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May 7, 2009

Via U.S. Mail

Kraig Tambornini, Senior Planner  
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Planning Division  
P.O. Box 151560  
San Rafael, CA 94915-151560

Re: San Rafael Airport Recreational Facility Draft Environmental  
Impact Report

Dear Mr. Tambornini:

This firm represents the Gallinas Creek Defense Council on matters relating to the San Rafael Airport Recreational Facility ("Project"). The Gallinas Creek Defense Council is a coalition of citizens and organizations concerned with the well being of the Gallinas Creek watershed. This Project will have serious long-term consequences for the residents of San Rafael and the surrounding region. Those consequences include damage to sensitive wetlands and the wildlife that depends on those wetlands, increased flooding danger, land use conflict with the nearby airport, and the increased traffic and noise that come along with commercial development.

The environmental impact report ("EIR") for this proposal should provide both decision-makers and the public a full opportunity to understand and analyze environmental repercussions of the Project. Unfortunately, the draft EIR ("DEIR") fails entirely to live up to this mandate. Indeed, the DEIR violates the minimal standards of adequacy under the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000 et seq., and the CEQA Guidelines, California Code of Regulations, title 14, § 15000 et seq. ("CEQA Guidelines").

To ensure that the public as well as the City's decision-makers have adequate information to consider the effects of the proposed Project – as well as to comply with the law – the City must prepare and recirculate a revised DEIR that properly describes the Project, analyzes its impacts, and considers meaningful alternatives and mitigation measures that would help ameliorate those impacts.

**I. THE DEIR DOES NOT COMPLY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.**

**A. The Project Description is Incomplete and Misleading.**

The DEIR fails to describe the Project with sufficient detail and stability. “An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.” *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185 192-93. The court in Inyo explained why a thorough project description is necessary:

A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the “no project” alternative) and weigh other alternatives in the balance.

71 Cal.App.3d at 192-93. The DEIR's project description fails to comply with this mandate in a number of respects.

The project description is unstable because the Applicant has not limited the use of the recreational facility to any particular activity. Although the DEIR contemplates use of the facility for soccer, dance, and gymnastics, the DEIR also indicates that the Applicant wishes to preserve all flexibility to change this focus in the future. (DEIR at 3-11.) But the effects of replacing these sports with other recreational uses are completely unanalyzed in the DEIR. For example, there is a suggestion that a third indoor field/rink may replace the dance and gymnastics uses. (DEIR at 3-12.) The impacts of this possibility are not analyzed. An ice rink, for example, could have energy needs and noise generating features that differ significantly from those of a gymnastics studio.

The project description is further destabilized because (1) the landscaping plan is not finalized (DEIR at 3-16) and (2) the type of turf on the outdoor field is contingent on outdoor lighting being approved. (DEIR at 3-12.) The revised DEIR needs

to analyze both grass and turf and both lighting scenarios or commit to one version of each. If grass is used, many alleged environmental benefits of the Project will not materialize. See DEIR at 3-19, extolling the environmental benefits of recycled field turf that does not require watering, pesticides, or fertilizers. If grass is used instead what new measures will the Applicant employ to achieve LEED certification? See also DEIR at 10-15, stating that no fertilizers or herbicides will be used on the outdoor fields. Further, the City appears to have taken the Applicant's word, without any data to back it up, that the use of the more expensive turf will only be economically viable if outdoor lighting is approved. The City must exercise its own independent judgment, and the public deserved to see the data underlying this kind of assumption in the DEIR.

Finally, the DEIR does not adequately describe the kind of zoning and permit changes that will occur, stating only that the Project requires "an amendment" to the Planned Development District and the Master Use Permit for the site. (DEIR at 4-15.) Furthermore, the DEIR fails to satisfactorily analyze whether an amendment to the Declaration of Restrictions will be required. In order to constitute a legally adequate project description, the revised DEIR must clearly state the exact nature of all zoning, permit, and covenant amendments required. More details regarding this deficiency in the EIR are presented below in the Land Use and Planning section.

**B. The DEIR Fails to Adequately Analyze and Mitigate the Project's Significant Environmental Impacts.**

The discussion of a proposed project's environmental impacts is fundamental to an EIR. See CEQA Guidelines § 15126.2(a) ("[a]n EIR *shall* identify and focus on the significant environmental effects of the proposed project") (emphasis added). As explained below, the DEIR's environmental impacts analysis is deficient under CEQA because it fails to provide the necessary facts and analysis to allow the City and the public to make informed decisions about the Project. An EIR must effectuate the fundamental purpose of CEQA: to "inform the public and responsible officials of the environmental consequences of their decisions before they are made." *Laurel Heights Improvement Assn. v. Regents* (1993) 6 Cal.4th 1112, 1123. To do so, an EIR must contain facts *and* analysis, not just an agency's bare conclusions. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568. Thus, a conclusion regarding the significance of an environmental impact that is not based on an analysis of the relevant facts fails to fulfill CEQA's informational goal.

Additionally, an EIR must identify feasible mitigation measures to mitigate significant environmental impacts. CEQA Guidelines § 15126.4. Under CEQA, "public agencies should not approve projects as proposed if there are feasible alternatives or

feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.” Pub. Res. Code § 21002.

### **1. Land Use and Planning**

The Project site is part of a Planned Development-Wetland Overlay Zoning District (PD 1764-WO), which allows non-aviation uses consistent with the Master Use Permit. (DEIR at 4-15.) The DEIR states that amendment of this zoning is required, but does not sufficiently explain what that amendment will consist of. (DEIR at 4-15.) Presumably the amendment will need to include a change to the limitations imposed by the Wetland Overlay District, which only allows “recreational activities compatible with wetland habitat.” San Rafael Municipal Code § 14.13.010. Section 14.13.030 of the Municipal Code specifically states that “Recreation/scientific activities in or near wetlands should be low intensity uses, such as bird watching, fishing, nature photography and study, wildlife observation and scientific research and education.” Without a zoning amendment, this large active recreation facility complete with a bar, pro shop, and large parking lot would clearly violate City law. Yet the DEIR glosses over this significant land use impact, failing to explore the potential consequences for other wetland properties in the City and failing to alert the public that one of the fundamental goals of the Wetland Overlay District is violated by this Project. The revised DEIR must clarify that this conflict constitutes a significant land use and planning impact. Also, the revised DEIR must explain whether or not the proposed zoning change affects all Wetland Overlay properties, or just the Project site.

The DEIR is similarly evasive when it comes to describing the required amendments to the site’s Master Use Permit of 2001, which for the first time granted legal authorization to permanent airport operation at the site. (DEIR at 4-5.) Presumably, the amendment will include changing the hours of non-aviation business at the site, which are currently limited to 7 a.m. to 6 p.m., Monday through Saturday. Also the amendment may include a change to the non-aviation uses permitted. The DEIR only states that currently, “[t]he non-aviation uses are limited to those uses approved by the Use Permit and there shall be no increase in the amount of square footage.” (DEIR at 4.6.) This begs the question, what are the uses approved by the Use Permit? What are the consequences of the changes to the Use Permit contemplated by the Project. The revised DEIR must explore this subject in depth.

The final relevant land use restriction is the recorded Declaration of Restrictions, a 1983 covenant among the City of San Rafael, Marin County, and property owner. (DEIR at 4-6.) The DEIR says that Project is consistent with the covenant because “private and public recreational uses” are permitted. (DEIR at 4-18.) However, in Alternatives section the DEIR says the existing Declaration of Restrictions does not

allow for the construction of a recreational facility. DEIR at 16-6. This must be reconciled and thoroughly explained. Evidence not alluded to in the DEIR suggests that the Alternatives section is correct. For instance, City Council minutes from 1983 show that the intent was to restrict the use of the land so that “commercial development would never take place.” See Exhibit 1. The minutes mention use of the land as “open space” and “wildlife habitat” but nowhere suggest that an active recreational facility could be built on the property. These restrictions were imposed as part of an exchange of development rights. (See Exhibit 2, newspaper article from 1990 quoting County Counsel as saying “the property owners agreed to these restrictions because they wanted more density at another project” and Exhibit 3, Declaration of Supervisor Roumiguere testifying to that effect.) If indeed the Declaration of Restrictions do not permit the proposed Project, the permission of all parties to the covenant, including Marin County, would be required to amend the agreement.

Additionally, the Project conflicts with General Plan Policy Con-5: “Protect seasonal wetlands and associated upland habitat contained within undeveloped dyked baylands, or restore to tidal action. Support and promote acquisition from willing property owners.” The Project site is a prime candidate for wetland restoration. The site contains historic diked baylands, and wetlands delineations that designate the land as grassland do not capture its powerful ecological potential.

Furthermore, the Project meets the third threshold of significance stated on page 4-17, “conflict with any applicable habitat conservation plan or natural community conservation plan,” because it is inconsistent with the Bayland Ecosystem Habitat Goals, published by the San Francisco Estuary Institute and available at <http://www.sfei.org/sfbaygoals/docs/goals1999/final031799/pdf/sfbaygoals031799.pdf>.

In summary, the DEIR is incorrect when it concludes that the Project does not conflict with a planning program adopted for the purpose of avoiding environmental effects. The fact that zoning amendments, permit amendments, and covenant amendments are required clearly shows that there are conflicts with these planning programs. Those requirements were adopted to ensure compatibility with the nearby wetlands and airport (see DEIR 10-11). The site is appropriate for passive recreation such as bird watching, but not for a large sports facility that draws thousands of cars to a building that reaches the maximum height permitted under City law, employs nighttime lighting, and draws people to sensitive habitat until late in the evening. Also, the Project conflicts with General Plan Policy Con-5. Thus, the Project will have a significant land use and planning impact and the revised DEIR must disclose and mitigate this impact.

## 2. Hydrology and Water Quality

The site lies within the 100-year floodplain and is a flood hazard area subject to Title 18 of the Municipal Code. (DEIR at 11-2 to 3.) The revised DEIR must reflect the fact that the Project exposes people and structures to “a significant risk of loss, injury, or death involving flooding, including flooding as a result of the failure of a levee or dam.” (DEIR at 11-20.) Therefore the Project’s hydrology impacts are significant under CEQA.

The elevation values underlying the flooding analysis are based on the National Geodetic Vertical Datum of 1929 methodology, but many other jurisdictions have switched to the North American Vertical Datum of 1988 methodology and San Rafael plans to make this switch in 2009. (DEIR at 11-2.) The revised DEIR should conduct its analysis using the best and most contemporary methodology. The DEIR claims that it cannot use the new methodology because San Rafael has not officially switched. This self-limitation makes no sense. The public deserves to know how the impact analysis would differ if the more current methodology were used.

The DEIR’s conclusions regarding levee breach-induced flood risk and mitigation are not supported by substantial evidence. The flood mitigation measures rest on the assumption that the levees surrounding the site are well-constructed and well-maintained. (DEIR at 11-31, describing assumptions about the way that a levee breach would begin and then spread over time.) However, the evidence indicates otherwise, so the mitigation measures will not be effective. The levees are old and poorly maintained (see Exhibit 4, email from Marin County Department of Public Works Director Farhad Mansourian discussing a levee breach that is undisclosed in the DEIR), and it is our understanding that the Applicant does not own all the levees and therefore cannot maintain them. Similarly the pump station relied on to drain the site is on land the Applicant does not own. Therefore, the DEIR’s conclusion that people at the site during a 100-year storm-induced levee breach will have enough time to evacuate the site is overly optimistic. Finally, the feasibility of the flood mitigation is undermined by the lack of evidence that the airport responded to earlier concerns about flood protection when it finally acquired its permanent use permit. (See DEIR at 4-5 [“should a permanent use be applied for in the future, improvement to the levee... would be required”].)

The DEIR fails to provide an evacuation plan for use in the event of a flood, and the revised DEIR must correct this omission. A flood evacuation plan is especially critical because the the site is surrounded by water on three sides with a single access road. FEMA Technical Bulletin 3-93, which contains requirements for non-residential floodproofing, states: “For any floodproofed building, all roads to be used as

evacuation routes must remain passable as the floodwaters rise.” See Exhibit 5. The revised DEIR must analyze whether or not the sole access route will meet this standard during a levee breach-induced flood.

The DEIR’s approach to expected sea level rise also violates CEQA’s requirement that all reasonably foreseeable impacts be accounted for. The DEIR explicitly concludes: “It is expected that a 0.5-foot rise in the level of the San Francisco Bay would occur by the year 2050.” (DEIR at 11-34.) See also DEIR at 15-11 (“The Project is located in an area that would likely be subject to coastal or other flooding resulting from climate change during the economic life of the Project”). It goes on to contradict itself by claiming that sea level rise is “speculative” and therefore impacts associated with sea level rise are less than significant. (DEIR at 11-35.) The City cannot ignore the weight of scientific evidence and dismiss this impact as speculative. See “The Impacts Of Sea-Level Rise On The California Coast,” a report recently published by the California Climate Change Center, attached as Exhibit 6, and available online at [http://www.pacinst.org/reports/sea\\_level\\_rise/report.pdf](http://www.pacinst.org/reports/sea_level_rise/report.pdf). The City’s own General Plan S-21 requires the City to take sea level rise into account. The revised DEIR must recognize that sea level rise is reasonably foreseeable. All impact analysis and mitigation measures must be revised accordingly. For example, the building should be redesigned so that it will comply with the City’s flood control ordinance even after a 0.5 foot sea level rise.

The DEIR’s water quality impact analysis is also inadequate. MM Hyd-1a requires the Project Applicant to prepare and submit an erosion control plan, but does not include a clear performance standard for this plan. This is impermissible deferred mitigation. Designing the erosion control plan to “mitigate erosion and sedimentation impacts during construction.” (DEIR at 11-23) is too vague a standard. *San Joaquin Raptor v. County of Merced* (2007) 149 Cal.App.4<sup>th</sup> 645, 670 (“generalized goal” insufficient as CEQA mitigation).

Finally, the proposed Project has changed to include a smaller impervious surface area than the project analyzed by the hydrologic consultants. (DEIR at 11-27.) Although a decreased impervious surface area is generally considered to minimize water quality impacts, the consultants should do a follow-up study to see if this change causes any new impacts on the environment.

### **3. Biological Resources**

The mitigation measures recommended in the Biological Resources section of the DEIR are inadequate in a number of respects. First, several mitigation measures have been improperly deferred and are unenforceable:

- (a) The part of MM Bio-1a that reads “precautions shall be taken to prevent silt-laden or contaminated runoff from entering the stream” is vague and therefore unenforceable.
- (b) MM Bio-5a is unenforceable because it does not make surveys for western burrowing owls mandatory in both the breeding and non-breeding seasons, stating only that it would be “ideal” to perform both kinds of survey. This should be revised to require surveys during both breeding and non-breeding seasons, especially considering the fact that different consequences are described for the discovery of owls during the different seasons.
- (c) MM Bio-5e is unenforceable because it depends on California Department of Fish and Game to “likely” require a burrowing owl mitigation and monitoring program. (DEIR at 7-75.) The City itself should impose the requirement now. Also, the City should clarify that a long-term management endowment fund is mandatory by using the term “the applicant shall” instead of “the applicant will”.

Next, MM Bio-2e is insufficient to protect the nocturnal bird activities because its noise restrictions are limited to outdoor events. However, indoor events lasting past 10 p.m. will also be disruptive to nocturnal species because people will make noise as they exit the complex.

The permanent conservation area envisioned by MM Bio-2b is only feasible if the Applicant owns all of the marsh habitat land described in that measure. Evidence of this ownership must be presented in the revised DEIR. If the Applicant does not own the entirety of the land necessary for effective protection of these sensitive areas, a new mitigation measure will have to be devised to mitigate the Project’s impacts on marsh habitats and their associated species.

MM Bio-4c is internally inconsistent. It first states that the 300-foot raptor nest buffer may be reduced if a qualified raptor biologist determines that the nesting raptors are acclimated to people and disturbance **and** otherwise would not be adversely affected by construction activities. Thus, both conditions must be met. But then the measure states “Instances when the buffer could be reduced in size would be if the raptors were well acclimated to disturbance **and/or** if there were physical barriers between the nest site and the construction project that would reduce disturbance to the



nesting raptors.” This implies that only one of the conditions need be satisfied. This discrepancy must be reconciled in the revised DEIR.

In two instances the Biological Resources chapter errs with respect to permits required by other agencies. First, the DEIR is inconsistent on the subject of whether an Army Corps of Engineers permit will be required. (See DEIR at 3-54 and 7-17.) Note that if such a permit is required, the State Water Board will have to undertake the Clean Water Act section 401 certification process. Second, the Streambed Alteration Agreement from the California Department of Fish and Game is now expired. (DEIR at 7-19 to 20.) A new one must be acquired. If the new agreement imposes any different terms than the old one, MM Bio-9 must be revised.

#### **4. Hazards**

The best way to protect people from airport hazards is to permit only low intensity land uses near airports. This is a fundamental principle of airport land use planning and is explicitly acknowledged in the DEIR. (DEIR at 10-11.) Despite this, the Project is designed to attract and concentrate hundreds of people right up to the very edge of the San Rafael Airport airspace. This Project is encroaching so closely on navigable airspace that the DEIR recommends that signs be posted advising drivers not to back their cars into certain parking spaces, thus gaining a few extra feet of vertical clearance. (DEIR at 10-21.)

The Project exceeds the single-acre concentration standard set in the California Airport Land Use Planning Handbook (“Handbook”) (DEIR at 10-17) and it will draw large numbers of children, which the DEIR admits is a “highly risk-sensitive use” (DEIR at 10-12). The DEIR inappropriately backpedals on this problem on page 10-20, fudging the numbers to attempt to come within the limit and then claiming that the Project is consistent with the single-acre criteria. The revised DEIR must consistently and clearly disclose this fundamental conflict between the proposed Project and the existing airport. Mitigation fares no better than impact analysis. The DEIR claims that the Project’s conflict with the single-acre criterion can be mitigated through the incorporation of “risk-reduction design features” into the design of the facility such as the provision of a sprinkler system and an extra emergency exit. However, the Handbook discourages reliance on such risk reduction features, stating that “avoidance of intensive uses is always preferable” and that risk-reduction features “should be limited to airports which are situated in highly urbanized locations.” Handbook at 9-53 (available at <http://www.dot.ca.gov/hq/planning/aeronaut/documents/ALUPHComplete-7-02rev.pdf>). Relevant portion of Handbook attached as Exhibit 7. In other words, when an airport is located in a city and there is no viable way to avoid all land use conflict, risk-reduction design is better than nothing. But when there is another choice, it is “always preferable”

to avoid locating intensive uses near airports. Because the San Rafael Airport is not located in a highly urbanized area, the correct approach is to reject intensive uses for this site.

In sum, this Project is clearly inappropriate for the location, and will have the significant and unavoidable effect of subjecting children and families to unnecessary hazards due to the proximity to the airport.

## 5. Noise

The Project would subject people to extremely loud noise generated by aircraft taking off or landing at the airport: up to eleven 18-second aircraft events per day at 100 dBA. (DEIR at 12-15.) The DEIR, however, concludes that the Project is compatible with the local noise environment and that this is a less than significant impact because this level of noise exposure “would not cause hearing damage to soccer participants or spectators.” Hearing loss is a completely inappropriate threshold of significance. These loud aircraft events would disrupt speech on a regular basis. Reliable verbal communication is crucial to team sports, as recognized on page 12-24 of the DEIR (“Speech interference effects could disrupt soccer or softball practices or games.”). Coaches would regularly be unable to hear their players and vice versa. Much can happen during 18 seconds in a soccer game. The DEIR must be revised to reflect the Project’s incompatibility with the local noise environment and conclude that this is a significant impact.

Additionally, the DEIR fails to analyze single-event noises generated by the Project, such as roars from the crowd or referee whistles. The DEIR only analyzes the Project’s impact on ambient noise levels averaged over 24 hours (DEIR at 12-16), thus violating the principles established in *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344. The Court of Appeal in that case stressed the need to provide information in a form that is useful to help nearby residents evaluate the impact of proposed projects on their daily lives. In particular, the EIR must enable residents to evaluate the degree to which loud “single events” interfere with their sleep, conversation, and the quiet enjoyment of their property. *Id.* at 1372-83.

Next, ambient nighttime noise at nearest residences will exceed the limits established in the San Rafael Noise Ordinance. (DEIR at 12-16.) This is a potentially significant impact, requiring mitigation. But MM N-1 is insufficient because one of the alternative approaches it allows, revision of the site plan to accommodate a noise wall, is inadequate mitigation. First, there is no performance standard for the noise wall. Also, there are no consequences if the wall is ineffective. The mitigation measure must be revised to require closure of the outdoor fields at 9 p.m. if the wall proves ineffective to

meet the standards set by the Noise Ordinance. Moreover, changing the site plan to accommodate a noise wall needs to be further analyzed in case it will unintentionally cause or exacerbate any impacts on the environment.

Finally, with respect to construction noise, there is no evidence that MM N-3 will be sufficient to mitigate the impact of pile driving noise. For example, if the Applicant does pre-drill holes, what will the resultant noise diminution be? The pile driving noise likely will still be significant, and therefore the revised DEIR must disclose that this impact is significant and unavoidable.

## **6. Transportation and Traffic**

The DEIR uses the wrong baseline for measuring the Project's traffic impacts. "The baseline scenario includes existing transportation conditions plus traffic generated from approved developments that are under construction." (DEIR at 13-2.) CEQA case law holds that existing conditions, rather than some hypothetical future scenario, should be the basis for determining the significance of impacts. *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350 ("EPIC"). The primary legal principle set forth in *EPIC* is that the use of a future scenario as a baseline should be avoided where the practical consequence of such an approach would be to artificially understate the true environmental consequences of a proposed project. Here, by using existing condition plus expected traffic as the baseline, the DEIR understates the effect the Project alone will have on the traffic situation in the region. The traffic expected from approved developments under construction should be analyzed thoroughly as a cumulative impact, but it should not be built into the baseline.

Next, MM Traf-1 constitutes impermissible deferred mitigation because it contains no performance standard. This measure simply requires the Applicant to submit a traffic management plan if the proposed two-lane bridge deck is not built. Ensuring "adequate queuing and pedestrian safety" is not specific enough to rescue this mitigation measure from being illegally deferred mitigation.

Finally, the traffic analysis fails to analyze potential conflicts with the commuter train that the Sonoma-Marín Area Rail Transit District plans to operate along the railroad tracks mentioned on page 13-27 of the DEIR. It is our understanding that this commuter train will be operating at peak hours and will require drivers using the only road to and from the Project to stop and wait at the crossing. This blockage could cause traffic to back up, resulting in other indirect traffic impacts throughout the region. This possible interaction must be analyzed as a cumulative impact in the revised DEIR.

## **7. Climate Change**

The climate change discussion appear to have been cut and pasted from some other document, given its assertion that the Project's greenhouse gas emissions cannot be quantified because "[a]s yet, there is no study that quantitatively assesses all of the GHG emissions associated with each phase of the construction and use of an individual residential development." (Also the analysis later refers to "this Initial Study" – DEIR at 15-16.) Obviously, the Project is not a residential development. The revised DEIR must make a reasonable attempt to quantify the Project's greenhouse gas emissions. Also, the contribution of the Project to climate change should be deemed cumulatively considerable even if the Project by itself will not influence global climate change. (DEIR at 15-13.) Feasible mitigation measures should be proposed in the revised DEIR. See Exhibit 8, "Addressing Global Warming Impacts at the Local Agency Level."

Not only will the project affect climate change, but also climate change will affect the Project. However, the analysis on page 15-12 of the DEIR is incoherent and internally contradictory. Despite admitting that "it is expected that a 0.5 ft-rise in the level of the San Francisco Bay would occur by the year 2050," the DEIR concludes that sea level rise cannot be predicted with certainty and therefore the impacts of climate change on the Project are less than significant. This must be revised to disclose the significant impact that climate change will have on the Project.

## **8. Air Quality**

The DEIR's air quality analysis fails to analyze or even mention the air pollution generated by the existing airport use of the site. Despite noting on page 6-10 that playgrounds and athletic centers are considered to be "sensitive receptors," describing on page 6-13 the General Plan's policy AW-2a against siting new sensitive receptors without adequate buffers from existing sources of toxic air contaminants and odors, and recognizing the exposure of sensitive receptors to substantial pollutant concentrations as a CEQA threshold of significance, the DEIR fails to take the next logical step and analyze how the adjacent airport will affect the quality of the air breathed by users of the recreational facility. Children will be running around outdoors at the Project site, causing their lungs to uptake greater than normal quantities of whatever lingers in the air after airplanes take off, land, and are serviced. This impact must be analyzed and mitigated in the revised DEIR.

## **9. Utilities and Services**

The DEIR states that a water pipeline will need to be extended in order to serve the Project. (DEIR at 14-9.) But the impacts of this extension are not analyzed.

Similarly, sewer lines will need to be laid, and the revised DEIR must analyze the environmental impacts, including growth-inducing impacts, of those new sewer and water lines. (DEIR at 14-9.)

#### **10. Aesthetics**

The DEIR fails to analyze the effect of glare from the headlights of cars traveling to and from the Project. In some instances these lights will shine directly into residential properties, potentially disturbing sleep. This concern was discussed in a February 28, 2006 staff report to the Planning Commission, but is nowhere mentioned in the DEIR. The revised DEIR must analyze and mitigate this impact.

#### **11. Geology and Soils**

The DEIR fails to analyze the ability of the levees to withstand seismic shaking. On page 15 of Appendix C, the DEIR states that the integrity of the levees and the ability of the levees to withstand seismic shaking is being further analyzed and will be presented to the Planning Commission in the future. This impact analysis must be included in the revised DEIR.

#### **12. Cumulative Impacts**

“An EIR shall discuss cumulative impacts of a project when the project’s incremental effect is cumulatively considerable.” CEQA Guidelines § 15130(a). The DEIR does not comply with this legal standard. Although the DEIR provides a list of cumulative projects, no actual analysis has been done about how the incremental effects of those projects might interact with those of the Project. The DEIR quickly goes through a few issue areas and concludes that, because none of the project-specific impacts were found to be significant and unavoidable, there can be no cumulative impacts. (DEIR at 14-12 to 14.) This approach does not comply with the law, which contemplates that an impact might be insignificant on a project-specific level and yet still be cumulatively considerable. Additionally, the DEIR incorrectly states that the Project is consistent with the site’s zoning designation, Master Use Permit, and restrictive covenants. (DEIR at 14-13.) The DEIR dismisses any possibility that there might be cumulative land use and planning impacts based on this inaccurate assertion. The entire cumulative impact analysis must be revisited in the revised DEIR.

#### **13. Growth-Inducing Impacts**

An EIR must discuss the ways a project could directly or indirectly facilitate or remove obstacles to population growth or new development in the surrounding environment. Pub. Res. Code § 21100(b)(5). The appropriate components

for an adequate analysis include: (1) estimating the amount, location and time frame of growth that may occur as a result of the project (e.g., additional housing, infrastructure, and mixed use developments); (2) applying impact assessment methodology to determine the significance of secondary or indirect impacts as a result of growth inducement; and (3) identifying mitigation measures or alternatives to address significant secondary or indirect impacts.

Despite admitting that growth-inducing impacts can result from the development of public institutions and the introduction of employment opportunities, the DEIR makes the unsupported assertion that “[i]t is not likely that the proposed Project in and of itself would attract new permanent residents to the City or region.” (DEIR at 14-14.) This unsupported assertion also appears in the discussion on Population and Housing Impacts, where the DEIR concludes that a recreational facility “by nature” would not induce population growth, but rather serve the recreational needs of the population. (DEIR at 14-3.)

To the contrary, the Project provides employment and recreation possibilities and therefore has the potential to induce population growth in the area. The Project also extends water and sewer service to the site and improves bridge access, both of which remove an obstacle to future population growth onsite. Increased population will have its own impacts. These must be analyzed and mitigated.

**C. The DEIR Does Not Adequately Discuss Alternatives to the Proposed Project.**

The analysis of alternatives to the proposed project lies at “[t]he core of an EIR.” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564. Every EIR must describe a range of alternatives to the proposed project and its location that would feasibly attain the project’s basic objectives while avoiding or substantially lessening the project’s significant impacts. CEQA § 21100(b)(4); CEQA Guidelines § 15126(d). A proper analysis of alternatives is essential for the City to comply with CEQA’s mandate that significant environmental damage be avoided or substantially lessened where feasible. Pub. Res. Code. § 21002; CEQA Guidelines §§ 15002(a)(3), 15021(a)(2), 15126(d); *Citizens for Quality Growth v. City of Mount Shasta*, 198 Cal.App.3d 433, 443-45 (1988). As stated in *Laurel Heights Improvement Association v. Regents of University of California*, “[w]ithout meaningful analysis of alternatives in the DEIR, neither the courts nor the public can fulfill their proper roles in the CEQA process. . . . [Courts will not] countenance a result that would require blind trust by the public, especially in light of CEQA’s fundamental goal that the public be fully informed as to the consequences of action by their public officials.” 47 Cal.3d 376, 404 (1988). The DEIR’s discussion of alternatives fails, in numerous respects, to live up to these standards.

First, the DEIR does not discuss any alternatives that could meet most of the Project's objectives. Thus, the alternatives are set up to fail. The revised DEIR must analyze alternatives that reduce the Proposed Project's impacts on the environment but still achieve basic project objectives. CEQA Guidelines § 15126.6(f) ("the EIR need examine in detail only the [alternatives] that the Lead Agency determines could feasibly attain most of the basic objectives of the project").

Second, the selection of the No Project Alternative is not supported by the evidence. The DEIR purports to analyze, as the No Project Alternative, a future project application that fully conforms to the existing zoning and Master Use Permit. (DEIR at 16-7.) However, the uses that the DEIR anticipates would be permissible without amending the zoning or the Master Use Permit (outdoor soccer fields and playgrounds) would not comply with the Wetland Overlay limitation to "low intensity uses, such as bird watching, fishing, nature photography and study, wildlife observation and scientific research and education." Nor is it clear that outdoor soccer fields and playgrounds would comply with the Master Use Permit and the Declaration of Restrictions.

Third, when comparing the alternatives to the proposed Project, the DEIR inappropriately concludes that various impacts of the No Project Alternative and the Reduced Development Alternative would be "similar" to the Proposed Project on the basis that the Proposed Project had been found not to have significant impacts. (See, e.g., DEIR at 16-7.) This is faulty reasoning. Just because the Project's impact would be less than significant does not mean the No Project Alternative would have similar impacts. Moreover, had the DEIR adequately analyzed the Project's environmental impacts, it would have determined that the Project would have significant environmental impacts. The EIR is obligated to identify and analyze alternatives that are capable of minimizing the Project's impacts.

Fourth, the DEIR fails to adequately explore the feasibility of an Alternative Location. The DEIR concludes with no evidence or analysis that, of a list of 14 alternative sites compiled by the Applicant, none proved to be suitable to obtain the Applicant's basic objectives. (DEIR at 16-26.) This mere conclusion does not provide the public and decision-makers with enough information to meaningfully participate in the decision not to promote alternative locations. "To facilitate CEQA's informational role, the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions. An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 404-405 (EIR should have discussed reasons for rejecting alternative locations).

Moreover, the reasoning that alternative locations are infeasible because “the Applicant does not possess development rights on another site in the City” is faulty. This line of thinking implies that there was no actual consideration of alternative locations, because “if the Applicant were to be required to find an alternative site, it is likely that the Applicant would withdraw the development application.” (DEIR at 16-26.) Already possessing development rights is not the legal standard for feasibility. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553 describes in detail the circumstances in which an EIR should consider off-site alternatives. When a developer “ha[s] the ability to purchase or lease [alternative sites], or may otherwise have access to suitable alternatives,” then analysis of such sites is called for. *Id.* at 575. The revised DEIR must explore whether the Applicant has the ability to purchase, lease, or otherwise access the 14 sites on the list compiled by the Applicant as well as other sites that the City, using its independent judgment, concludes might be potentially viable alternative locations.

Fifth, the alternatives are all rejected as infeasible on page 16-27 because they supposedly are commercially unviable. However, the City appears to have merely taken the Applicant’s word on this. The DEIR must disclose the economic data that underlies these conclusions. Moreover, as a legal matter, some decrease in profitability is not a sufficient reason for rejecting an alternative as infeasible. CEQA Guidelines § 15126.6(b). “The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project.” *Preservation Action Council v. City of San Jose*, 141 Cal.App.4th 1336, 1351 (2006).

## **II. A REVISED DRAFT EIR MUST BE PREPARED AND RECIRCULATED.**

CEQA requires recirculation of a revised draft DEIR “[w]hen significant new information is added to an environmental impact report” after public review and comment on the earlier draft DEIR. Pub. Res. Code § 21092.1. The opportunity for meaningful public review of significant new information is essential “to test, assess, and evaluate the data and make an informed judgment as to the validity of the conclusions to be drawn therefrom.” *Sutter Sensible Planning, Inc. v. Sutter County Board of Supervisors* (1981) 122 Cal.App.3d 813, 822; *City of San Jose v. Great Oaks Water Co.* (1987) 192 Cal.App.3d 1005, 1017. An agency cannot simply release a draft report “that hedges on important environmental issues while deferring a more detailed analysis to the final [EIR] that is insulated from public review.” *Mountain Lion Coalition v. California Fish and Game Comm’n.* (1989) 214 Cal.App.3d 1043, 1053.



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In order to cure the panoply of DEIR defects identified in this letter, the City must obtain substantial new information to adequately assess the proposed Project's environmental impacts, and to identify effective mitigation and alternatives capable of alleviating the Project's significant impacts. This new information will clearly necessitate recirculation. CEQA requires that the public have a meaningful opportunity to review and comment upon this significant new information in the form of a recirculated draft supplemental EIR.

### III. CONCLUSION

For the foregoing reasons, the Gallinas Creek Defense Council urges the City to delay further consideration of the San Rafael Airport Recreational Facility unless and until the City prepares and recirculates a revised draft EIR that fully complies with CEQA and the CEQA Guidelines.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Ellison Folk  
Jeannette MacMillan

#### Attachments:

- Exhibit 1 – City Council minutes
- Exhibit 2 – “Airport owners file suit to lift building restrictions,” San Rafael/Terra Linda News Pointer
- Exhibit 3 – Declaration of Supervisor Roumiguere
- Exhibit 4 – email from Marin County Department of Public Works Director Farhad Mansourian
- Exhibit 5 – FEMA Technical Bulletin 3-93
- Exhibit 6 – The Impacts of Sea-Level Rise on the California Coast
- Exhibit 7 – portion of California Airport Land Use Planning Handbook
- Exhibit 8 – The California Environmental Quality Act: Addressing Global Warming Impacts at the Local Agency Level