nighttime to an urban area nighttime/quiet office environment (Table 2 in DEIR Appendix J provides examples of common indoor/outdoor noise sources). For the purposes of the EIR analysis, the project would result in a significant impact if project-generated traffic noise were to increase the noise levels at the closest noise-sensitive receivers by 3 dBA ( $L_{dn}$ ) or cause the City noise ordinance 40 dBA nighttime noise threshold to be exceeded at residential property lines (DEIR page 12-13).

According to the Illingworth & Rodkin’s analysis, peer reviewed and appended by the City noise consultant Geier and Geier, the noise measurement location LT-1 was selected to measure the effects of intermittent aircraft noise and to establish background noise levels throughout the area. This measurement was made away from local sources, including neighborhood noises and vehicular traffic in the neighborhood that would potentially elevate localized noise levels, and provides a conservative measurement of background noise in the area, including the Vendola Drive neighborhood. The very quiet conditions at the measurement location were noted. Measurement in 2002 at locations LT-2 and LT-3 were specifically designed to measure aircraft noise and overall total noise levels (represented in terms of the  $L_{dn}$  noise metric). This measurement included noise from individual aircraft, average noise levels in 3-hour intervals, and maximum and minimum levels measured in each 3-hour interval. The measured levels in LT-1, during quiet daytime periods in the absence of aircraft, were equal to or lower than levels during comparable daytime periods measured at LT-2. The data, taken cumulatively, fully characterize noise exposure levels throughout the area. Additional measurements in the Vendola Drive neighborhood would provide no additional information that would be useful in the analysis. Ambient noise levels in the

Vendola Drive neighborhood (with and without the influence of aircraft noise) were correctly established by the noise survey.

The current mitigation measure calls for nighttime noise monitoring after establishment of the use, to determine whether the 40 dBA noise threshold would actually be exceeded by nighttime use of the fields. The FEIR analysis is accurate and adequate in its conclusion that evening use of outdoor fields has the potential for causing a significant impact due to its potential to exceed the City exterior noise ordinance threshold at the nearest residential property line. Although estimates of the future noise levels associated with the project have been made based on what is currently known about the project as proposed, it is not possible to know the actual noise levels generated by the project until after the facility is in operation. The estimates of future project-related noise levels developed for the EIR indicate that potentially significant noise impacts might be expected to result from development of the project site as proposed; although it is also possible that development and subsequent operations might not result in significant noise effects. The mitigation measure MM N-1 has been identified to reduce potential project-related noise impacts to a level considered less than significant if the actual noise impacts associated with operation of the proposed facility at the project site were to exceed established significance threshold. For this reason, it is essential that noise levels be measured after the project is operational in order to determine the extent of mitigation required to bring noise levels below established significance thresholds.

If noise measurements taken following completion of the proposed project indicate that it is necessary to implement the mitigation measure identified in the EIR to reduce project-related noise effects to a level considered less than significant, the City can require that those mitigation measures be effectively implemented, consistent with the requirements of CEQA. However, if the post-operational noise measurements indicate that noise levels would not exceed the established significance thresholds, then there would be no requirement for the City to impose the mitigation measure as the potential noise impact would no longer be considered significant. However, in response to concerns with the timing of noise monitoring relative to the proposed hours of operation, measure MM N-1 may be further revised, as follows:

**Revised MM N-1: Evening Noise.** To address the potential that noise from late evening games becomes an annoyance to neighbors to the south due to the potential of a 1 decibel increase over maximum allowable nighttime noise levels, the following measures shall be implemented:

~~During the first full year of operations, the project sponsor shall annually monitor noise levels during a minimum of five games to determine whether the use of outdoor fields and warm-up areas would result in an exceedance of actually causes the 40 dBA exterior residential nighttime noise threshold to be exceeded at the closest residential property boundary as a result of the outdoor field use. The City shall approve the monitoring schedule which games are to be monitored, to ensure monitoring occurs during times when outdoor fields are in full usage. This shall include at least 3 mid-week games and 2 weekend games. A copy of the noise consultant's analysis shall be submitted to the City. If the analysis demonstrates that the Noise Ordinance nighttime threshold would be exceeded, the outdoor facilities shall remain closed by 9 p.m., Sundays through Thursdays, and 10 p.m. on Fridays and Saturdays. If the noise analysis demonstrates that the Noise Ordinance nighttime noise threshold would not be exceeded, the outdoor facilities may extend its hours of operation to 10 p.m., Sundays through Thursdays.~~

The MMRP would specify the timing and responsibility for implementing this measure, which shall be presented to the Planning Commission for review and approval at a later hearing date. Thus, this measure may be further revised at time of project approval, for example, if the Commission recommends that City staff should select and manage the noise consultant.

As noted above, MM N-1 no longer includes a recommendation for installation of a soundwall, which was previously recommended in the DEIR to allow games to extend past the 9PM weekday curfew. Further, concerns with people congregating in the parking lot can be addressed through project conditions of approval, which shall include use of timers to automatically turn off nighttime field lighting and discourage this activity. If a noise complaint is received, the Police officers have equipment for taking noise measurements. They can issue a citation and typically report their findings to Code Enforcement for further action.

With regard to existing facilities, the Community Services Department has not received noise complaints associated with the use of the Pickleweed Park playing fields before or since the June 2001 installation of the two existing soccer fields.

### *Building Noise Attenuation*

The project Description presented in the DEIR is silent on whether or not soundproofing would be installed in the proposed structure at the project site. However, in order to meet current Building Code requirements, walls and ceilings will need to be insulated, which would provide some noise attenuation. The project Description indicates that there would be mechanical units for heating and ventilation located within the structure, which suggests that there would be no need to open windows of the structure in order to provide sufficient ventilation inside. DEIR Appendix J (Illingworth & Rodkin) provided by the project Applicant, and subject to City peer review, stated:

“Noise generated inside the facility would be significantly reduced by the walls and windows of the facility. Noise levels would be about 15 dBA lower than the noise generated by outdoor activities with windows open and about 20 to 25 dBA lower than the noise generated by outdoor activities with windows and doors closed. Noise levels generated by indoor activities would be far below the levels allowed by the City of San Rafael Noise Ordinance. Finally, the 24-hour average  $L_{dn}$  generated by the facility would be less than 40 dBA, far below the existing  $L_{dn}$  of 54-56 dBA measured in the Contempo Marin Mobile Home Park.”

DEIR Appendix J, Table 2, identifies common indoor noise sources that can be used to understand noise impacts associated with the indoor use. According to the noise analysis a use generating interior noise levels as high as 80 dBA (e.g., such as that identified as experienced in a noisy restaurant) would result in 65 dBA outside of the building, with windows open. According to the noise consultant, the maximum instantaneous sound levels inside the building would range from 65 to 80 dBA  $L_{max}$ , primarily resulting from shouts, bouncing balls, and ball strikes. The average level inside the building during practice games, impinging on the walls and ceiling, is estimated to range from 55 to 65 dBA  $L_{eq}$ . Based on the level of exterior noise that would be realized, the noise analysis shows that the resulting level of noise experienced at the nearest residential property boundary would fall below the 40 dBA exterior noise threshold established by the City Noise Ordinance (i.e., 33 dBA at 1,000 feet).

### *Measurement of Multiple Noise Sources*

The DEIR Appendix J further provides a description of the fundamental concepts of noise analysis. Ambient noise level is defined as the composite of noise from all sources near and far. If the ambient noise level at a particular measurement point is measured as “x”, and an additional noise source is added which generates noise at a level that is lower than “x” by more than 9 dB, then the original ambient noise level (“x”) would not change. However, if a new noise source generates noise that is 9 dB to 5 dB below the ambient noise level “x”, then the original ambient noise level (“x”) would be increased by approximately 1 dB. (Note: An additional noise source that is 4 dB to 2 dB less than the ambient noise level “x” results in a 2 dB increase, while a noise source that is 1 dB less than or equal to “x” results in a 3 dB increase). If the additional noise source is greater than the ambient level “x”, the resulting ambient

noise level would be the new higher noise level, and could increase by the same increment as previously described for the noise level of "x".

#### *Pile Driving Noise*

As indicated on FEIR page C&R-22 (Master Response 5), the supplemental report letter prepared by John C. Hom, dated February 23, 2010 (**FEIR Appendix B**) confirms the number of piles anticipated for construction of the building, at 40-50 piles, are well within estimates used for analysis of the project noise impacts (which assumed a much higher potential of 100 piles being required). The supplemental report estimates that 15 to 20 piles could be driven per day, thus taking an estimated 2 to 3.5 days to complete pile driving. Further, the duration required to drive 15 to 20 piles per day is assumed based on one pile driver used to drive each pile. Based on the analysis provided by the engineer, the piles would be pushed into the bay mud soils for the majority of its driven length, and would only need to be driven using noise generating hammer blows for a period of 5 minutes each in order to achieve the level of penetration into bedrock required for the last several feet of pile driving. Thus, significant noise generated from the hammer blows would total 75 to 100 minutes per day, and this would occur throughout the work day in 5 minute increments, as necessary to drive each individual pile into bedrock.

The noise effects associated with pile driving relate to both the noise associated with driving the piles and the duration of the pile driving activity at the site. The more piles that could be driven at the site at any one time, the less time would be required to complete pile driving at the site. If the noise level associated with driving a single pile is the same as the noise level associated with driving another pile, then driving multiple piles simultaneously should result in a noise level similar to that associated with driving a single pile. If it were possible to drive all piles at the project site simultaneously, this would drastically reduce the duration of pile driving activity at the site, which would represent a reduction in the potential noise effects on sensitive receptors. However, the analysis has not considered requiring simultaneous pile driving. Concurrent driving of multiple piles is not considered necessary given the relatively short duration required for this work.

### **9. Transportation and Traffic**

The discussion below addresses the following:

- *Explain further and provide information from the City regarding the safety for making left turns onto Smith Ranch Road from Yosemite Road, due to the westbound rise of Smith Ranch road just before Yosemite Road.*
- *Discuss why a stop sign would not be recommended at this location, and what further effect the project traffic will have on vehicles attempting to make left turns from Yosemite Road.*
- *Provide the history with regard to questions raised about widening of the existing bridge deck.*
- *What is the status of the response provided by the City to the 9/23/11 DOT letter?*
- *Did the analysis show any problems for the unsignalized intersections?*

#### *Yosemite Road Intersection Analysis*

The Department of Public Works has reviewed the visibility and traffic counts at the intersection of Yosemite Road with Smith Ranch Road and has confirmed that drivers at the intersection have adequate visibility to safely make a left turn onto westbound Smith Ranch Road and a stop sign is not warranted. The traffic study also did not show any significant problems for the unsignalized intersections along the study segment of Smith Ranch Road and Lucas Valley Road. The project generates 268 PM peak hour trips, with 135 trips in and 133 trips out (DEIR Table 13-3). As noted in the FEIR, based on distribution and assignment of these vehicle trips, the project would not cause the City LOS D threshold to be

exceeded at signalized intersections impacted by the project.. The roadway has sufficient capacity in the baseline and general plan buildout conditions to accommodate the additional project traffic. The Fehr & Peers traffic study concludes that the project increase in vehicle delay at the study intersections would be negligible during the impacted PM peak period (See DEIR Appendix K, *Fehr & Peers Traffic Impact Study*, Table 8, Table 9, Table 11 and Table 12 for intersection delay and roadway segment speeds, and Figure 9 for study intersection locations).

Analysis of the arterial segment was primarily conducted to identify any potential impacts of the project on unsignalized intersections along the Smith Ranch Road/Lucas Valley Road segment. The results of the study, as referenced above, concluded that existing travel speeds and traffic volume would not be significantly changed. Existing visibility provided at this intersection would not change. Based on the Fehr & Peers study sufficient gaps in traffic flow should remain such that vehicles can continue to make safe turns onto the Smith Ranch and Lucas Valley roadways.

The warrant study conducted by Fehr & Peers and provided as an attachment to DEIR Appendix K included an all way stop and signal warrant analysis for the intersections of Yosemite Road/Smith Ranch Road and Silveira Parkway/Smith Ranch Road, to determine whether existing plus project conditions would warrant all way stop control or traffic signals at either location. It is noted that these types of controls are most effective where the volume of traffic on the intersecting roads is approximately equal. Installation of signals can be costly and unnecessary signals can increase delay. The warrants examined peak hour delay and peak hour volume at the study intersections; that is, whether traffic conditions cause minor street vehicles undue delay when entering or crossing the major street. The conditions tested include minor street volume, stopped time delay, and total intersection volume. Warrants for installation of a signal were not met. The delay experienced by the vehicles at the stop sign on Yosemite Road is not significant enough to warrant a stop control or traffic signal. However, the City shall continue to monitor conditions, and will install all-way controls at this intersection if warranted by future conditions.

### *Bridge Deck History*

The City reviewed the bridge deck history in 2005 after issuance of permit B0509-038 for replacement of catwalk structure along the sides of the bridge. Staff concluded that the bridge work, including catwalks, were within the scope of original bridge configuration. The overall bridge width of 25-feet was determined at that time. Further, in a March 30, 2006 letter from Robert M Brown, AICP, Community Development Director to Robert Dobrin, Mr. Brown noted that staff has measured the existing bridge and has consulted with California Fish and Game to determine if the proposed change from the existing bridge configuration to a wider bridge deck would necessitate a Fish and Game Permit. Fish and Game staff indicated little concern for a minor increase in bridge width if indeed a catwalk did not previously exist, as long as there were no changes in the bridge abutments affecting the creek bank. The existing and proposed bridgework, including deck replacement, would not require work within the creek channel nor work to the bridge abutments. Thus, there is no conflict with any regulatory agency requirements. The proposed bridge deck replacement work is approved by the CDFG as currently shown through its issuance of a streambed alteration permit for the project. There are no outstanding CEQA questions or issues with regard to this proposed component of the project.

### *Caltrans Response*

On November 18, 2011 the Department of Transportation provided a letter to City staff, which appended their recent September 23, 2011 letter regarding the FEIR response to their comments on the DEIR (**ATTACHMENT 9**). At this time, Caltrans comments for the most part have been resolved by clarifications provided from City staff. Caltrans' remaining concern has to do with its comment on the potential for traffic to queue at the freeway ramps in the area onto the mainline of US Highway 101. In its most recent letter, Caltrans iterates its remaining concern and recommendation, as follows:

***“Comment #2, Response to Comment 3-12: Under existing and future conditions, the queues at study intersections #3 (Smith Ranch Road/US 101 Northbound Ramps) and #4 (Lucas Valley Road/US 101 Southbound Ramps) exceed the available storage capacity for the turn lanes. Since there is no technical analysis demonstrating that signal timing adjustments would adequately reduce queuing, please revise the mitigation measures of the EIR to include that the expected queuing problems can be addressed by adjusting the traffic signal timing and that the Department will be included in the process. Please provide the signal timing plans to the Department when the City of San Rafael is ready to start the evaluation.”***

The FEIR concludes that there would be no significant queuing impact at the US 101 interchanges identified by Caltrans, thus there is no need to adopt a new mitigation measure. As stated in the FEIR, the City already monitors and will continue to monitor signal timing to optimize traffic flow and address any queue levels. The City Department of Public Works has confirmed that the City will continue to work with Caltrans operations to address any operational issues at this location. This is an ongoing system issue that is being managed by the City in cooperation with Caltrans (which is identified in the General Plan 2020 for traffic improvement). The project's increase in traffic impacts on queuing are controlled through signal timing adjustments, which would continue to be made as necessary to maintain adequate flow through this segment. The FEIR/Response to Comments 3-12, page C&R 69-70, identifies that at worst-case queue/stacking scenario would be fewer than six vehicles at the [Westbound] WB Smith Ranch Road/101 Northbound offramp (see also DEIR Appendix K - Transportation Impact Report, page 24). Signal timing at these intersections can be adjusted to accommodate the increase in traffic levels associated with the project, adequately address any potential stacking issues and avoid any significant impacts to traveler safety as a result of the predicted increased queue lengths.

In order to address Caltrans concerns, staff recommends adding the existing commitment by the City, as recommended in the Caltrans measure, to the FEIR/MMRP to address their concerns; e.g., affirming the following:

Added **MM Traf-1**: The City shall monitor the signal timing at study intersections #3 (Smith Ranch Road/US 101 Northbound Ramps) and #4 (Lucas Valley Road/US 101 Southbound Ramps) to ensure traffic flow is optimized and that there are no significant impacts to traveler safety as a result of queuing impacts, and that the City will continue to work with Caltrans in these efforts.

The addition of this measure does not trigger the need for recirculation due to the fact that it does not constitute evidence of a new significant impact, and the addition of the mitigation has no potential to result in a significant adverse impact.

## **10. Climate Change**

The discussion below addresses the following:

- *The project is not “green enough” and there is no guarantees that it will be green.*
- *The DEIR does not establish a greenhouse gas (GHG) threshold and reports that assessment was too speculative. The FEIR needs to be recirculated to acknowledge the exceedance of the new air district threshold, and to allow further input on the GHG thresholds and to see if there are some further mitigation measures that could be included.*
- *Confirm that the GHG analysis does not require recirculation and that the threshold used for the EIR is adequately identified and discussed. Exceeding the BAAQMD thresholds shows the project is inconsistent with AB 32.*

### *Green Building and Climate Change Action Plan Compliance*

At a minimum, the project must include the level of “green-building” improvements indicated on project plans, i.e., achieve LEED certification. At time of filing the application, the City had not adopted its Green Building Ordinance. The City also subsequently adopted the 2009 Climate Change Action Plan. Most recently, a Greenhouse Gas (GHG) Emissions Reduction Strategy was adopted by the City on July 18, 2011 as appendix E to the 2009 Climate Change Action Plan, and the Sustainability Element was adopted as an amendment to the General Plan 2020. Appendix E was prepared to meet the requirements of the Bay Area Air Quality Management District (BAAQMD) criteria as a qualified GHG reduction strategy; as defined under the district’s updated California Environmental Quality Act (CEQA) Air Quality Guidelines, December 2009 (effective March 2010) and implemented pursuant to SB97. These updated BAAQMD Guidelines establish thresholds of significance for GHG emissions. The new guidelines apply to assessment of plan level and project level impacts, and allow a lead agency to determine that a projects impact on GHG emissions is *less than significant* if it is in compliance with a qualified GHG reduction strategy.

The City will experience an increase in GHG emissions due to anticipated growth. Emissions are primarily generated as a result of vehicle traffic, which represents 43% of all emissions. Commercial and residential sectors are roughly equivalent, and together make up another 43%, while waste emissions make up the remaining 14% of total emissions. The City has set its emissions reduction target at 25% below its baseline levels, to be achieved by 2020. The baseline level used for measurement of emission reduction is year 2005 emissions levels. Thus, the City must reduce its level of GHG emissions, including anticipated growth emissions, such that it will be 25% lower than the 2005 level. In 2005, the City’s GHG emissions inventory totaled 412,804 metric tons; from all sectors of the community. Therefore, the City commitment is to reduce its community-wide emissions level to 309,603 metric tons by year 2020; versus the 445,245 metric ton of increased emissions level otherwise anticipated to occur by 2020 based on business as usual scenario. The resulting emissions “gap” is 103,201 metric tons reduction required to meet achieve 25% below 2005 levels, and 135,642 metric tons to achieve reduction that would capture anticipated year 2020 growth.

The City’s CCAP notes that the community-wide reduction level will be achieved through a combination of local, regional, state and federal actions and programs, including programs that have not yet been developed. State level programs include the Renewable Portfolio Standard, Title 24 Energy Efficiency Standards updates, California Solar Initiative Rebates, and AB1493 motor vehicle fuel efficiency standards (aka, Pavley Standards). The City has recently established participation in the Marin Clean Energy utility provider, which will help reduce local emissions. Based on state and regional actions a local reduction by 59,963 metric tons is projected by 2020<sup>8</sup>. This brings the 2020 projected community-wide emissions level down to 385,282. This leaves 75,679 metric tons of GHG emissions reduction required as a result of local actions to achieve the year 2020 reduction target of 25-percent.

Local Emissions Reduction targets must be achieved by implementing strategies within the City’s ability to control. These include fostering change in lifestyles, buildings, environment, economy and community, to achieve the potential reduction by 2020. The San Rafael Climate Change Action Plan, Appendix E, concludes that the City can achieve a reduction of 58,222 metric tons of GHG emissions by 2020. Thus, the City is within reach of meeting its total 25% reduction target. New technologies and emissions strategies are anticipated that will result in the City achieving the reduction target. The City has incorporated components of the GHG Emissions Reduction Strategy into its General Plan, under the new Sustainability Element, which assures the document is updated to respond to updates to science, technology and policy. In addition, BAAQMD required that the City develop a checklist of mandatory reduction measures that would need to be implemented by a project, to be in conformance with the City’s qualified CCAP.

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<sup>8</sup> San Rafael Climate Change Action Plan, Table 4: State Programs Emissions Reductions (MTCO2E)

Review of new development for consistency with the CCAP Appendix E and Sustainability Element of the General Plan may now be used to determine whether project GHG emission impacts are significant. If new development implements all required GHG reduction checklist items, it would be covered under the strategies contained in the CCAP. The applicant has recently completed the GHG reduction checklist (**ATTACHMENT 10**), and staff's review of the responses confirms that the project would meet all required GHG reduction measures as well as several recommended elements of the checklist. Thus, the project is in compliance with the City adopted qualified CCAP and updated BAAQMD CEQA requirements. This is further confirmed based upon staff's review and discussion of the Sustainability Element policies pertinent to this project, as follows:

- *SU-5a. Require new construction to comply with adopted green building regulations;*
- *SU-5c. Develop and implement water efficient conservation programs..., including water efficient landscape regulations;*
- *SU-5d. Encourage use of high albedo (reflectivity) materials for future outdoor surfaces such as parking lots, roadways; SU-6. Plant new and retain existing trees to maximize energy conservation and carbon sequestration benefits.*

The project is exempt from applicability of the Green Building Ordinance. However, the applicant has proposed to achieve LEED certification, and this is required as part of the project proposal. The LEED 2009 requirements for new construction allow projects to attain 100 base points, with 6 possible Innovation in Design and 4 Regional Priority points possible. The LEED certification levels that can be achieved are as follows:

- Certified 40–49 points
- Silver 50–59 points
- Gold 60–79 points
- Platinum 80 points and above

The applicant has agreed to meet the Gold standard for the project, as a condition of project approval.

The project must also comply with current building code (CBC) Title-24 energy efficiency requirements, the Water Efficient Landscape mandates of MMWD, and would plant in excess of 100 new trees on-site. In addition large-sized screening trees must be planted along the north boundary of the building to supplement the existing eucalyptus trees to remain. The City Climate Change Action Plan was adopted and amended, which implements policies in the new Sustainability Element. In general, consistency with the General Plan 2020 Sustainability Element polices would help assure that the project would also be consistent with the qualified CCAP. Achieving LEED green building certification would also be consistent with the General Plan 2020 Sustainability policies and CCAP, Appendix E. In order to assure substantial compliance with the new standards and policies, the project would also be required to implement clean air vehicle parking per San Rafael Municipal Code Section 14.18.045, install bicycle parking per SRMC 14.18.090 and implement construction demolition debris recycling as part of its LEED certification and building permit issuance.

The project would further meet the City CCAP, Appendix E objectives through the required payment of affordable housing fees, use reclaimed water if available, proposed installation of solar and green roofing materials, and proposed provision of a designated bicycle and pedestrian path from Smith Ranch Road to the facility. Staff would recommend incorporating the bicycle parking requirement as a Condition of Environmental and Design Review permit approval. The SU-5d policy regarding paving surfaces would also be recommended to be incorporated as an Environmental and Design Review condition. Thus, as

mentioned herein staff concludes that the project would be in substantial compliance with the new Sustainability Element and the Climate Change Action Plan.

### *Greenhouse Gas Reduction Modeling*

An extensive discussion of the project's effects associated with greenhouse gas emissions and climate change is presented on FEIR pages C&R-43 through C&R-51. As indicated in that discussion, the Bay Area Air Quality Management District has indicated that for those projects that had issued a Notice of Preparation prior to the adoption of the District's new CEQA Guidelines (June 2010), compliance with the new guidelines (in terms of evaluating project-related air quality and greenhouse gas emissions using the new methodology and thresholds) was not necessary. Both the Notice of Preparation and the DEIR for this project were released to the public well before June 2010. Thus, analysis of project-related greenhouse gases (GHG) impacts using the current methodology and thresholds is not required. Nevertheless, GHG assessment was provided for informational purposes.

CEQA Guidelines section 15088.5 describes the situations in which recirculation of an EIR is required. Basically, recirculation is required when significant new information is added to an EIR, changing the EIR in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect. As provided in that section, however, recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. As explained below, while new information was added to the FEIR, the information is not of the type that triggers the need to recirculate the EIR.

When the DEIR was circulated in March 2009, the EIR included a section evaluating the climate change impacts of the project. (See DEIR section 15.) The DEIR discussed the potential impact and evaluated the project elements that would reduce the potential impact, but ultimately concluded that in the absence of guidance from the state regarding appropriate standards for evaluating this sort of impact it would be speculative to arrive at a conclusion regarding the significance of the project's contribution to this global impact. Since that time, additional guidance has come from the Natural Resources Agency—in the form of CEQA Guidelines section 15064.4—as well as additional guidance from the Bay Area Air Quality Management District (BAAQMD)—in the form of its new CEQA guidance documents and thresholds. CEQA Guidelines section 15064.4 instructs lead agencies to evaluate GHG emissions, qualitatively or quantitatively, and to evaluate whether any increases in emissions are significant in light of whatever threshold the agency deems is appropriate or in light of the project's consistency with statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions. The BAAQMD thresholds, however, by their own terms apply only to projects for which an NOP was published after June 2, 2010. The environmental review for this project was commenced in 2006, and an NOP was published in 2007 (when EIR preparation resumed) which considerably predates that BAAQMD rules.

At the time of preparation of the FEIR the City adopted its own threshold and the FEIR considered whether the project would impede compliance with AB 32's emission reduction mandates. (See FEIR, C&R-43 to C&R-51.) The FEIR concluded that the project would be in compliance with these mandates. Thus, the FEIR concluded that the project would not result in significant environmental impacts. In light of this conclusion, that no significant impacts would result from this project, it was determined that the standards for recirculation contained in CEQA Guidelines section 15088.5 have not been triggered and recirculation is not required.

Although the new BAAQMD standard was not required to be applied to this project, FEIR Master Response 22, FEIR Table 4, provided this assessment for informational purposes, which indicated that the project could produce 2,202 metric tons of GHG emissions, as compared against the new 1,100 metric ton BAAQMD threshold to be used for assessing impacts. BAAQMD also established that a jurisdiction may determine that project compliance with a qualified Climate Change Action Plan could be

used to address the BAAQMD CEQA threshold. Since publication of the DEIR the City adopted its qualified Climate Change Action Plan, as Appendix E to its 2009 CCAP. Thus, concerns in this area may also be considered moot based upon the fact that the project would comply with the City's qualified CCAP, GHG reduction strategies. The applicant has presented information demonstrating compliance with the CCAP, as well as regarding anticipated energy usage. The information presented indicates the facility may produce lower than anticipated emissions. Thus, based on the updated CCAP as well as the GHG strategy provided by the project applicant, the GHG emissions would not violate BAAQMD standards and may actually be lower than modeled, as follows:

1. The project emission level of 1,240 metric tons annually, which represents the largest volume of project emissions, primarily result from mobile source (vehicle) emissions and are not adjusted for future Pavley fuel standards. The City CCAP anticipates a reduction in emissions in response to the Pavley standards in achieving its 2020 reduction level target. Further, a noted weakness in the BAAQMD model is that it does not account for regional trip diversion, and the project could reduce the distance (VMT) that local residents would otherwise travel to use other facilities in the region.
2. The GHG emissions calculations presented in FEIR appendix C assumed that the 87,500 square foot recreation facility building would have a 22.5 per unit electricity demand per sq. ft., resulting in 1,968,750 kWh electricity demand, with a corresponding 649 annual tons of emissions equivalent. However, the applicant points out that the per unit demand calculation in the applicable standards would be lower if the unit measure for general assembly use is applied. This lower unit demand calculation may be more appropriate since it includes a recreational facility use. The standard used by the City was more conservative and generates a higher anticipated energy usage. The applicant has provided PG&E records for Sports City's indoor soccer facilities to illustrate that the lower than anticipated energy demand may in fact be realized at this facility. (ATTACHMENT 10).
3. The applicant has committed to produce 100% of the project electricity from solar panels; thereby substantially reducing GHG emissions associated with energy usage. The photovoltaic panel's capacity to reduce energy demand was not precisely determined in the GHG analysis prepared by the City. In actuality, the rooftop panels proposed on the facility as part of the project may achieve greater reduction than anticipated, as indicated in the information presented by the applicant (ATTACHMENT 10). During review of the building permit, documentation would be required to verify the LEED Gold standard has been achieved. At that time, final plans and calculations would be prepared for energy efficiency that includes alternative on-site solar usage.

While compliance with the CCAP would satisfy the new BAAQMD standard for a project, the goal is to implement the most efficient strategy at the time of project construction. The reduction to be achieved by the project can be further quantified at time of construction based on the GHG reduction strategies and project commitments. Requiring a greater amount of solar energy development at the project site could reduce the immediate demand, and possibly also bring it below the new BAAQMD threshold. However, this would be above and beyond the requirements of the newly adopted GHG reduction strategy that has been developed to meet BAAQMD standards. The project currently meets the City CCAP, and maintains the potential for additional reduction to be realized through further improvement in technologies that are anticipated to occur over the next several years.

At the November 15 meeting, it was also noted that the County of Sonoma had recently prepared and recirculated an analysis of GHG emissions for its Roblar Road Quarry project EIR. The pertinent public concern raised is whether the San Rafael Airport Recreational Facility EIR has adequately identified and considered all potential mitigation measures with respect to GHG emissions, and provided meaningful public review and input in the process.

City staff reviewed the County of Sonoma action and its decision to recirculate portions of its DEIR for the Roblar Road Quarry project. The timing and process followed for that project are substantially similar to that of the San Rafael Airport Recreational Facility Project EIR. In 2004 Sonoma County issued a Notice of Preparation for the Roblar Road Quarry project EIR. Hearings were then held on the Draft EIR in 2008, and the FEIR/Response to Comments were considered by Sonoma County in 2009. Regarding its review of Climate Change/GHG emissions, the Sonoma County Roblar Road Quarry project EIR identified that at the time of EIR preparation no state thresholds had been established. Its EIR originally also discussed project conformance with AB32 criteria. Sonoma County adopted its own Climate Change Action Plan. It is noted that Sonoma County falls within two separate air districts, with the southern portion within the San Francisco BAAQMD region. Therefore, according to Blake Hillegas, Sonoma County Planner, the Sonoma County CCAP has not been SFBAAQMD approved.

Prior to certification of its EIR, Sonoma County discovered that the analysis of Biological impacts warranted recirculation. This was due to discovery of protected tiger salamander larvae on the site, which was an impact not previously anticipated, identified and discussed. The County of Sonoma, therefore, also elected to apply the new GHG thresholds to this project and also recirculate this information along with the revised biological section; although throughout its discussion Sonoma County notes that this review was not required as the BAAQMD policy states that the new threshold is not applicable to projects already undergoing environmental review. Nevertheless, Sonoma County Counsel determined that it would be prudent to revise the EIR sections to include the new GHG emissions analysis. Recirculation of the revised GHG emissions analysis would not have occurred, however, had Sonoma County not been *required* to recirculate a portion of its Biological Impacts analysis. The FEIR, including these re-circulated portions, were considered for certification by Sonoma County in 2010.<sup>9</sup>

Sonoma County established as revised thresholds for analysis of Climate Change impacts whether a project would, a) result in an exceedance of the new BAAQMD 1,100 metric tons of emissions annually for operational emissions, or b) interfere with Sonoma County's Climate Change Action Plan goal of reducing GHG emission to 25 percent below 1990 levels by 2015. Based on the GHG analysis, Sonoma County found that the project would exceed the BAAQMD threshold by 3,303 metric tons of GHG emissions. The mitigation measures established to address this impact (Roblar Road Quarry FEIR Measure F.6a-b) consist of the following:

1. *Directs that the applicant shall become a reporting member of The Climate Registry (TCR).<sup>10</sup> Beginning the first year of quarry operations and continuing through the completion of quarry reclamation, the applicant shall conduct an annual inventory of greenhouse gas emissions, and report these to TCR. The annual inventory shall be conducted according to TCR protocols and third-party verified by a verification body accredited through TCR. Copies of the annual inventory shall be submitted to the Sonoma County Permit and Resource Management Department (PRMD).*
2. *Requires the applicant shall take the following steps to ensure the GHG emissions do not exceed 1,100 MT CO<sub>2</sub>e per year:*
  - a. *As described in MMF.1a, the applicant shall utilize PG&E electricity to power its mobile processing plant instead of using a proposed diesel powered generator.*
  - b. *The applicant to fuel its on-road and off-road vehicles with alternative fuels (such as biodiesel and compressed natural gas) to the extent feasible.*

<sup>9</sup> [http://www.sonoma-county.org/prmd/docs/eir/roblardeir/deir\\_recirculate.pdf](http://www.sonoma-county.org/prmd/docs/eir/roblardeir/deir_recirculate.pdf)

<sup>10</sup> TCR is a non-profit collaboration that sets consistent and transparent standards to calculate, verify and publicly report GHG emissions into a single registry. TCR does not register or trade carbon offset credits, but rather focuses on voluntary and mandatory reporting programs and provides comprehensive, accurate data to reduce emissions. The measure does not provide quantifiable emission reduction strategies that must be implemented by the project to achieve compliance.

- c. *Other measures, including those addition to those listed in prior air quality mitigation measures F.1e (which will limit use of diesel powered equipment), shall be employed and quantified to achieve maximum feasible reduction in GHG emissions from quarry operations.*
- d. *If the applicant is not able to reduce emissions below the 1,100 MT CO<sub>2</sub>e per years using the above measures, the applicant shall offset all remaining project emissions above that threshold. Any offset of project emissions shall be demonstrated to be real, permanent, verifiable, enforceable, and additional, as determined by PRMD in its sole discretion. To the maximum extent feasible, as determined by PRMD, offsets shall be implemented locally. Offsets may include but are not limited to, the following (in order of preference):*
  - i. *Onsite offset of project emissions, for example through development of a renewable energy generation facility or a carbon sequestration project (such as a forestry or wetlands project for which inventory and reporting protocols have been adopted). If the applicant develops an offset project, it must be registered with the Climate Action Reserve (CAR)<sup>11</sup> or otherwise approved by PRMD in order to be used to offset project emissions. The number of offset credits produced would then be included in the annual inventory, and the net (emissions minus offsets) calculated.*
  - ii. *Funding of local projects, subject to review and approval by PRMD, that will result in real, permanent, verifiable, enforceable, and additional reduction in GHG emissions. If the BAAQMD or Sonoma County develops a GHG mitigation fund, the applicant may instead pay into this fund to offset GHG emissions in excess of the significance threshold.*
  - iii. *Purchase of carbon credits to offset emissions to below the significance threshold. Only carbon offset credits that are verifiable and registered with the CAR, or available through a County-approved local GHG mitigation bank or fund, may be used to offset project emissions.*

The Sonoma County FEIR provides a “potential mitigation scenario” table that illustrates how the project could achieve GHG emissions level reductions. The total GHG emissions calculation prepared for the Roblar Quarry project anticipated 5,926 metric tons annually; thus, 4,826 metric tons over the threshold. The mitigation strategies requiring use of PG&E electricity, low carbon fuel and other measures to reduce diesel powered equipment are anticipated to achieve a 1,524 metric ton reduction; thus, leaving the project 3,304 metric tons over the threshold. The majority of reduction primarily would consist of purchase of offset credits. Actual reduction levels achieved by the project would be quantified *after* project operations. Sonoma County certified the Roblar Quarry Project FEIR in December 2010. A statement of overriding consideration for GHG emission impacts was not required, based on incorporation of the mitigation measures referenced above.<sup>12</sup>

The City for the San Rafael Airport Project has identified reduction strategies that would be required through application of the City CCAP, Appendix E (GHG Reduction Strategy). This approach would assure that the project would satisfy the City GHG reduction plan, which has been developed to satisfy the new BAAQMD standard, and anticipates further reduction in emissions over time as technologies improve. Recirculation of the document’s GHG analysis would not result in further mitigation being required, particularly given that project impacts have now been demonstrated to be satisfied through its

<sup>11</sup> <http://www.climateactionreserve.org/about-us/california-climate-action-registry>. The California Climate Action Registry is a program of the Climate Action Reserve committed to solving climate change through emissions accounting and reduction. It was created by the State of California in 2001 to promote and protect businesses’ early actions to manage and reduce their greenhouse gas (GHG) emissions. Through this mandate, the California Registry established protocols to guide emissions inventories and an online tool, the Climate Action Registry Reporting Tool (CARROT), to serve as a central database for emissions reports. See also <http://www.climateactionregistry.org/>

<sup>12</sup> [http://sonoma-county.granicus.com/MetaViewer.php?view\\_id=2&clip\\_id=131&meta\\_id=43425](http://sonoma-county.granicus.com/MetaViewer.php?view_id=2&clip_id=131&meta_id=43425) (Attachment 5 to Sonoma County Board of Supervisors 12/14/10 Agenda Item 36 - Exhibit “A” page 57, Doc. No 113389, Roblar Road Quarry, 12/14/10)

compliance with the City CCAP, Appendix E, as adopted to satisfy the new BAAQMD threshold. The applicant has agreed to implement the strategies required to comply with the CCAP, Appendix E, and General Plan 2020 Sustainability Element. Therefore, Air Quality/Climate Change Impacts remain less-than significant. The following measure is recommended to be added to the Air Quality measures to confirm the applicant's intent to comply with the GHG reduction strategy:

Add **MM AQ-2 Greenhouse Gas Reduction Strategies Compliance**. The applicant shall implement all of the City of San Rafael November 2010 BAAQMD Qualified Greenhouse Gas Reduction Strategy checklist's *Required Elements*; as indicated in the checklist prepared and submitted by the project applicant. Additionally, the applicant shall implement the GHG Reduction Strategy checklist's *Recommended Elements*, as proposed by the project applicant and required as a condition of approval to comply with City Municipal Code Requirements. Additional strategies shall be implemented, to the extent feasible, as determined by City of San Rafael Building, Planning and Public Works in order to further reduce the project generated GHG emission.

Implementation of this additional feasible mitigation is now required and has been agreed to by the applicant. Thus, incorporation of this as a mitigation measure is proposed to document this in the EIR, and would not require recirculation of the EIR.

## 11. Alternatives

The discussion below addresses the following:

- *The Alternatives discussed in the DEIR are not sufficient to allow meaningful information. A reasonable range of alternatives has not been provided. There is no information provided on the impacts at other sites. Feasible alternatives that are not acceptable to project sponsor are eliminated. Should discuss an alternative that splits the uses between two or more sites.*

Master Response 23 on FEIR pages C&R-51 and C&R-52 provide additional discussion of the alternatives analysis presented on pages 16-25 through 16-26 of the DEIR. A total of 14 alternative sites in Marin County were considered by the proposed soccer operators prior to submitting the development application for the proposed project at the subject site. None of the sites considered by the soccer operator met their criteria, either due to inadequate conditions of buildings, or rent costs that exceeded their operational business plans, and since no other sites were identified as feasible alternatives to the project site, impacts associated with development at other sites were not evaluated in the EIR. As indicated on DEIR page 16-26, there are no potentially significant environmental impacts addressed in the DEIR that cannot be reduced to a level of less than significant through implementation of the Mitigation Measures identified in the DEIR. Although there may be additional sites which may provide a feasible alternative to the project location while meeting Project Objectives (which may include splitting the uses proposed for the project site among multiple locations), none have been identified, and no alternative sites are currently under the control of the project Applicant. The alternatives analysis presented in the EIR provides a reasonable range of alternatives sufficient for providing an adequate evaluation of the project impacts and for identifying the environmentally superior alternative. Further analysis of alternatives would not provide any additional and meaningful information which is not readily evident and available within the existing FEIR analysis.

## 12. Other

The discussion below addresses the following:

- *Mitigation measures rely on the airport owner to monitor the site. City enforcement capabilities are limited by its resources. Given these limitations, how will monitoring be accomplished by the City?*
- *What are the security measures for the facility?*
- *Clarify that the information that has been provided, identified and discussed as part of the FEIR process can still be considered as part of the merits discussion, and used to make a determination regarding the proposed land use.*

The purpose of an EIR is to evaluate the environmental impacts of a project, and the potential measures to avoid or reduce environmental impacts. This information must inform the decision makers as they decide how to act on the project. (CEQA Guidelines sections 15090 and 15091.) That said, the decision makers are not bound to consider only the information contained in the EIR in their decision-making process. An EIR generally is not the appropriate vehicle to consider fiscal matters, job creation, tax benefits, and the like associated with a particular project. But this is not to say that these matters are not relevant to the agency's consideration of a project, and ultimate determination regarding a particular land use. In fact, these matters may be highly relevant in evaluating the feasibility of alternatives to a project and mitigation for a project (CEQA Guidelines section 15091, subd. (a)(3)) or in the ultimate decision of whether to approve the project (CEQA Guidelines sections 15092, subd. (b)(2) and 15093).

In this case, the City conducted separate hearings on the EIR and on the project. Because of the importance of the EIR, the City has separately held two hearings on the FEIR at the Planning Commission to focus on the EIR and to evaluate the EIR's adequacy and completeness under CEQA Guidelines section 15090. The City will conduct a separate hearing to discuss the merits of the project generally. The City has divided up the hearings in this manner to attempt to make the review of a large volume of material more manageable. It should be noted, however, that even after the close of the formal hearings on the EIR, when the City opens up discussions to consider the merits of the project generally, the City will continue to consider the information in the EIR, the environmental impacts of the project, and the adequacy of the document generally as is appropriate and as compelled by law.

A Mitigation Monitoring and Reporting Program (MMRP) is required to be prepared to assure all required mitigation measures are addressed, if a project is implemented. The MMRP identifies the timing, control method and party responsible for implementing the measure. The City would require the applicant to provide funds to cover any costs associated with project monitoring for compliance. These funds could be used to cover City staff time or could be used to hire a consultant (of the City's choice) if staff resources are limited. It is anticipated that existing and future staffing levels would be adequate to manage the measures identified for this project. There are no long-term monitoring requirements that would require periodic, ongoing assessments to be conducted. The Police Department has also provided draft conditions recommending security measures to monitor patrons on the site and exiting the property. These will be provided in detail as part of project merits review. In addition, other relevant informational documentation has been provided as an attachment to this report for the Commissions information (**ATTACHMENT 11**).

## **PUBLIC CORRESPONDENCE**

Notices of continued and rescheduled hearing dates were mailed and posted in public places at least 15 days prior to the January 10, 2012 and January 24, 2012 meeting dates (**ATTACHMENT 13**). Additional correspondence received after the November 15, 2011 FEIR hearing has been attached to this report, for the Commissions information (**ATTACHMENT 14**).

## CONCLUSION

The FEIR prepared for this project has adequately identified all of the potential environmental impacts of the project, and it is appropriate to conclude the EIR review. The City has provided substantial public input in the process, including during scoping of the EIR as well as during review of the DEIR and FEIR documents, and all requirements of the California Environmental Quality Act (CEQA) have been addressed in this review. The FEIR provides the Planning Commission, City Council and public with all of the information that would be necessary in order to identify all of the potential project impacts on the environment. Further, the FEIR has identified mitigation measures that are proposed to reduce potential impacts to a less than significant level. The report and mitigation measures have been provided by competent professionals with expertise in their subject areas, which has included study of air quality, soils, hydrology, biology, noise, hazards, airport safety and climate change. Thus, the City and public can be assured that all potential project impacts have been adequately identified, assessed and mitigation measures identified that would reduce impacts to the extent feasible. There has been no evidence discovered or presented that would lead the City to conclude that all of the potential project impacts cannot be mitigated to the extent feasible, or that the environmental impacts have not been fully and completely assessed in compliance with CEQA.

Based on the further direction and discussion provided by the Planning Commission at its November 15 meeting on the FEIR, an Errata sheet has been prepared to identify additional revisions made to the DEIR. These additional revisions primarily provide further correction and clarification to mitigation measures, and do not result in substantially new or different information. Based on the fact that all of the requirements for CEQA review have been satisfied and the Final EIR document identifies all of the potential environmental impacts of the development project and recommends feasible mitigation to address those impacts, the Commission should recommend certification of the FEIR. This action would enable the City to move forward and conduct a public hearing to decide whether to approve the project, as proposed or with further modifications, or deny the application request. If a decision is made to approve the project (whether in the manner proposed, or based on a substantially similar project, or reduced intensity development), the City must also make specific findings accepting the EIR as the adequate environmental document addressing all of the potential environmental impacts for the project and adopt a mitigation monitoring and reporting program that would assure all mitigation measures are implemented.

## OPTIONS

The Planning Commission has the following options:

1. Adopt Resolution Recommending that the City Council Certify the EIR and direct staff to prepare draft resolutions for their consideration of an action on the project zoning entitlements at a future hearing; i.e., CEQA Findings of Fact and MMRP for Project Approval, PD Rezoning, Master Use Permit and Environmental and Design Review Permit (STAFF RECOMMENDED); or
2. Deny certification of the FEIR and direct staff to draft resolutions for an action to deny the PD Rezoning, Master Use Permit and Environmental and Design Review; or
3. Direct staff to prepare further revisions to the FEIR and/or recirculate all or portions of the document.

## ATTACHMENTS

Attachment A – History Related to the Airport Property Land Use Restriction

1. Draft Resolution Recommending FEIR Certification and Errata Sheet with additional changes to DEIR text and Mitigation Measures recommended in this report
2. Vicinity Map - San Rafael Airport Recreational Facility
3. Marin County Counsel letter, January 5, 2012
4. Questa Engineering letter, March 15, 2010 re: Response to Comments
5. State Department of Toxic Substances Control (DTSC) Daniel Murphy Email, November 28, 2011
6. Phase I Investigation, January 5, 2012, San Rafael Airport
7. Margo Tsirigotis Oge, USEPA Director, Office of Transportation and Air Quality letter, July 27, 2010
8. Lee Oberkamper letter, December 12, 2011, re: Contempo Marin Flood Protection & Plat, Flood Protection Facilities and Flood Protection
9. Department of Transportation letter, November 18, 2011
10. San Rafael Sports Facility Sustainability Strategy, including the GHG Reduction Strategies Checklist
11. Referenced historical documents:
  - a. Marin County Counsel letter, December 29, 2009 (rcvd Jan 1, 10)
  - b. Board of Supervisors meeting minutes, April 19, 2006 – Item 10
  - c. San Rafael Community Services meeting minutes, July 21, 2005
  - d. City Attorney letter to Steve Petterle, Principal Planner, Department of Parks and Open Space, Marin County, August 23, 2005
12. Other informational documents
  - a. Department of The Army (USACOE) Dec 9, 2011 wetland delineation letter (updated)
  - b. Tsunami Zone map, Dec 15 2011 GIS Maps, City of San Rafael
  - c. State ABC “License Query” summaries for Sports City Cotati & Santa Rosa soccer facilities
  - d. FEMA letter, November 10, 2011
  - e. Department of Transportation March 25, 1999 letter regarding San Rafael Airport Permit
13. Public Hearing Notice for January 24, 2011 Planning Commission Meeting
14. Public Comments (received after the Nov. 15. 2011 Hearing)

*The Environmental Impact Report and Project Plans were distributed at the November 15, 2011 PC Meeting*

## ATTACHMENT A

## HISTORY RELATED TO THE AIRPORT PROPERTY LAND USE RESTRICTION

In 1981 the City published the Smith Ranch Road Master Plan (7/20/81) and Civic Center North Development Plan (11/3/81) as the planning documents for development along the Civic Center Drive and Smith Ranch Road areas located north of Marin Civic Center, east of Highway 101 and west of the railroad right of way. These documents identified the plans for development along both sides of Smith Ranch Road from the Highway 101 to the railroad tracks (*100 Smith Ranch Road offices to Captains Cove*), and properties located along McInnis Parkway (*Embassy Suites, Autodesk, Marin Lagoon housing development*). The Smith Ranch Airport property located east of the railroad right of way was not included within the planning boundaries of these planning documents. See Attachment A and Attachment B for the boundary of these projects.

In 1983 the City approved the Civic Center North rezoning Z80-1 (consisting of a commercial and residential development plan). The Planning Commission (PC) recommended approval of development of the Civic Center North project on 11/23/82. The City Council reviewed the project on 2/7/83, introduced Ordinance 1448 and Ordinance 1449 on 2/22/83 to prezone and rezone the Civic Center North project site and, adopted the ordinance and a subdivision map (TS82-5) on 3/21/83. The following additional facts are relevant to the project review and approval:

- The 2/7/83 City Council (CC) staff report, page 9, states that the PC had recommended approval of 87 units as the base density for the project medium density residential designated area (ten units per acre), ***“with the provision that the density could be increased if the applicant submitted an acceptable design program. The applicant does not agree with this Planning Commission recommended change and continues to seek City authorization for the 125 units (15 units/acre) proposed in the application for the multi-family area.”*** The PC had recommended condition “s” in order to allow the PC to approve a higher density at time of final design review. Further, condition (l)3 of TS82-5 allowed for increased density for the multi-family residential area as an incentive for affordable housing.
- The 2/7/83 City Council (CC) staff report, page 14, includes the following discussion regarding Smith Ranch Airport Parcel: ***“Just this week, the Board of Supervisors expressed concern that the City application for rezoning/prezoning does not include the easterly parcel(s) owned by the First National State Bank of New Jersey. That area is leased to the Smith Ranch Airport, which operates under the provisions of a City use permit issued in that U (Unclassified) District. Since early discussions in 1978 with the not yet applicant, City staff has concluded there is no valid need or reason to include the Airport property in the rezoning/prezoning. The area is not within the Northgate Activity Center, is appropriately zoned “U” for such an interim use, and is almost totally within the U.S. Army Corps of Engineers jurisdiction due to low elevations and historic diked wetlands status.”*** [Note: The extent of US Army Corps of Engineers jurisdiction was presumed at this time by City staff, based on historic diked wetlands status]
- The 2/22/83 City Council (CC) minutes, page 4, record that County Supervisor Roumiguire provided comment on a County recommended condition of approval (i.e., condition 14 in the 2/18/83 memorandum from Marjorie Macris) asking the City to include a covenant restricting use of the 116 acre airport parcel, which has been worked out with property owner representatives [i.e., the applicant for Civic Center North]. The property owner’s Attorney Bianchi confirmed that the property owners consent to the restriction.
- The 2/22/83 City Council (CC) minutes, page 5, record that Dwight Winther [representative for the Civic Center North project applicant] commented on condition “s” regarding the density for the project, noting that 125 units have been proposed throughout the proposal for the project.
- The 2/22/83 City Council (CC) minutes, page 5, also record that James Hatfield, representing Smith Ranch Airport [e.g., pilots], stated regarding County recommended Condition 14: ***“it is the position of the people at Smith Ranch that, in the event they are successful in their bid to buy the property they will have a condition that it will only be used as open space and an airport. If the deal is successful, they will be coming back to the City for a grant of some sort of control so the property can never be used for anything other than as it is today.”*** [The people at Smith Ranch were a group of potential interested buyers of the airport property, and were not project applicants]

- The 3/21/83 City Council (CC) action included subdivision TS82-5 which separated the airport property from the Civic Center North development area. Condition of approval (j) of the Lot Line Adjustment (TS82-5) stated the following:

***“The following three conditions shall apply to a lot line adjustment to create the 90 acre development area and the 116 acres airport parcel. The remaining conditions (a) thru (i) and (k) thru 5 do not apply to such a lot line adjustment,***

- 1. The applicant shall secure any legally required County approvals for the lot line adjustment.***
- 2. Prior to recordation of a final map, the applicant shall offer the City a 10 year option to purchase an 80-foot wide road right-of-way for the extension of Northbank Drive through the airport parcel. The right-of-way shall be adjacent to the Northwestern Pacific Railroad right-of-way. An additional 3 acre compensatory wildlife habitat site adjacent to the southernmost end of the airport parcel shall be included in the road right-of-way.***
- 3. Prior to approval of the final map for the project, the property owner shall sign and record a covenant, binding themselves, their successors, assigns, and grantees, restriction the use of the 116 acre airport parcel (AP 155-230-01 through 07) to those uses existing as of the date of the tentative map approval and the following permitted uses:***
  - a. Public utility uses as approved by the appropriate governmental agencies, including flood control, sanitary sewer, gas and electric and public safety facilities.***
  - b. Airport and airport related uses.***
  - c. Roadways.***
  - d. Open space.***
  - e. Private and public recreational uses. The covenant shall run with the land and shall be enforceable by the County of Marin or the City of San Rafael.***
  - f. Other related uses agreed to by the City, County and property owner.***

[Note: Conditions a through i and k through 5 relate to the further development of the Civic Center North project parcel (which was anticipated to require subsequent subdivision and zoning actions in order to implement the development plan). Further, the term contained in condition f was stricken out in the recorded deed, and confirmed by the former owner in 1984.]

- On 9/16/1983 the County of Marin waived the tentative map requirement for the 2 parcel division of Civic Center North and Smith Ranch airport lands (AP 155-030-01 through 07 and AP 180-120-30, 31, 32). [Note: It was necessary for the County to take an action given that portions of the project remained in County jurisdiction, prior to annexation of some of the lands into the City].
- On 11/22/83 the Marin County Board of Supervisors considered authorizing execution of the deed restriction for the Smith Ranch Airport property. The minutes record the following statements and action: ***“Deed, Smith Ranch Airport Property. A representative of the First National State Bank of New Jersey addressed the Board requesting authorization for execution of a deed restriction covering the Smith Ranch Airport property. This restriction would prohibit any further development of the property and with the approval of the Planning Department and County Counsel, M/s Aramburu-Stockwell, to authorize the Chairman to execute the Deed. Ayes: All”.***
- On 12/15/83 the land use Declaration of Restrictions and the Civic Center North Parcel Map were recorded to create the 90 acre Civic Center development area parcel and 116 acre airport parcel; applying the land restriction to the airport parcel pursuant to project approvals TS82-5.
- On 7/2/84 the CC minutes record that a presentation was made by developers of Civic Center North who were seeking direction on their desire to pursue a 184% density increase for the project.

Following the filing of the subject San Rafael Airport Recreational Facility project application with the City of San Rafael, City staff provided project plans to County Parks Director Mark Riesenfeld and requested a meeting with County Parks staff and County Parks Commission to discuss the project on June 15 & 16 2005. On June 21, 2005 City Staff met with County Parks Commissioner Jean Starkweather and County Planning Commissioner Don Dickenson to show plans and answer questions. A neighborhood meeting was held that included Santa Venetia residents on June 22, 2005. Another meeting was held at Contempo Marin June 23, 2005. On July 5, 2005 staff

met with Supervisor Susan Adams, Parks Director Mark Riesenfeld and park staff members Ron Paolini and Stephen Peterle. On September 1, 2005 staff gave a project presentation to the County Parks Commission.

On April 19, 2006, the County Board of Supervisors heard agenda item 10, Request from the Department of Parks and Open Space to discuss issues related to the proposed San Rafael Airport Recreation Facility Project. Parks and Open Space Director Sharon McNamee advised that the deadline for comments on the City of San Rafael's Initial Study and Mitigated Negative Declaration for the proposed facility is February 28, 2006. The Board meeting minutes record that; ***"Boardmembers generally conveyed support for soccer facilities."*** Boardmembers provided comments on the project, concluded it would be appropriate for the City to conduct all public hearings on the project, and directed staff to; ***"coordinate comments on the Initial Study from various County departments regarding the inclusion of green building practices, the use of permeable surfaces, and concerns about any environmental impacts of the proposed facility. Ayes. All."***

The City has held several noticed public hearings on the project following the February 28, 2006 Planning Commission hearing, including a September 26, 2006 scoping hearing for preparation of an EIR for the project and May 12, 2009 hearing on the DEIR. All hearings were noticed, including notification to Marin County Planning and Marin County Parks and Open Space District staff. At the recent November 15, 2011 public hearing for review and consideration of the FEIR, Marin County Parks and Open Space District staff submitted an updated letter on the FEIR/Response to Comments, in which they present an additional concern with the appropriateness of the private recreational land use with the intent of the land use restriction. This was an issue previously addressed by the City and County in 2006 and was not raised in the May 11, 2009 DEIR comment letter received from the Marin County Parks and Open Space.