



DATE: May 17, 2012

TO: Planning Commission Chair Viktoriya Wise, and Planning Commissioners

FROM: Kraig Tambornini, Senior Planner

SUBJECT: **May 29, 2012 Planning Commission Public Hearing Addendum to March 27, 2012 Staff Report – Response to Caltrans Division of Aeronautics Airport Safety Comments; 397-400 Smith Ranch Road (San Rafael Airport Recreational Facility)**

Background

The above project previously was scheduled for hearing on March 27, 2012. That meeting date was cancelled (after publication of staff's report to the Commission) in order to allow time for staff to evaluate a March 9, 2012 letter received from the State of California Caltrans, Division of Aeronautics. The Caltrans Division's letter points out a recent change to its California Airport Land Use Planning Handbook (*Handbook*) published for purpose of evaluating development near public use airports for safety and noise compatibility. The *Handbook* has been relied upon by Mead & Hunt, the airport safety consultant that was hired by the City to evaluate this project. Mead & Hunt was the primary consultant responsible for development of the 2002 *Handbook* and also served as a consultant for the 2011 *Handbook*.

The *Handbook* provides general compatibility guidance to local agencies and the public in developing land use plans surrounding public use airports. Development around public use airports is subject to review by Airport Land Use Commissions (ALUC's), which are responsible for developing land use compatibility plans utilizing the *Handbook* for guidance. Marin County has one public use airport, Gross Field, and the County of Marin Planning Commission serves as the ALUC and reviews development projects near that airport. San Rafael Airport is a private airport and, therefore, it is not subject to an ALUC and does not require a land use compatibility plan. The City maintains responsibility for evaluating development on and near the San Rafael airport, for compatibility and compliance with the San Rafael General Plan 2020. Since the San Rafael airport is not subject to an ALUC and related compatibility plan, the Caltrans Division was consulted and provided advisory comments for the City to consider in evaluating the project. To assist with this function City staff decided to utilize the *Handbook* for guidance, and hired Mead & Hunt as the City's technical expert regarding the *Handbook's* relevance to the project and to evaluate safety and compatibility issues.

The primary intent of this memorandum is to update the Commission on staff's findings and conclusions regarding airport safety in light of the most recent Caltrans Division letter. This additional review evaluates the project in light of the revised guideline criteria, as recommended by Caltrans, but it is not based upon any change in the physical characteristics of the airport or project site or surrounding environment. In response to the Divisions recent letter, Mead & Hunt has recommended additional safety measures; summarized on Page 5 of this memorandum. Additionally, City staff has included a response to comments received from Marin County Public Works regarding levee maintenance obligations, and provides updated project recommendations. The topics covered in this memorandum have been arranged as follows:

- Staff Recommendation (Page 2)
- Review of Caltrans Division of Aeronautics Airport Safety Comments (Page 3)
- Review of General Plan 2020 Policies (Page 6)
- Review of Marin County Department of Public Works Levee Maintenance Comments (Page 6)



Staff Recommendation

The Planning Commission must provide its recommendation on this development project to the City Council, because the project includes a PD rezoning. As a reminder, the policy of the Planning Commission requires that a motion to recommend approval of the PD rezoning must pass with an affirmative vote by four members (i.e., a minimum of four members and not just a majority of those present).

The staff report published March 27, 2012 noted that the recreational facility project had been recommended for approval in 2006, before the Project EIR was required and completed. At that time, the project did not include a lighted outdoor field with extended outdoor evening hours, and proposed to be closed between 4pm and 6pm. After the Planning Commission completed its January 24, 2012 review of the Project FEIR (i.e., environmental analysis) no new concerns were uncovered that caused staff to materially alter its previous recommendation for approval, nor recommend a change in scope or design of the project. There have, however, been a number of concerns raised during hearings held on the project and the Project FEIR that are discussed in the March 27, 2012 report.

Airport safety in relation to this project is an issue that has received substantial attention and detailed study. Therefore, in light of the March 9, 2012 letter from the Caltrans Division, staff requested that Mead & Hunt prepare an additional evaluation and response to the Division's comments. Mead & Hunt's response has resulted in some additional recommended project mitigations being proposed that respond to the specific concerns of Caltrans. Staff has further augmented its recommendation for this project, in light of this additional airport safety evaluation, and recommends that the Planning Commission consider the following options:

1. Continue the matter with direction from the Commission concerning any additional modifications that the Commission deems necessary to support the project, including consideration of the new airport safety mitigations proposed by Mead & Hunt (staff recommended).
2. Adopt Resolution's recommending that the City Council adopt the following:
 - a. CEQA Findings of Fact and Mitigation Monitoring and Reporting Program for project approval
 - b. PD Rezoning Ordinance, and
 - c. Master Use Permit and Environmental and Design Review Permit, with conditions.
3. Reject the project and direct staff to draft resolutions to deny the PD Rezoning, Master Use Permit and Environmental and Design Review.

Following the recent additional airport safety review, staff has concluded that the project appears to remain in conformance with all applicable General Plan 2020 goals and policies, and could be supported with appropriate conditions of approval. It is recommended that the Commission conduct a hearing on project merits in order to consider all additional testimony, including this memorandum and the March 27, 2012 staff report, and continue the project for revision to address the outstanding identified merits issues. This would include but not be limited to; i) incorporation of any additional airport safety requirements that the Commission deems appropriate (including those listed on page 5 of this memorandum), ii) clarification of levee maintenance responsibilities, and iii) confirm and establish the appropriateness of proposed site design, intensity of use, outdoor field lighting, indoor and outdoor hours of operation, other use limitations including proposed alcohol sales, and project climate change strategies.



If the Commission determines site or building design changes should be required in order to support the project (including any additional building design modifications listed in the Mead & Hunt report to further fortify the building structure; e.g., concrete walls, etc.) it may be appropriate or necessary for the project to return to the Design Review Board for its recommendation. If the design implications are substantial, this should occur before staff returns to the Commission with any revised resolutions, findings, and conditions for the project.

Review of Caltrans Division of Aeronautics Airport Safety Comments

The Caltrans Division of Aeronautics *Handbook* is used by Airport Land Use Commissions (ALUC's) for developing land use compatibility plans for public use airports; which identify safety and noise compatibility parameters for surrounding development and expansion of an airport facility. The *Handbook* provides safety zone configurations and associated risk factors that can be used to evaluate and determine land use compatibility within the area around an airport (page 25 of the January 24, 2012 FEIR Staff Report provides detailed discussion of the safety zones). In Marin County, the County Planning Commission serves as the ALUC for Gness Field, which is the only public use airport in Marin. Compatibility plans developed for areas around public use airports must be guided by the *Handbook*. Caltrans also reviews these compatibility plans for the ALUC's, and local jurisdictions consider the ALUC compatibility plans when developing general plan land use designations for incorporated areas that lie within ALUC plan boundaries.

Caltrans is responsible for issuing an Airport Permit for the San Rafael Airport facility. It has granted permit Mrn-005 for this facility to operate under the category of "special-use airport" (i.e., 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; California Code of Regulations Title 21 Sections 3525 through 3560). A copy of the Airport Permit is attached. Caltrans regulates the airport facility only, and not the surrounding land uses. The proposed project has not been found to conflict with any of the conditions of the Airport Permit.

The airport is privately owned, and pursuant to the existing City Zoning and Use Permit approvals granted for the airport use, only pilots who hangar airplanes at the site are permitted to use the facility; which is limited to 100-based aircraft. The airport has no control tower thus no commercial flights are allowed and, due to the size of the runway, it is limited to use by small aircraft. The airport permits visual approaches only, with sight of runway required for pilots to land at the airstrip. In inclement weather with low visibility, such as severe fog conditions that impede visibility of the runway from the approach elevation (e.g., 1,000 feet) pilots must land at another airstrip that provides for instrument-based landings.

Because this is a private use airport, there is no ALUC authority and no land use compatibility plan required for the site and surrounding land uses. Accordingly, and separate from Caltrans' permitting of the airport facility operations, the City maintains the discretionary land use authority over development on the airport property and on properties within the airport safety zones (that fall within the City's jurisdiction). Therefore, the City hired Mead & Hunt to evaluate and provide guidance on the proposed recreational facility development project given its proposed location adjacent to the active San Rafael Airport runway. Mead & Hunt relied on the 2002 Caltrans Division of Aeronautics handbook in conducting its evaluation of this development project. Building design constraints and intensity of use limitations were examined. Mead & Hunt also reviewed the 2011 Handbook revisions prior to the January 24, 2012 Commission hearing on the FEIR, and had concluded that the text changes did not alter any of its findings regarding airport safety.



In its March 9, 2012 updated comment letter, Caltrans Division of Aeronautics notes that the project is in safety zone [2] & 5 and that the updated 2011 Handbook recommends prohibiting group recreational uses in the subject safety zones. Caltrans' comment letter specifically recommends:

"special considerations should be given to facilities that cater to children such as recreation and sports facilities and Caltrans asks that the City of San Rafael to consider this new information in future decisions regarding this project."

The letter also mentions concerns with the potential for intrusions into the 7:1 transitional surface zones (i.e., building and parking spaces). These previously were identified and discussed during the FEIR review process. The FEIR has recommended installing signage that restricts parking spaces proposed closest to the runway to compact spaces. Parking lot grading could be further adjusted, or parking areas relocated, to avoid potential intrusion of vehicles into the transition zones. Detailed construction drawings, surveys of finish grades and building elevations would be required to confirm that building improvements would not encroach within the transition safety zones.

The 2011 *Handbook* recommending that "group recreation" uses should be prohibited within airport safety zones does not provide any qualifying factors or a definition of the term "group recreation uses."[†] The term "group recreation" is not contained in the 2002 Handbook either, but "outdoor stadiums" are referenced as an assembly use recommended as prohibited in safety zone 6.[‡] The term "group recreation" can be viewed to encompass a wide range of low to high intensity uses including outdoor sports fields, indoor gymnasiums, health clubs, assembly uses such as theaters, and sports stadiums. Mead & Hunt does not consider golf courses and public parks to be "group recreation". If this new guideline is applied without qualification, any group recreation use including low intensity recreational uses would be excluded from placement within airport safety zones. Given the recent change to the *Handbook* there have been no recent ALUC compatibility plans prepared that have been required to apply this new guideline. It appears that the Division's concerns are with facilities that cater to children, facilities with high intensity usage, and facilities creating confined spaces; hence the express inclusion of children's schools, assembly facilities and stadiums -- uses that seem to have fairly uniform and recognizable building and use characteristics, and would likely exceed occupancy intensity standards.

Mead & Hunt met with Caltrans Division staff via a conference call in order to gain a better understanding behind its decision to include group recreation as a recommended prohibited use in the *Handbook* under its basic compatibility policies for the safety zones. As stated in its letter, Caltrans Division explicitly recommends that special considerations should be given to facilities that cater to children, such as recreation and sports facilities. In Mead & Hunt's response, they note that the Division specifically has three concerns with the project:

* Caltrans acknowledges that their letter incorrectly identified Safety Zone 2 as Safety Zone 3.

[†] <http://www.dot.ca.gov/hq/planning/aeronaut/documents/AirportLandUsePlanningHandbook.pdf>

[‡] <http://www.dot.ca.gov/hq/planning/aeronaut/documents/ALUPHComplete-7-02rev.pdf> - Chapter 9 of the 2002 Handbook recommends "prohibit outdoor stadiums and similar uses with very high intensities in safety zone 6". Further, the 2002 Handbook distinguishes between uses in structures vs. outdoor uses; noting "buildings provide substantial protection from the crash of a small airplane..." and that "people outdoors have more of a chance to see a plane coming as well as more directions in which they can move to vacate the impact area. A greater concentration of people thus is sometimes considered acceptable for such land uses." It is further noted that an exception shall be made with regard to large "open stadiums and other similar uses where a large number of people are confined in a small area with limited exits. Such facilities can represent equal or higher risks than similar uses in buildings."

- Project location within Safety Zones
- Group Recreation use
- Airspace Penetration potential

Mead & Hunt has summarized the Division's concerns and discussed these relative to the aeronautical and land use compatibility factors pertinent to this site. Principal concerns with group recreation are spectator-oriented facilities that draw large groups of people within confined spaces and the presence of young children who may not respond appropriately to get out of harm's way. The project maintains a low to moderate risk level based on *Handbook* guidelines (see 2011 *Handbook* excerpts attached to Mead & Hunt's letter for description of the 'Nature of Risk' and 'Basic Compatibility Policies' for the respective safety zones 2 and 5), and there have been no physical changes to the site or the manner in which the airport operates that would materially alter the original airport safety assessment. Thus, based on the characteristics of the project and the airport facility operations, the project would remain conditionally compatible with the airport; i.e., physical and operational constraints associated with the airport result in a low risk level to occupants on the proposed site and to aircraft in flight. Nevertheless, Mead & Hunt has augmented its recommendations to address Caltrans heightened concerns, as follows:

Revised Airport Safety Measures

1. Incorporate the two mitigation measures for enhanced exiting and fire sprinkler systems (as currently required in the FEIR).
2. Post maximum occupancy signage for 480 people inside the building (note: this occupancy level accommodates the maximum occupancy level of 345 people anticipated to be inside the recreational building during peak usage[§]).
3. Post maximum occupancy signage for 336 people for the outdoor soccer field area (note: this occupancy level accommodates the maximum occupancy anticipated for the soccer field and is set at the low end of the 2011 Handbook's acceptable intensity range).
4. Post maximum occupancy signage for 104 people in the outdoor warm-up area (note: this occupancy level exceeds the range anticipated for the warm-up field and is set at the low end of the 2011 Handbook's acceptable intensity range).
5. Post clearly marked exit gates and fencing around the outdoor field areas to further enhance safety in outdoor field areas.
6. Install and maintain fencing (chain link or equivalent) between the recreation and airport facilities to prevent trespass by children onto the airfield and protect site from any potential accident from planes that could veer off the runway; with a barrier that complies with FAA Advisory Circular 150/5370-10B, Standards for Specifying Construction of Airports, Item F-162, Chain Link Fences.
7. Prohibit installation of fixed-seating, including temporary bleachers, around the outdoor field areas; to avoid creating confined spaces and higher than anticipated per-acre intensity occupancy levels.
8. Prohibit conduct of any special events that would draw a large number of people to the site that would exceed the above-noted occupancy limits established for the recreation facility use.

[§] The discussion beginning on Page 27 of the January 24, 2012 Planning Commission Staff Report provided detailed information on the anticipated occupancy calculation.



Based on Mead & Hunt's analysis, the overall risk exposure is deemed minimal for the proposed use given the low activity of the airport, limitations on the airport's use and the location of the project near the middle of the runway rather than close to the runway ends; provided that all recommended airport safety measures are included. Caltrans has further recommended the project verify it would not penetrate protected airspace (the Mead & Hunt report noted that portions of the building and parking spaces near the runway may slightly encroach within the airspace). In order for the project to be supported revisions would need to be incorporated into the project plans and/or a part of project conditions of approval that address the above safety measures and assure that no penetration of protected airspace would occur.

Mead & Hunt also has suggested that the Commission *could* include other building fortifications -- such as increased roof strength, elimination of windows and skylights, and concrete wall construction -- if desired by the Commission to support the proposal. However, the building mitigations recommended in the FEIR (i.e., enhanced exits and fire sprinkler systems) and augmented recommendations listed above address the safety risks for the project.

Review of General Plan 2020 Policies

The City General Plan 2020 promotes general health & safety and general welfare of the community through implementation of goals, policies and objectives identified as important by the residents of San Rafael. It is expected that implementation of the general plan would promote the values and character of the community. Therefore, in making its land use decisions, the City must consider and weigh all of the policies determined to be applicable to a development project. All pertinent policies have been identified and evaluated in Exhibit 4a of the March 27, 2012 Staff Report. However, deference must be given to safety-related policies.

The City General Plan 2020 current Airport/Recreation land use category identifies the site as having valuable recreation and environmental characteristics, with airport, recreational and utility uses being designated as appropriate land uses for the property. The Noise Element does provide airport-related noise contours, for determining noise related compatibility. However, there are no airport land use compatibility policies in the General Plan 2020 Land Use or Safety elements specifically addressing safety. The following general Safety Element Policy is deemed applicable in this case:

"S-1. Location of Future Development. Permit development only in those areas where potential danger to the health, safety and welfare of the residents of the community can be adequately mitigated."

The *Handbook* has been relied upon to evaluate the proposed recreational development near the active private San Rafael airport facility (the airport operator also relies upon the *Handbook* to maintain their facility in compliance with the FAA and Division of Aeronautics standards). The Mead & Hunt airport safety analysis provides the information needed to determine compliance with this policy, and concludes that the development would not create unacceptable safety risks to aircraft or occupants using the facility with the inclusion of measures specified in its report.

Review of Marin County Department of Public Works Levee Maintenance Comments

The City also has received a recent letter from the County Department of Public Works (March 21, 2012, attached) that clarifies the County's position that it does not have maintenance obligations for portions of the levee surrounding the airport site that fall within County jurisdiction. Thus, the airport property owner maintains the primary incentive and responsibility for assuring the levees are maintained in good repair and condition. As noted in prior staff reports, the County cannot enter into a joint maintenance agreement with the owner for this levee system, which has not been designed to flood standards and is not in the flood control district. However, County DPW would issue grading



permits for the airport owner to maintain those sections of the levee that are within County jurisdiction. Revisions to the Use Permit *draft* conditions 8 & 9 are necessary to clarify that the airport property owner has a principal interest in maintenance of this levee system.

Staff also notes that the site and building design have been developed to respond the fact that the site is not protected by engineered levees, and, therefore, is more susceptible to potential flooding impacts. Accordingly, the building must be flood-proofed to preclude penetration by floodwaters, and the driveway has been elevated to permit emergency vehicle access in the event of site flooding.

Conclusion

The updated airport-safety review completed by Mead & Hunt has considered the private airport's characteristics and the intensity of recreational use being proposed in airport safety zones 2 & 5, and concluded that safety concerns can be mitigated. The project could be approved with conditions that incorporate the safety measures recommended by Mead & Hunt, and conditions recommended by staff to assure the use would remain compatible with the adjacent airport operations and surrounding residential, recreation and open space land uses. If deemed appropriate, the Commission should direct the applicant and staff to make changes to the project as necessary to support an approval for private recreational uses.

Staff will forward copies of public comments received after publication of the March 27, 2012 staff report and any additional information received on this project to the Planning Commission prior to or at the May 29, 2012 hearing.

Attachments

1. Mead & Hunt's May 16, 2012 response to Caltrans Division's letter, with attachments
2. Caltrans Division of Aeronautics March 9, 2012 letter
3. City of San Rafael April 10, 2012 response to Marin County DPW letter
4. Marin County DPW March 21, 2012 letter
5. San Rafael Airport Caltrans Permit



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May 16, 2012

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Sent via E-mail

Subject: *Caltrans Division of Aeronautics Comment Letter on the San Rafael Airport Recreational Facility – Mead & Hunt Responses*

Dear Mr. Tambornini:

As requested by City Planning staff, this letter provides Mead & Hunt's (M&H) response to the comment letter submitted by Caltrans Division of Aeronautics (Division) on March 9, 2012, regarding the proposed San Rafael Airport Recreational Facility (Project). On March 22, 2012, M&H participated in a conference call with Division staff Terry Barrie, Chief, Office of Aviation Planning, and Ron Bolyard, Associate Environmental Planner, to discuss the contents of the letter. The conclusions of this meeting are summarized below. At the City's discretion, the City may wish to use the information provided in this letter to formally respond to the Division's letter.

In October 2011, the Division published a new edition of the *California Airport Land Use Planning Handbook* (Handbook). Although the Handbook did not change appreciably from the earlier edition in terms of airport land use compatibility guidance, there is one notable change that affects the proposed Project. As indicated in the Division's letter, "group recreational uses" has been added to the list of prohibited uses for the area adjacent to runways (Safety Zone 5). The prior editions of the Handbook did not include this prohibition. The Handbook defines a "prohibited use" as a use that should not be permitted under any circumstances. The Handbook, however, does not provide a definition for a group recreational use or the rationale for this new prohibition.

Based upon our discussions with Division staff, they appear to have added group recreation to the list of prohibited uses for two reasons. One is that, as a "group" activity, it was presumed that the use would exceed the usage intensity (people per acre) limits suggested by the Handbook. Second, group recreation was presumed to cater to children and therefore should be restricted in the same manner as a children's school. Therefore, where the previous Handbook edition recommended prohibition of schools, Division staff added group recreation.

It should be recognized that the Handbook provides general compatibility planning guidance to local agencies and the public. The Handbook does not consider the unique operational characteristics of an

airport or specific qualities of a land use proposal. For this reason, the purpose of this letter is to reemphasize the aeronautical and land use compatibility factors that we believe make this Project conditionally compatible with the San Rafael Airport.

As noted in our 2008 Technical Report, any project that is located in proximity to an active airport is exposed to some level of risk of an aircraft accident. For San Rafael Airport, the probability of an aircraft accident occurring on the Project site is considered to be remote given the low-activity of the airport and the location of the site near the middle of the runway rather than close to the runway ends. Furthermore, other limitations on the airport's use along with proposed characteristics of the Project itself will also serve to limit the risks to the facility's users. Nonetheless, a community's perception of risk can vary. For this reason, the discussion below provides optional mitigation measures beyond what were provided in our 2008 report for use by the Planning Commission/City Council in addressing the community's concerns.

Division Comments

The Division's March 9, 2012 comment letter raised the following three concerns:

- **Project Location within Safety Zones:** In its letter, the Division contends that the Project is located in Safety Zones 3 and 5 while M&H's 2008 Technical Report indicates the Project's location in Zones 2 and 5. As can be seen in Attachments A and B, the Project is clearly within Zones 2 and 5 according to the 2011 *California Airport Land Use Planning Handbook* (Handbook). In our conference call, Division staff indicated that the report graphics were unclear but concurred that the Project is located in Zones 2 and 5.
- **Group Recreation:** As described above, fundamentally, the Project is a group recreation use which the 2011 Handbook recommends prohibiting in Safety Zones 2 and 5. Notably, prior editions of the Handbook did not include a similar prohibition. The Division's principal concern is with large spectator-oriented facilities attracting large groups of people to confined spaces. The presence of young children who may not appropriately respond to get out of harm's way is also of concern. The Division's letter requests that special attention be given to the protection of children. This topic is further discussed below as it is the most complex issue raised by the Division.
- **Airspace Penetration:** The Division's letter indicates that obstructions to the airport's airspace surfaces associated with new development could compromise the airport's Operational Permit issued by the Division. The Division will typically accept obstructions on one side of the runway, but not both. The Division noted concern with the row of parking nearest the airfield. Based on comments provided by city planning staff, we informed Division staff that this row of parking would be relocated. Note that although not specifically mentioned in the Division's letter, the building parapet, field lights and proposed landscaping would also penetrate the airport's airspace surfaces. Final grading and design of the site and selection of a shorter variety tree species would likely remove these airspace concerns.

Aeronautical and Land Use Compatibility Factors

The discussion below identifies the aeronautical and land use factors which we believe make the Project conditionally acceptable with the San Rafael Airport.

Aeronautical Considerations

If the San Rafael Airport were a busy public-use facility, the Project would clearly be an incompatible use. Instead, the airport is unique in that it is a private-use facility whose operations are severely constrained by aeronautical factors and the requirements of the Conditional Use Permit issued by the City. These constraints are discussed below.

- **Physical Constraints:** The airport has a very short runway length of 2,140 feet. This length restricts use of the airport to mainly small, light general aviation aircraft. Generally, in the event of an accident, less damage to buildings would be produced by smaller, slower aircraft than by larger, faster ones.

The runway is not equipped with a straight-in instrument approach procedure (e.g., GPS). This means that all flights are conducted only under visual and good weather conditions. Based on the accident data provided in the 2011 Handbook, general aviation accidents tend to be fewer and the consequences less severe under visual and good weather conditions.

The runway is not served by a parallel taxiway. Without a parallel taxiway, aircraft must taxi on the runway to access the ramp area. For busy airports, a parallel taxiway can enhance safety of the runway system by allowing aircraft to exit the runway environment. Safety at the San Rafael Airport is not significantly compromised without a parallel taxiway for three reasons: 1) activity at the airport is low; 2) pilots are very familiar with the airport's facilities, or lack thereof, because operations are restricted to only those based at the airport; and 3) pilots communicate with each other using a radio frequency specifically established for the airport (Unicom 122.7) and are thus aware of other pilots in the airport's operating environment.

- **Operational Constraints:** The airport's CUP issued by the City in March 2001 establishes several restrictions on the airport that limit activity at the facility. The CUP limits the airport's use to no more than 100 based aircraft. Airport management indicates that the airport has reached its capacity and aircraft operations are expected to remain at about 15,000 annual operations (41 daily operations).

The CUP also restricts use of the airport to only based aircraft. Specifically, the CUP prohibits flight training, commercial flight activity, public or semi-public use or activities, helicopters, charter flights, and transient (non-based aircraft) activity.

The CUP also prohibits overflights of the Santa Venetia and Contempo Marin neighborhoods. This results in a one-way-in/one-way-out flight route, wind conditions permitting. Essentially, all aircraft approach the airport from the east to land on Runway 22 and depart to the east over the marshlands. A closed-circuit traffic pattern is also prohibited. Therefore, no overflights of the Project site would occur.

- **Risk Level:** The highest concentration of people on the Project site is expected to be in Safety Zone 5, an area situated adjacent to the center portion of runways. The 2011 Handbook characterizes the risk level in this zone as low to moderate.

The types of accidents that commonly occur within Safety Zone 5 are ones involving an aircraft losing directional control and veering off the side of the runway. A pilot with operational control of his/her aircraft would steer away from populated areas. A pilot with an uncontrolled aircraft veering toward the Project site would attempt to decelerate¹ and spin his airplane away from the site in hopes to avoid striking an object such as a perimeter fence. Assuming a standard chain-link fence such as those found at FAA-funded airports², the chain-link mesh would act like a net to ensnare the aircraft and help to immobilize the plane. This snaring effect is accomplished in a manner similar to that used on aircraft carriers for halting incoming planes. An aircraft that is attempting to "spin away" from the fence would likely catch its wing in the chain-link mesh. Damage to the aircraft's wing, nose and landing gear caused by striking the fence mesh and posts also would help to further decelerate and arrest the aircraft.

Figure 1: Single-engine piston aircraft that crashed into a chain-link fence at Fullerton Airport, California.



Also, the types of airplanes operating out of San Rafael Airport are small light-weight aircraft weighing less than 4,000 pounds when fully loaded³. For comparison purposes, these aircraft weigh less than a standard sport utility vehicle (SUV)⁴. Although not impenetrable, a perimeter fence separating the airport and the Project would aid in immobilizing a small aircraft as shown in Figure 1. Given the overall width of an airplane (from wingtip to wingtip), the force of the impact is distributed across a much larger length of the fence thereby enabling immobilization of the aircraft. By comparison, a vehicle being narrower than an airplane may strike only one panel and drive right through the fence.

¹ An aircraft landing on the runway is typically operating at speeds of about 50 to 75 miles per hour.

² Federal Aviation Administration Advisory Circular 150/5370-10B, Standards for Specifying Construction of Airports, Item F-162, Chain-Link Fences, provides the following minimum standard specifications: 6-foot tall fence with 9-gauge galvanized steel wire in a 2-inch mesh; 12-inch high barbed wire section made up of 2-strands of 12-½ gauge zinc-coated barbed wire with 4-point barbs able to withstand a load of 250 pounds applied vertically; 7-gauge marcelled steel tension wire; galvanized steel pipe for posts, rails and braces; posts spaced at not more than 10-feet apart; concrete footings meeting requirements of Caltrans Section 90-10 Minor Concrete with a minimum 28-day compressive strength of 2,500 psi.

³ Piper (PAZ8R) 2,150 lbs.; Mooney (M20J) 3,374 lbs.; Cirrus (SR22) 3,400 lbs.; Beech Bonanza (G36) 3,650 lbs.

⁴ Ford Explorer 4,463 lbs.; Nissan Pathfinder 4,779 lbs.; Chevy Tahoe 5,524 lbs.

Land Use Considerations

The Project is fundamentally considered a group recreational use. The 2011 *California Airport Land Use Planning Handbook* (Handbook) prohibits this use in certain portions of the airport environs. Given the characteristics of the Project, however, we believe that the Project does not exactly fall under the standard definition for the following reasons:

- **Large Groups:** Group recreational uses typically include large groups of people. Exposing large groups of people to high levels of risk would be unacceptable.

The 2011 Handbook establishes intensity limits (maximum number of people per acre) for various portions of airport environs. The highest concentration of people on the Project site is expected to be in Safety Zone 5. The 2011 Handbook does not classify Safety Zone 5 as a high-risk zone given its location lateral to the runway and away from the runway ends. Within Zone 5, the Handbook recommends an average intensity limit of 70 to 100 people per acre and a single-acre intensity of 210 to 300 people per single acre during typical busy period usage.

Based on M&H's 2008 Technical Report, the Project would not exceed the average or single-acre intensity limits recommended by the state. For example, during the normal peak periods, the Project is anticipated to have an average of about 48 people per acre (475 people ÷ 10 acres). Approximately 256 people per single-acre are anticipated in the most intensive portion of the site, which is anticipated to be the recreational building (410 people ÷ 1.6-acre building footprint).

Optional Mitigation Measures:

A major concern with regard to a group recreational uses, with or without children being involved, is that large numbers of people may be confined within a small area where quick egress would not be possible in the event of an impending aircraft accident or its aftermath. The highest risk use would be a large stadium in that such a structure neither allows for quick exiting nor provides the protection from a small aircraft that a building with a roof would afford. Avoiding the use of fixed seating and confining fencing in the outdoor recreation areas would greatly reduce this concern.

Another concern is that special events at the Project site may attract significantly more people than under normal peak use. Precautions, such as temporary suspension of airport operations, would be needed to ensure that people are not unduly exposed to risk.

Establishing a condition in the Project's Conditional Use Permit (CUP) and requiring signs specifying the maximum number of people permitted in the recreational building and outdoor fields would be desirable. Based on the single-acre intensity limits recommended in the 2011 Handbook, the acceptable intensity range for each component use is:

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

These intensity ranges are significantly lower than the occupancy loads permitted by the building code. Under the building code, for example, the maximum occupancy load of the recreational building is 754 people⁵ while the Handbook would allow a maximum of 480 people. The maximum intensity of the Project should be set at the lower end of the above-noted intensity ranges given the Project's proximity to an active runway and that children will be on the premises.

- **Vulnerable Occupants:** Group recreational uses are among several types of uses of special concern with regard to aircraft accident risks. These uses often include children, elderly or disabled who may have difficulty knowing how to vacate the premises in the event of an aircraft crash or maybe physically unable to do so. As noted in the 2011 Handbook, the public generally affords special attention to the protection of children, including facilities that cater to these groups such as recreation/after-school centers and sports facilities.

Buildings can provide substantial protection from the crash of a small airplane, such as those operating at the San Rafael Airport. To enhance the safety of vulnerable occupants, incorporating special risk-reduction features into the building design may be appropriate. There currently is no set standard or set precedence indicating the appropriate risk-reduction features that would mitigate different levels of risk of an aircraft accident. The decision must be based on the type of land use proposed, proximity to the runway ends, and the community's sensitivity to the airport and its associated hazards.

Two mitigation measures are currently incorporated into the Project to enhance the safety of the building occupants in the event of an aircraft accident. These measures include an additional emergency exit beyond the building code requirement and an enhanced sprinkler system that would be designed in a manner that the entire system would not be disabled by an accident affecting one area. These building design improvements are considered to be adequate in mitigating the potential risk of an aircraft accident.

Optional Mitigation Measures:

Below is a list from our 2008 Technical Report identifying additional risk-reduction construction features that could be incorporated into the building design to further enhance safety, if warranted.

- No skylights
- Limited number of windows
- Upgraded roof strength
- Concrete walls

Safety enhancements of the outdoor areas could include:

⁵ Source: San Rafael Airport Sports Center Aeronautical Safety Review Technical Report prepared by Mead & Hunt in 2008.

- A sufficient number of clearly marked exit gates if a fence is used to separate the outdoor fields from the parking lot or other portions of the facility.
 - Fencing separating the Project from the Airport should be sufficient to prevent children from accessing the airfield. Access gates to the Airport should be prohibited.
- **Confined Spaces:** Group recreational uses often include fixed seating (e.g., bleachers) or other physical barriers which can restrict a person's ability to escape the area of impact.

No fixed seating is proposed in the recreational building or around the outdoor soccer and warm-up fields. Spectators are anticipated to be in the designated viewing area in the building (which does not have fixed seats), or to stand or use folding chairs to view activities on the indoor and outdoor fields.

Optional Mitigation Measures: The CUP for the Project should specify the prohibition of fixed seating around the outdoor fields.

Conclusion

For the reasons noted above, Mead & Hunt concludes that the overall risk exposure is acceptable despite the Project's proximity to an active airport. However, given the community's perception of risk, the Planning Commission may wish to establish restrictions beyond what Mead & Hunt recommended in its 2008 Technical Report. The mitigation measures provided above are options for further reducing the perceived risk.

If you have any questions or require additional information, please contact me or Ken Brody at 707-526-5010.

Sincerely,

MEAD & HUNT, Inc.



Maranda Thompson
Aviation Planner

Attachments A and B: Safety Zone Exhibits

Nature of Risk

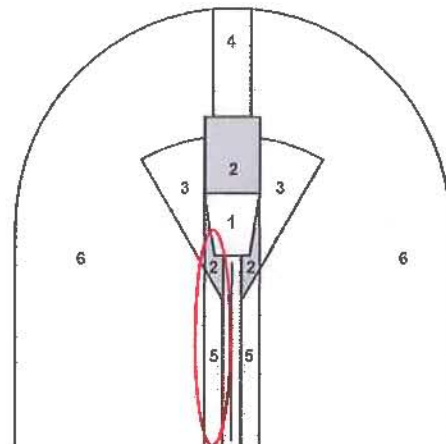
- Normal Maneuvers
 - Aircraft overflying at low altitudes on final approach and straight-out departures
- Altitude
 - Between 200 and 400 feet above runway
- Common Accident Types
 - Arrival: Similar to Zone 1, aircraft under-shooting approaches, forced short landings
 - Departure: Similar to Zone 1, emergency landing on straight-out departure
- Risk Level
 - High
 - Percentage of near-runway accidents in this zone: 8% - 22%



FINAL APPROACH

Basic Compatibility Policies

- Normally Allow
 - Agriculture; non-group recreational uses
 - Low-hazard materials storage, warehouses
 - Low-intensity light industrial uses; auto, aircraft, marine repair services
- Limit
 - Single-story office buildings
 - Nonresidential uses to activities that attract few people
- Avoid
 - All residential uses except as infill in developed areas
 - Multi-story uses; uses with high density or intensity
 - Shopping centers, most eating establishments
- Prohibit
 - Theaters, meeting halls and other assembly uses
 - Office buildings greater than 3 stories
 - Labor-intensive industrial uses
 - Children's schools, large daycare centers, hospitals, nursing homes
 - Stadiums, group recreational uses
 - Hazardous uses (e.g. aboveground bulk fuel storage)



Refer to Chapter 3 for dimensions.

	Maximum Residential Densities	Maximum Nonresidential Intensities	Maximum Single Acre
	Average number of dwelling units per gross acre	Average number of people per gross acre	2x the Average number of people per gross acre
Rural	See Note A	10 – 40	50 – 80
Suburban	1 per 10 - 20 ac.	40 – 60	80 – 120
Urban	0	60 – 80	120 – 160
Dense Urban	0	See Note B	See Note B

Note A: Maintain current zoning if less than density criteria for suburban setting.

Note B: Allow infill at up to average intensity of comparable surrounding uses.

FIGURE 4C

Safety Zone 2 – Inner Approach/Departure Zone

Nature of Risk

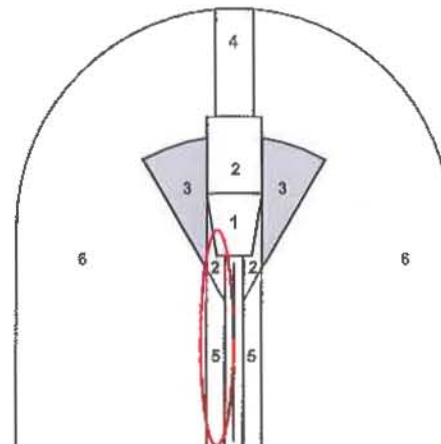
- Normal Maneuvers
 - Aircraft—especially smaller, piston-powered aircraft— turning base to final on landing approach or initiating turn to en route direction on departure
- Altitude
 - Less than 500 feet above runway, particularly on landing
- Common Accident Types
 - Arrival: Pilot overshoots turn to final and inappropriately cross controls the airplane rudder and ailerons while attempting to return to the runway alignment causing stall, spin, and uncontrolled crash
 - Departure: Mechanical failure on takeoff; low altitude gives pilot few options on emergency landing site; or, pilot attempts to return to airport and loses control during tight turn.
- Risk Level
 - Moderate to high
 - Percentage of near-runway accidents in this zone: 4% - 8%



TURNING TO FINAL

Basic Compatibility Policies

- Normally Allow
 - Uses allowed in Zone 2
 - Greenhouses, low-hazard materials storage, mini-storage, warehouses
 - Light industrial, vehicle repair services
- Limit
 - Residential uses to very low densities
 - Office and other commercial uses to low intensities
- Avoid
 - Commercial and other nonresidential uses having higher usage intensities
 - Building with more than 3 aboveground habitable floors
 - Hazardous uses (e.g., aboveground bulk fuel storage)
- Prohibit
 - Major shopping centers, theaters, meeting halls and other assembly facilities
 - Children's schools, large daycare centers, hospitals, nursing homes
 - Stadiums, group recreational uses



Refer to Chapter 3 for dimensions.

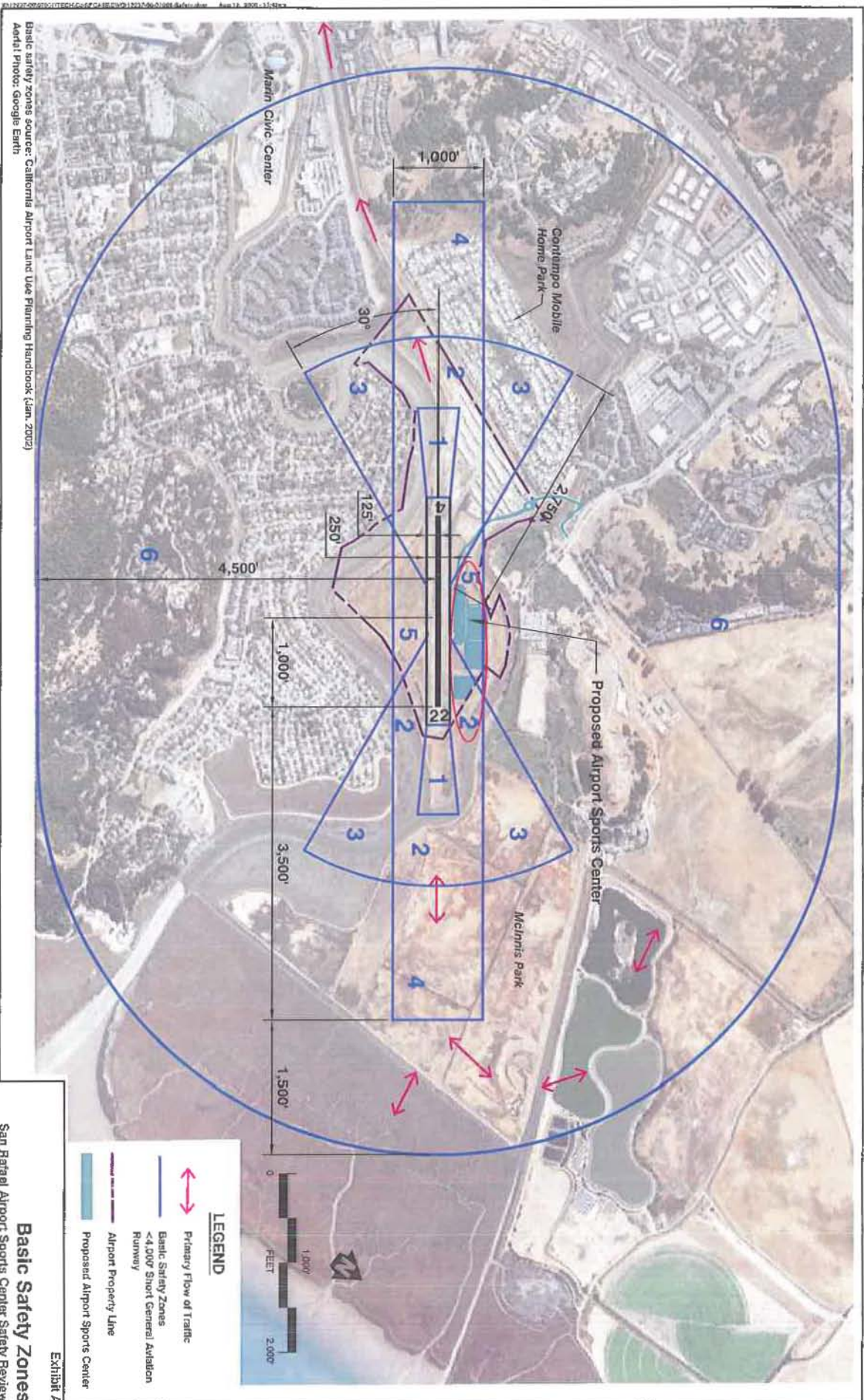
	Maximum Residential Densities	Maximum Nonresidential Intensities	Maximum Single Acre
	Average number of dwelling units per gross acre	Average number of people per gross acre	3x the Average number of people per gross acre
Rural	See Note A	50 – 70	150 – 210
Suburban	1 per 2 - 5 ac.	70 – 100	210 – 300
Urban	See Note B	100 – 150	300 – 450
Dense Urban	See Note B	See Note B	See Note B

Note A: Maintain current zoning if less than density criteria for suburban setting.

Note B: Allow infill at up the average of surrounding residential area.

FIGURE 4D

Safety Zone 3 – Inner Turning Zone



Basic safety zones source: California Airport Land Use Planning Handbook (Jan. 2002)
Aerial Photo: Google Earth

Basic Safety Zones
San Rafael Airport Sports Center Safety Review

Exhibit A

DEPARTMENT OF TRANSPORTATION

DIVISION OF AERONAUTICS – M.S.#40

1120 N STREET

P. O. BOX 942874

SACRAMENTO, CA 94274-0001

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FAX (916) 653-9531

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March 9, 2012

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MAR 14 2012

COMMUNITY DEVELOPMENT
CITY OF SAN RAFAEL

Mr. Kraig Tamborini
City of San Rafael
Planning Division
P.O. Box 151560
San Rafael, CA 94915-1560

Dear Mr. Tamborini:

The San Rafael Airport Recreational Facility

The California Department of Transportation (Department), Division of Aeronautics (Division), reviewed the above referenced project's Draft Environmental Document and sent comments in a letter dated May 1, 2009 and also the Negative Declaration in a letter Dated February 24, 2006. Since those reviews, the Division updated the California Airport Land Use Planning Handbook (Handbook) in 2011. State law requires airport land use commissions to guide land use decisions near public use airports. Because the San Rafael Airport is not a public use airport, it lacks this benefit. Please see the following for new Division guidance regarding this project.

The proposal is for the construction of a recreational facility adjacent to the San Rafael Airport. The facility will consist of a 38-foot tall recreational building housing indoor fields and courts with spectator seating, offices, food and beverage service, arcade and meeting rooms, two outdoor fields with exterior lighting, landscaping, parking and fencing improvements.

The project is located in Safety Zones 3 & 5 according to the updated Handbook. In these safety zones, the Handbook recommends prohibiting group recreational uses. In general, society gives special attention to protection of children. Special consideration should be given to facilities that cater to children such as recreation and sports facilities. We ask the City of San Rafael consider this new information in future decisions regarding this project.

The proposed parking area south of the recreational facility adjacent to the San Rafael Airports' runway violates Federal Aviation Regulation (FAR) Part 77.17 obstruction standards. Vehicles using this parking area may penetrate the 7:1 transitional surface and would be defined as obstructions to air navigation. According to FAR Part 77.17, an existing object, including a mobile object, is, and a future object would be an obstruction to air navigation if it of greater height than any of the following heights or surfaces: FAR Part 77.17 section (a)(5) The surface of a takeoff and landing area of an airport or any imaginary surface established under FAR Parts 77.19, 77.21, or 77.23, and section (b)(3) 10 feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road. New construction projects must meet or exceed the minimum design standards for a permitted airport. in

Mr. Kraig Tamborini
March 9, 2012
Page 2

accordance with the California Code of Regulations, Title 21, Article 3, "Design Standards, Airports Only."

Vehicles using the row of parking closest to the runway, taller than 5 feet will be an obstruction to air navigation. Failure to maintain obstruction free airspace may negatively impact the airport's permit and use of the airport.

Sincerely,



RON BOLYARD, Aviation Planner
Office of Aviation Planning

c: Marin County ALUC, San Rafael Airport



MAYOR GARY O. PHILLIPS
COUNCILMEMBER DAMON CONNOLLY
COUNCILMEMBER BARBARA HELLER
COUNCILMEMBER MARC LEVINE
COUNCILMEMBER ANDREW CUYUGAN MCCULLOUGH

COMMUNITY DEVELOPMENT DEPARTMENT
PHONE: 415-485-3085
FAX: 415-485-3184

April 10, 2012

Eric Steger, Assistant Director
Marin County Department of Public Works
PO Box 4186
San Rafael, CA 94913-4189

Re: San Rafael Airport Property Levee System

Mr. Steger:

Thank you for contacting me to clarify Marin County Public Works concerns and position regarding the levee system that surrounds the San Rafael Airport site. Based on your letter of March 21, 2012, and subsequent phone conversations with you and Tracy Clay, it is understood that the County does not have an obligation to maintain any portion of the levee system surrounding the airport site, including those portions that were placed on state and county lands. Marin County Public Works has performed work on this levee system, in order to minimize potential for loss of life or property damage, on the following occasions:


- Mid-1990's – Material from a Marin County Flood Control District dredging project was stockpiled within the County jurisdiction for use for future levee repairs.
- 2005 – Emergency repair was completed to levee sections in the County jurisdiction.
- 2009 – Excavation material from offsite projects was placed on levee sections within the County jurisdiction.

It has been further clarified that the airport property owner can request grading permits from the County in order to maintain portions of the levee that fall within County jurisdiction, in order to protect life and property at the site. In fact, a grading permit was issued to the airport owner to perform levee maintenance on sections of the levee within County jurisdiction in 2001 through 2003 (grading permit GP00-11 was issued on 2/16/01, and three extensions were granted between 8/17/01 and 2/25/03). City staff shall review the draft project conditions of approval and ensure that there is no reference made to joint monitoring and maintenance of the entire levee

system. It will remain incumbent upon the applicant to maintain the levee system consistent with the City of San Rafael General Plan 2020 Policy S-20.

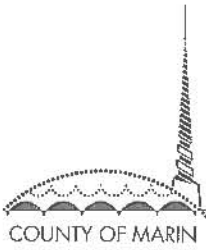
Thanks again for your assistance.

Sincerely,



Craig Tambornini
Senior Planner

Cc: Paul Jensen, Community Development Director
R Herbst, San Rafael Airport
File



DEPARTMENT OF PUBLIC WORKS

People serving people.

Robert Beaumont
DIRECTOR

March 21, 2012

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PLANNING

Administration
PO Box 4186
San Rafael, CA 94913-4186
415 473 6528 T
415 473 3799 F
415 473 3232 TTY
CRS Dial 711
www.marincounty.org/pw

Mr. Kraig Tambornini, Senior Planner
City of San Rafael Community Development
1400 Fifth Avenue, Third Floor
San Rafael, CA 94901

RE: San Rafael Airport Recreational Facility
397-400 Smith Ranch Road
Comments on Report to Planning Commission for March 27, 2012

Accounting

Dear Mr. Tambornini:

Airport

The Marin County Public Works Department has reviewed the subject report and recommended conditions of approval for the San Rafael Airport Recreational Facility project and has a few comments.

Building Maintenance

Capital Projects

Maintenance of the site perimeter levee system is discussed in the staff report and there are a few related proposed levee maintenance conditions of approval. Public Works would like to clarify that neither the County of Marin nor the Marin County Flood Control and Water Conservation District are responsible for levee maintenance around the San Rafael Airport site, including portions of the levee on State tidelands where the County of Marin is a public trust lands administrator.

Certified Unified Program Agency (CUPA)

Communications Maintenance

County Garage

Reference to the county's responsibility to maintain the levees to 9' MSL is not accurate. The county is not responsible for maintaining any part of the subject levee system; please remove the reference in the proposed conditions of approval of "joint monitoring and maintenance of the entire levee system." We do, however, concur with the basic condition that the developer is responsible to maintain the levee system consistent with the City's General Plan 2020, Policy S-20. Any work on the levee outside of the City of San Rafael's jurisdiction may, depending on the scope and quantity of material involved, require a grading permit from County Public Works.

Disability Access

Engineering & Survey

Flood Control & Water Resources

Land Development

Should you have any questions or would like to discuss further, please contact me at (415) 473-2754. Thank you for your consideration.

Purchasing

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Very truly yours,

Reprographic Services

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Road Maintenance

Eric Steger
Assistant Director

MAR 26 2012

Stormwater Program

C: Bob Beaumont, Director

PLANNING

Transportation & Traffic Operations

Waste Management

DEPARTMENT OF TRANSPORTATION

AERONAUTICS PROGRAM M.S. #40

1120 N STREET - ROOM 3300

P.O. BOX 942873

SACRAMENTO, CA 94273-0001

(916) 654-4959

TDD (916) 654-4014

FAX (916) 653-9531



Marin Ranch Airport
San Rafael Airport
Marin County

March 25, 1999

Mr. Joe Shekou
2173-D Francisco Boulevard
San Rafael, CA 94901

Dear Mr. Shekou:

We are pleased to enclose the corrected Airport Permit No. Mm-005 for the San Rafael Airport in Marin County. This corrected permit reflects a change in name and ownership for the airport.

We have shown the physical status and the operating conditions for the airport on the permit. Prior to making any physical change to the airport, the airport's owner must notify the California Department of Transportation, Aeronautics Program, to ensure that the proposed change does not affect the status of the airport's permit.

Also enclosed is a display certificate for the airport that you can post near the airport. If you have any questions, or if we can be of assistance in the future, please do not hesitate to contact us.

Sincerely,

Original Signed by

DANIEL R. GARGAS
Aviation Consultant

Enclosures

bc: DReynolds - District 04
BSpano
Permit File

DRG:jef

u:\z\permits\ca35-SnRafaeltr.doc

[Signature] 3/24/99 *[Signature]* 3/24/99

State of California

AIRPORT PERMIT

FOR A SPECIAL-USE AIRPORT

Pursuant to California Public Utilities Code Section 21662, the California Department of Transportation, Aeronautics Program, hereby issues this corrected Airport Permit No. Mrn-005 for the:

SAN RAFAEL AIRPORT
397 Smith Ranch Road
San Rafael, California

Latitude: 38° 00' 55" N.
Longitude: 122° 31' 20" W.

Owned by:

San Rafael Airport, LLC
c/o Joe and Haidy Shekou
2173-D Francisco Boulevard
San Rafael, California 94901

This corrected permit reflects a change in name and ownership of the airport and supersedes the permit dated November 5, 1990. This permit is subject to the following conditions:

1. The airport is to be maintained in accordance with California Code of Regulations, Title 21, Sections 3525 through 3560.
2. The designated traffic pattern is as follows:
 - Right traffic for Runway 22.
 - Left traffic for Runway 04.
 - 1000 feet AGL.
3. The airport is approved for day and night use.
4. A variance is granted to the width of primary surface due to a drainage ditch.

5. A variance is granted to the 7:1 transitional surface which is penetrated by the dike to the north.
6. A variance is granted for a reduced runway length of 2140 feet.
7. A variance is granted to the 20:1 approach surface for Runway 04 for a hill that is 4,500 feet to the southwest.
8. 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 physical status of this special-use facility is described below:


Runway 4/22

- Physical length of the runway is 2140 feet.
- Runway is lighted.

This 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 Department to suspend, revoke, correct, or amend the permit pursuant to the California Public Utilities Code or the California Code of Regulations.

The airport's owner shall apply to the Department for an Amended/Corrected Airport Permit prior to any physical or operational changes at the airport which affect the conditions or physical status above or for a change in airport ownership.

Failure to maintain the airport in accordance with the conditions of this permit is a violation of Public Utilities Code Section 21666 and is punishable as a misdemeanor.


MARLIN BECKWITH, Program Manager
Aeronautics Program
Department of Transportation
State of California

March 25, 1999
Date

State of California

Department of Transportation
Division of Aeronautics

has issued an

AIRPORT PERMIT



For SAN RAFAEL AIRPORT

Owned by San Rafael Airport, LLC

Operated by _____

Located at 397 Smith Ranch Road, San Rafael, California

Latitude 38° 00' 55" N.; Longitude 122° 31' 20" W.

Has received Permit No. Mm-005

Operation of an airport is hereby authorized under this permit issued pursuant to the laws of the State of California and the rules and regulations of the Department of Transportation subject to any conditions imposed by the Department. This display certificate is not the Airport Permit.

March 25, 1999
DATE


MARLIN BECKWITH
CHIEF, Division of Aeronautics



DATE: May 24, 2012

TO: Planning Commission Chair Viktoriya Wise, and Planning Commissioners

FROM: Kraig Tambornini, Senior Planner

SUBJECT: **May 29, 2012 Planning Commission Public Hearing - Public Comments Summary; 397-400 Smith Ranch Road (San Rafael Airport Recreational Facility)**

As the Commission is aware, a substantial number of comments have been received for this project since the initial application was filed March 1, 2005. All of the project comments have been forwarded to the Commission throughout the review process, and are available for review in the project files. The intent of this memorandum is to summarize comments received to date. Any additional written testimony received prior to the public hearing shall also be presented to the Planning Commission by separate memorandum or at the public hearing.

Comments of Opposition or Concern

Hundreds of individual letters, emails and petition signatures have been received expressing opposition or concerns with the project. These include comments from residents in Santa Venetia, Captains Cove, Contempo Marin and Smith Ranch Homes neighborhoods located near and adjacent to the project site. Comments have also been received from Caltrans Division of Aeronautics, Marin County Supervisors, County Public Works, County Parks, County Attorney, HOA's, and interest groups including Marin Conservation League, Gallinas Creek Watershed Council, among others. The Center for Biological Diversity, an environmental nonprofit group, also sponsored an email campaign that thus far has resulted in over 4,110 responses from individuals concerned with impacts on clapper rails; including a reported 145 San Rafael residents and 403 Marin County residents (a hardcopy printout of respondents has been published and CD made of all emails received to date). Primary concerns identified with the project are as follows:

- *The project would exceed the development intensity anticipated by the declaration of restrictions*
- *More intensive land uses of the airport site could be proposed if the recreational use fails*
- *The project poses a safety risk to aircraft by placing structures near the runway.*
- *The project poses a safety risk to potential users of the facility, particularly children, as a result of a potential airplane crash at the project site*
- *There is a health risk from lead used in aviation gas*
- *Outdoor field lighting would create glare and change the residential character at night*
- *The project would create noise especially in evenings disrupting the current peace and quiet enjoyed in the area*
- *Alcohol sales would result in potential nuisance issues including loitering, noise, accidents, etc.*
- *Traffic noise would negatively affect nearby residents given that the access road borders homes at Captains Cove and Contempo Marin residential area*
- *Proposed late hours of operation are not compatible with the surrounding residential uses*
- *Vehicle headlights may shine into homes located near the access road*
- *Project-related traffic would increase delays and hazards at side street intersections with Smith Ranch Road, particularly Yosemite Road, due to existing conditions that limit visibility of oncoming traffic*



- *The project has only one access, over a bridge, that limits access in an emergency*
- *Development is proposed below flood elevation in an area that is not protected with adequate levees, which creates a public liability and safety risk for occupants*
- *The project would preclude ability to reclaim low lying lands in response to sea level rise*
- *Placement of a large building on the site would result in a sense of loss of open space particularly from McInnis Park, trails along the creek, Gallinas Creek waterway and adjacent residences*
- *The project would adversely impact the natural environment due to building on historic wetlands, increasing drainage into Gallinas Creek and impact on endangered species such as the clapper rail*

Comments of Support

Hundreds of individual letters, emails and signed petitions have been received in support of the project from residents, interested parties and interest groups. This includes letters of support from San Rafael Chamber of Commerce, Hispanic Chamber of Commerce, Marin County Sheriff's office, Marin Soccer League, San Rafael Youth Soccer Club, and Marin Women's Soccer League, among others. A petition drive sponsored by the facility soccer operator has generated 297 emails in support of the project (to date); reportedly from potential local users in Marin and Sonoma County area. Primary comments in support of the facility include the following:

- *The project would provide vital recreational facilities and services needed in the community, particularly opportunities for all-weather and year round play for adult and youth leagues*
- *The facility is complementarily placed near existing regional recreational uses and fields at McInnis Park*
- *Marin County lacks adequate number of quality soccer fields available making it difficult to schedule league games and requiring people to travel outside of the area and more fields are needed to meet local demand*
- *This facility will increase recreational opportunities, particularly for Marin youth, which is important and needed*

Conclusion

In general, development that is proposed within the City urban boundary and consistent with the General Plan 2020 land use designation, and policies, should be encouraged and promoted; although development at the "highest and best" level of intensity is not guaranteed. As the Commission is aware, testimony received on discretionary zoning entitlements are an important and integral part of the decision-making process. Such public input and review helps establish whether a project would adequately promote community values, as well as whether any revisions should be required to assure that a project would harmoniously integrate with surrounding land uses, and/or respond to community needs or concerns.

Public review of this project has resulted in mitigations being required, and draft conditions recommended in response to concerns with land use compatibility, safety and the environment. If the project is supported, the Commission may consider requiring further revisions or conditions in response to all testimony received and its own evaluation of the project's merit.

Attachment(s):

Comments received after publication of the March 27, 2012 PC Staff Report
CD Center for Biological Diversity Emails received through March 2012 & List through May 2, 2012

Comments of Opposition

LINDA LEVEY
1515 VENDOLA DRIVE
SAN RAFAEL • CALIFORNIA • 94903
P 415-499-3411 • F 415-507-1590
LINDA@SANTAVENETIA.ORG

May 24, 2012

San Rafael Planning Commission
c/o Kraig Tambornini
City of San Rafael
1400 Fifth Avenue
San Rafael CA 94901

Re: San Rafael Airport Recreational Facility – Merits of the Project

Dear Planning Commissioners:

It is hard to know what to say, what is important, when trying to put into words how devastating this project will be for our neighborhood. And I know you have heard it all, and I appreciate your time, and I really don't want to bore you to tears, but... here goes...

I grew up in the City of San Rafael and have lived in Marin County for almost 50 years, the last 23 in Santa Venetia. I have attended countless meetings regarding not only this project, but many land use projects including past projects on the Airport.

There are numerous problems with the Airport, with this site, and with this project. It is hard to not speak to ALL of the issues, but I know others have done so, and I hope you have heard them. I would like to make a quick mention and add my voice to theirs in opposition of the havoc this will wreak on our watershed, our clapper rails, our night skies, our quiet lives...

But the main points I wish to address are about my sense of FAIR-ness. I know I have addressed this in past meetings, but perhaps that was not the best time – I believe now is that time – and thankfully we are past the “technical stuff” (not my forte’) and onto the “merits” where hopefully you will take into account the un-FAIR-ness of this project for our neighborhood.

I have two (sort of) specific points:

1. Master Use Permit Violations / Bad Neighbors

According to the FEIR, there are many aspects of the project that will be controlled, maintained, and monitored by Airport Management. The "Airport" (Owner, Manager, Operator) have not been good neighbors. They have broken previous promises to both the City and the neighborhoods. They have violated the rules of their current Master Use Permit (MUP) (this has been documented with the City of San Rafael) but yet their MUP has not been revoked (as is a condition in that agreement). Why would/should they be afforded more opportunities?

As stated in the 1/24/12 Staff Report: *"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?"* And the report goes on to speak about monitoring and staffing but states: *"There are no long-term monitoring requirements that would require periodic, ongoing assessments to be conducted."*

This has been our problem all along. The City is the only overseer of this private Airport and has minimal oversight. More recently, while the Airport has been trying to get this project approved, they have responded more quickly to complaints, but in the past (and I believe the future), have not and will not play by the rules.

For the 11/15/11 meeting, we submitted a listing of violations regarding the Master Use Permit. I have attached that list. I was going to attach the complete documentation, but it's a whole lot of paperwork. So, rather than burden the Planning Department, please advise if you would like to review all, or specific items, of the documented violations and if so, I will prepare and bring with me on Tuesday 1/29/12 for your perusal.

Most of the projects on the Airport have been contentious and complaints have included such important issues such as illegal fill and extending the runway without a permit. The permit that was approved for the increased hangars came with promises to protect our neighborhood with landscaping/screening and as you know, that never happened.

I ask you to truly consider the past actions of the Airport when deciding if you are going to let them move forward with yet another project on this site.

2. Declaration of Restrictions – Broken Promises

We (the entire County of Marin) were promised low-density on this site in exchange for high-density down the road. This is a bargaining chip used in many, many land use projects. Currently, while we are seeing new projects use this same process as a way to get their projects approved, at the same time we are seeing older agreements ignored. What does this do to the trust? And as to this specific agreement – why should we be punished because the lawmakers at the time did not properly execute the document protecting us and adhering to what was agreed to (as attested/agreed to at different

times by then-Supervisor Roumiguere, then-County Counsel Maloney, and (I believe) then-Mayor Mulryan, and as documented in the minutes from the 1983 BOS meeting).

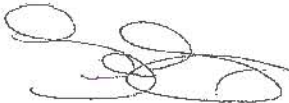
For the 11/15/11 meeting, I submitted a letter outlining my argument related to the Declaration of Restrictions and that documentation. I have once-again included that packet in this submittal. As mentioned in this letter, and as attested to at the 1/24/12 meeting (see transcription below), City Staff is insisting that there was no agreement or promise, for lesser density. I believe that to be an erroneous conclusion and I hope you will agree.

"And lastly with regard to the Shute Mihaly letter in the draft EIR, they had made some reference that the Deed Restriction was required as a mitigation measure - that's not supported by the evidence in the record. In fact, the County hasn't made that claim, the County has just said that their opinion is that they question that the proposed project may conflict with the intent of the Deed Restriction so they're not raising that as a concern, they're a party to the agreement. I think that the City and the County have both fully analyzed what the Deed Restriction says, what the record says, and we're certain that it wasn't required for a transfer of development intensity or for any other purpose than at the time it was something that was imposed on the property for purposes of limiting the types of land uses on the property. So there's no question that it's not a mitigation measure from prior development."

To sum it up, the main issue, the Trojan Horse per se, I see with this project is the rezoning. We all know that once the rezoning is allowed and the Declaration of Restrictions is lifted, all bets are off. We have no assurances that the building will be built, the "improvements" will be made, and/or how long all of that will take and/or how long it will stay in business. Past promises have not been kept. Future promises? It's anyone's guess.

Again, for these and the many other concerns brought up during these many meetings, I stand with my many neighbors in asking you to deny this project on its merits.

Thank you for your time,



Linda Levey

To: Kraig Tambornini, Senior Planner, City of San Rafael, CDA
Please accept the following into the record November 15, 2011

**San Rafael Airport Soccer/Recreational Facility
VIOLATIONS REGARDING THE MASTER USE PERMIT**

From MUP Review January 11, 2005:

4. This Master Use Permit does not have an expiration date. However, the Master Use Permit shall be reviewed by the Planning Commission for compliance with project conditions of approval one and two years after the Master Use Permit is approved. As a part of these compliance reviews, the Planning Commission may modify the Master Use Permit and Environmental and Design Review Permit conditions of approval. **If there are any violations to these conditions of approval or the Municipal Code in the future, the Planning Commission has the ability to consider an amendment or revocation to the Master Use Permit.**

In order to show lack of oversight, examples of bad management, and violations to the Master Use Permit, we have compiled a list of documented violations.

Because of the excessive amounts of violations, we have put into four categories: Non-aviation Uses, Land Use Violations, Safety Violations, and Bad Neighbor Behavior.

Please note; this is a partial list only, due to the late hour and excessive work required. Further documentation can be supplied if requested.

This Applicant/Property Owner has shown a poor track record with this property, poor stewardship of the land, disregard for the environment, and unwillingness to abide by previous agreements. City Officials have also shown a poor track record in enforcement of the Master Use Permit and following up on complaints from our neighborhood.

Because of the history of non-compliance to the Master Use Permit as well as other code regulations, it is unfathomable for us to believe that the Applicant/Property Owner will be forthcoming in mitigating, after-the-fact, such potential significant impacts such as noise and lights.

If City Staff and Planning Commission feel that a strenuous review of the Master Use Permit is recommended to bring their house in order, we will supply the information/correspondence listed below.

Below is the list of documented events, email correspondence (between City, County, State, and other Agencies or Officials) proving documented examples of violations and bad behavior:

Master Use Permit Violations

2010-01-22.Email.KraigReViolations
2009-06-23.Craigslist.CarStorageRental
2009-06-23CraigslistWarehouseRental
2009-10-21.Email.Kraig
2009-12-23.MarinJ.FoodBankEvent
2010-01-20.Craigslist.Wood
2010-02-19.RotaryCrabFeastEvent
2010-05-15.CIPBenefitEvent
2010-07-02.SanRafaelPatchReAirport
2011-07-06.Craigslist.LoungeEventRental
2010-08-04.Picture.Disking.Final
2011-08-30.Craigslist.FlyToBurningMan
2011-08-30.Craigslist.FlyToBurningManDeleted
2011-11-03.Patch.HerbstComment

Land Use Violations

Illegal Fill

1991-11-20.SRPC.Minutes
1991-11-20.SRReportToPC
1998-07-14.SanRafaelLetterReFill.pdf

Levees & Fill

2000-10.Email.Levee-Fill.pdf
2006-09-07.Email.Farhad-Herbst.pdf
2006-11-14.Email.FarhadReLeveeFill
2006-11-15.Emails.FarhadLeveeBreach.pdf
2009-10-06.Email.ClayReLevee

Safety Violations

FlightPathComplaints
2006-10-12.Letter.Hanley-Raffi
2006-10-12.Attach.RaffiLetter
2006-11-01.RaffiEmailReHeavyPlanes+
2006-09-02.LargePlanePic
2001-10-13.Report.NTSB

Bad Neighbors & Bad Behavior

1986-11-17.Letter.ThreateningNeighbor
1990.NewsPointerArticle
1991-11-15.PacSunArticle
2005-06-21.Email.Gould-Herbst
2007-03-12.Letter.BriscoeReBaylandsCorridor
2001-04-24.Letter.ShekouReWildlifeCorridor
2007-03-15.Airport-Dredging-Levees Letters
2008-02-14.Lawsuit.Airport-SVNeighbors

This document prepared by "The Goals Group", signed below:

COPY

LINDA LEVEY
1515 VENDOLA DRIVE
SAN RAFAEL • CALIFORNIA • 94903
P 415-499-3411 • F 415-507-1590
LINDA@SANTAVENETIA.ORG

November 15, 2011

Kraig Tambornini, Planner
1400 Fifth Avenue
San Rafael, CA 94901-1943
Kraig.Tambornini@ci.san-rafael.ca.us
415-485-3092

Re: San Rafael Airport Recreational Facility – FEIR Meeting

We have lived in this neighborhood over 20 years. Too much of that time has been spent on land use issues and/or at land use meetings. And although we don't have a vote, or much say, many of those meetings have been related to projects or issues for the City of San Rafael. And much of that has been related to the Marin Ranch Airport aka Smith Ranch Airport aka San Rafael Airport site.

The FEIR for this Project shows numerous items open-ended, with no deadlines enforced. We have continuously suffered with the City of San Rafael's lack of enforcement at this site and once again, we are being left at the mercy of a Landowner who has a track record of poor stewardship, always "pushing the envelope" on allowable uses, and inconsideration for his neighbors.

The FEIR and the Staff Report seem to come to the conclusion that this project is in compliance with the *Declaration of Restrictions* on this site. I would firmly disagree with this conclusion and wish to bring up the following points (attached):

- In 1991, not so long after the *Declaration of Restrictions* was agreed to, the Landowner sued the City of San Rafael to allow building on the site. Attached is a copy of the Declaration from then Supervisor, Robert Romiguere, fighting this lawsuit and attesting to the intent of the *Declaration of Restrictions* as **low-density uses**.
- Attached is an article from the Pacific Sun from that same year detailing the issues the neighborhood had to face while trying to keep this site **free of "development."**
- Attached is a 1999 News Pointer article quoting County Counsel, Douglas Maloney: "**This is not a public interest lawsuit.**" Where once again the Landowner is suing for development rights.

- And finally, just yesterday we learned of a letter from County Counsel sent in December 2009 that was not included in the current FEIR or documentation to date. The attachment to that letter includes the 1983 Minutes authorizing execution of the deed restriction, with approval of Planning Department and County Counsel, which would prohibit any further development of the property - (All AYES). This County Counsel letter was referenced in the Staff Report incorrectly as supporting for this project when in fact that wasn't the case. Numerous emails and communications between the City and County have occurred and I am hoping you are privy to those exchanges. I have attached a copy of my email to Kraig and his response.

For me, it is all about "F A I R". In exchange for the increased density allowed at Marin Lagoon, Embassy Suites, and Autodesk, we were promised that this site was to be kept *density-free, free of development, open space*.... That agreement was for "open space" and parklands, not an 85,000 sq foot building with the people, noise, and traffic that will generate.

I have commented mostly on the "Declaration of Restrictions" in my letter, but like my neighbors, I feel there are numerous faulty conclusions in the FEIR and I wish to reiterate my agreement with the comments supplied by my neighbors who have voiced opposition to this project.

There are still many other considerations and questions:

The DEIR for this Project shows numerous effects on the Environment, Noise, Traffic, etc. that have all been reduced to "less than significant" in the FEIR. Seriously, how can this be factual?

If the FEIR is certified and once rezoning is allowed, do they have to build this complex -- is it required? Or can they change plans midstream as happens so often?

Do the soccer players and/or neighbors who show up in force to support this project understand this is a private facility and may/will not benefit them?

We see in the news that in the current economy, McInnis Park is having trouble meeting their obligations. If they do build this complex and it fails (a la McInnis at this time), what uses will be allowed on the property? Will the building come down?

You have left some things to be decided after the fact including noise and lights. Considering past behavior, is this fair to your constituents?

But of course the final point is... what happens when/if this business fails and/or the Landowner sues once again to make even more money off his property. Now that you

LINDA LEVEY

November 15, 2011

Page 3 of 3

have further eroded the original "*Declaration of Restrictions*" and given this Landowner the rezoning he has been fighting for all these years, will we suffer further for these bad decisions?

The City of San Rafael and the County of Marin are supposed to protect OUR interests. Please keep that in mind as you refuse to certify this faulty FEIR and deny this project.

Thank you for your attention to these matters.

Sincerely,

COPY

Linda Levey

Attachments: 1991 Declaration from Robert Roumiguere
 1991 Article from the Pacific Sun
 1990 Article from the San Rafael/Terra Linda News Pointer
 12/28/09 Letter from County Counsel to Kraig Tambornini
 11/14/11 Emails to/from Kraig Tambornini

COPY

1 DOUGLAS J. MALONEY, County Counsel
2 Suite 342, Civic Center
3 San Rafael, CA 94903
4 Telephone: (415) 499-6117

5 Attorney for Defendant, COUNTY OF MARIN

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN

10 JOE SHEKOU, HAIDY SHEKOU, WILLIAM)
11 J. BIELSER, AUDREY BIELSER, ASHLEY)
12 BIELSER, CHRISTOPHER BIELSER,)
13 WESTLAND HOUSING INC., a)
14 California Corporation,)

15 Plaintiffs

16 vs.

17 CITY OF SAN RAFAEL, a municipal)
18 corporation and COUNTY OF MARIN,)
19 a political subdivision of the)
20 State of California,)

21 Defendants.

22 CITY OF SAN RAFAEL,)

23 Cross-Complainant,

24 vs.

25 JOE SHEKOU, et al.)

26 Cross-Defendant.

27 ROBERT ROUMIGUIERE declares:

28 1. I have been a Marin County Supervisor since September 26,
1972.

No. 147042

DECLARATION OF
ROBERT ROUMIGUIERE IN
SUPPORT OF COUNTY OF
MARIN'S SEPARATE STATE-
MENT IN OPPOSITION TO
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT
HEARING DATE: 10/30/91
TIME: 9:00 A.M.
DEPARTMENT: 5
TRIAL DATE: None

1 2. On or about December 14, 1983, I was the Chairman of the
2 Marin County Board of Supervisors. At that time I was contacted by
3 Dwight Winther on behalf of Coleman Consultants, which firm
4 represented the owners of a development project known as Civic
5 Center North, located in the City of San Rafael and my supervisorial
6 district.

7 3. Mr. Winther asked me to present the declaration of
8 restrictions, which is the subject matter of this litigation, to the
9 Board of Supervisors for consideration and approval on an expedited
10 basis, due to time constraints the developer was experiencing.

11 4. I had previously urged the City of San Rafael to require a
12 declaration of restrictions of this type and nature as a condition
13 of approval of the Civic Center North project to ~~mitigate~~ **mitigate** adverse
14 **impacts** engendered by the density allowed for this project. If the
15 Declaration of Restrictions had not been required, I, on behalf of
16 my constituents in the vicinity, would have urged to city to reduce
17 ~~the~~ **the** allowed density for the project.

18 5. In my opinion, based on my experience as a County
19 Supervisor, during which I considered scores of land development
20 projects, the Declaration of Restrictions was an integral factor in
21 the approval of the Civic Center North project at the allowed
22 density.

23 I DECLARE UNDER PENALTY OF PERJURY, that the foregoing is true
24 and correct.

25 Executed at San Rafael, California, October 15, 1991.

26
27 Robert Roumiguiere
28 ROBERT ROUMIGUIERE

G:\DJM\AFF

8006

14, 1983

CITY

by Lawrence E. Polk
 ATTEST: by Lawrence E. Polk
Jeanne H. Leoncini, City Clerk

COUNTY

by Bob Ramiguiera
 by _____

26 14, 1983

File #: ZC05-01A/P05-08/ED05-15
 Title: Covenant of Restrictions
 Exhibit: 3-3

Pacific Sun 11/15/91

See you there!

Fighting city hall

The folks in North San Rafael are mad as hell ...

BY JILL KRAMER

Public officials, take warning: the folks in North San Rafael are dead serious about democracy. If they suspect a smoke-filled back room, they'll kick down the door.

Members of this community have fought city hall over a number of development projects in recent years, and they're getting good at it. The next skirmish is set for November 20 at 7:30pm, when a special meeting of the San Rafael Planning Commission will consider whether to renew the use permit for the Smith Ranch Road airport.

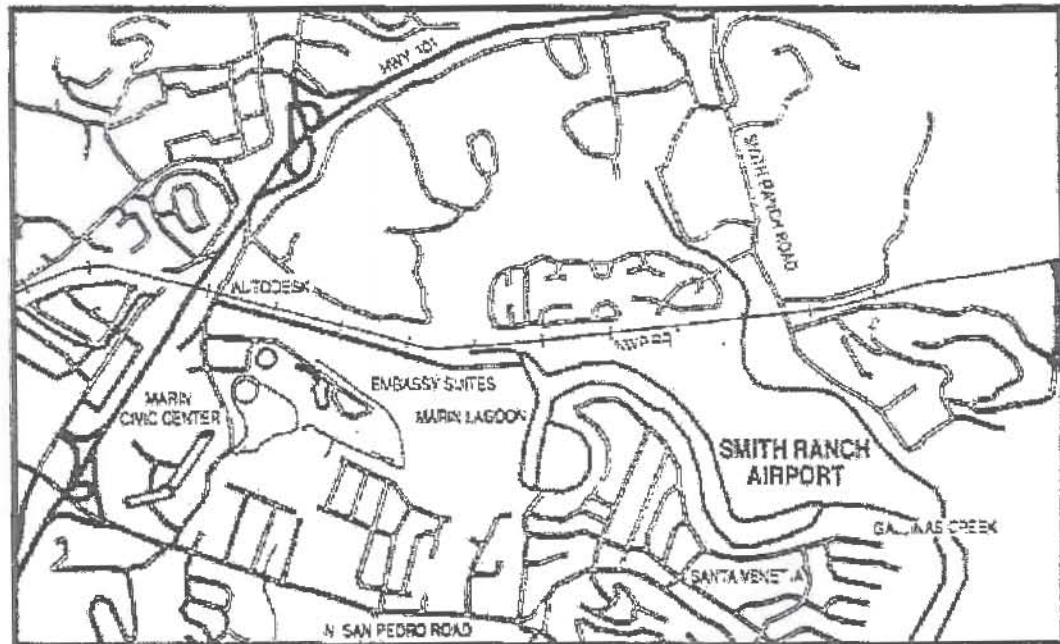
A development restriction, now in some jeopardy, was placed on the 120-acre airport property in 1983 when it was part of a parcel that extended westward nearly to Highway 101. The city and county agreed to allow a higher-than-usual density near the freeway in order to keep the more sensitive wetlands to the east free from devel-

opment.

After that agreement was signed, both parcels were sold to developer Joe Shekou. Because of the development restrictions, the eastern portion with the airport on it sold for a mere \$400,000. Shekou then gave former San Rafael city manager Bill Bielser a 10 percent interest in the airport property.

— and there's more to come. The eastern parcel, in addition to serving as an airport, is also used as grazing land for sheep and storage space for contractors. The use permit is worded vaguely, but is understood to limit the property to activities that will pose no threat to the environment.

The neighbors went on the alert in 1988



According to county counsel Doug Maloney, Shekou has testified that no money changed hands on that deal; he brought Bielser in, says Maloney, "because he felt Bielser had the political knowhow to get the property approved" for development.

Since then the western parcel has seen considerable development, including the Embassy Suites hotel, the Autodesk complex and the Marin Lagoon condominiums

when, as the City of San Rafael revised its General Plan, city and county officials held private meetings with owners Bielser and Shekou about future development possibilities on the restricted airport property. A recommendation was then written into the final plan calling for 370 houses, a shopping center and a marina or golf course "should the City, County and property owner agree to modify the Declaration of Restrictions."

A storm of protest from the community

SAN RAFAEL/TERRA LINDA NEWS PIONEER A MARIN SCOPE COMMUNITY WEEKLY

Volume 37 Issue 22
August 29-September 4, 1999

Airport owners file suit to lift building restrictions County Counsel Douglas Maloney: "This is not a public interest lawsuit."

JOE LELAND
Editor

A lawsuit seeking to lift development restrictions on a 41-acre parcel in north San Rafael has been filed by the property's owners against the City and County, while the property's owners claim the covenants should not apply, the County's chief attorney plans to ask a judge to dismiss the suit.

The suit was filed August 17 by Novato attorney Robert Levy, on behalf of developers William Belsler and Joe Shekou, and Westland Housing Corporation. Westland Housing, who became partial owners of the property during a complicated option arrangement, is comprised of landscape contractor Tom Cagwin of Hill Valley, owner of Cagwin and Dorward in Novato; restaurateur Al Delceto of Novato; and the San Rafael contracting firm of Megeena and Chiodini.

The disputed parcel, portions of Martin Rausel Airport, is part of a 90-acre plot located off Smith Ranch Road near Middle Park and the Marin Lagoon subdivision. Restrictions on the property, signed by the City,

County and the property owners, limit any future use to airport-related projects, roadways, open space, and private and public recreation.

County Counsel Douglas Maloney said the City and County were named in the suit because the development restrictions benefit both jurisdictions, although the airport is in San Rafael City limits.

Citing the kind of restrictions placed upon the property and the wishes of the property's owners to develop, Maloney said, "This is not a public-interest lawsuit."

The evolution of the airport property's ownership is lengthy and complex. The First National State Bank of New Jersey originally owned much of the land that stretches north of the Civic Center to South Ranch Road and west of Highway 101 to the Bay. Many of the parcels were sold to Shekou. Shekou sold land to South-west Diversified, who built the Marin Lagoon subdivision; and to Embassy Suites, who is building the hotel adjacent to the Civic Center.

Shekou kept the land fronting Highway 101, where he plans to build an office building and restaurant.

Shekou was one of the developers who recently and successfully bought the Marin Municipal Water District's moratorium on new hookups, citing the need for water for his proposed project. Although a Marin County Superior Court Judge ruled in the developer's favor, MAMWD has appealed the decision.

In 1991, the bank agreed to grant an option on the airport property to the Las Gallinas Valley Sanitary District, who planned to build an effluent pond. In 1983, the development restrictions were signed by the bank. This option was subsequently purchased from the Sanitary District by Belsler, Shekou and Westland Housing for \$300,000.

Maloney said he plans to ask a judge to dismiss the suit, because the property owners have not provided enough of a reason to lift the restrictions. San Rafael City Attorney Gary Reginald said although he has not yet studied the case, he will likely reconfirm the City's legal efforts with the County.

"It's a question of equity," Maloney said. "The property owners agreed to these restrictions because

they wanted more density at another project." The higher densities were granted by the City to the hotel and office properties near Highway 101.

Maloney said the property owner's argument is a technicality. They contend the bank agreed to the restriction after they granted the option to the Sanitary District. The new owners — Belsler, Shekou and Westland Housing — feel restrictions were subject only to the option between the two previous parties, and should no longer apply.

Belsler, former City Manager of San Rafael and now principal owner of San Rafael-based Capital Investment Resources, declined to comment on the suit when reached by the *NewsPioneer*. Belsler said all of the plaintiffs agreed they would raise all questions to their attorney, Levy, who could not be reached by the *NewsPioneer* by August 26.

When reached at his Novato office, Cagwin said he also would not comment on the suit. Plans for the property, although not finalized, may include a small shopping center, condominiums, and possibly a golf course. *NewsPioneer* will continue on page 74

FEB. 27, 2006 9:09AM

WF GOVERNMENT RELATIONS

China Camp for public TV



and Soviet participants in the Global Environmental Exchange plan are during a conservation demonstration at China Camp near San Rafael. From left, a new batch about 100th day efforts in private 1 temporary. The show will air on Thursday, September 13, at 7:30

9:09AM WF GOVERNMENT RELATIONS
FEB. 27. 2006
men with
September
45 weeks.
pines. Register
information.
Mullen is the instructor. For information, call
479-0773.
The Marinwood Center will also offer bi-weekly Kang Ea classes, beginning Tuesday, September 13. Classes are on Tuesdays and Thursdays, 4-5 p.m. for ages 5 and up, 7:30-8 p.m. for adults. Derek Koshak will teach the class. The cost is \$60 for six weeks for ages 6 and up and \$75 for six weeks for adults. For information, call 479-0773.
A teacher. Parents' friends will be held at the

Airport

continued from page 1

written following those meetings. According to the plan, two major roads must be built before the airport is developed — the Elmhurst-Los Ranchitos connector, which has been built, and the coastoverland Malins Parkway. The latter road, proposed to be an arterial connector between Highway 101 and Highway 37, currently dead-ends at Marin Lagaron. To continue to the airport, the road must cut through wetlands areas.

San Rafael General Plan's Northgate Policies says the property may not be developed unless the restrictions are lifted or modified by the City, County and the property owners. Should the restrictions be lifted, the land may then be developed for low- to medium-density residential uses, a neighborhood shopping center, a marina or golf course, and possibly a park for Northgate-area residents.

Traffic alterations in the General Plan would allow up to 375 housing units and up to 79,000 square feet of neighborhood commercial use.

San Rafael Senior Planner Jean Fozzies said Blaser met with City officials and neighborhood groups during the General Plan revision process in 1998. The plan's residential and commercial designation for the property was

major roads must be built before the airport is developed — the Elmhurst-Los Ranchitos connector, which has been built, and the coastoverland Malins Parkway. The latter road, proposed to be an arterial connector between Highway 101 and Highway 37, currently dead-ends at Marin Lagaron. To continue to the airport, the road must cut through wetlands areas.

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Traffic alterations in the General Plan would allow up to 375 housing units and up to 79,000 square feet of neighborhood commercial use.

Livelihoods

continued from page 1

inquiries," he said. "Action needs to be taken now."
Bob Lovett, owner of Lovett's Yacht Harbor, criticized the City against taking too long a season. His harbor does consist a few livelihoods, but he has shower and beverage facilities. Lovett, who said the livelihood problem is not growing, suggested forming a committee made up of City staff

and Waterways, requires all livelihoods in County waters to be hooked up to sewer lines. Most livelihoods lack those facilities, Brown said. The proposed amendment, slated for completion in two weeks, is designed to facilitate enforcement.

San Rafael special harbor-master Andy Anderson, a member of the County committee drafting the new amendment, said the new laws will affect all boats in unincorporated County waters. "All boats in Marin waters can no longer dump

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August 28-September 4, 1980

cess."

Jan Starkweather, a longtime environmental activist who lives in Petaluma, said, if the restrictions are lifted, the public will distrust all covenants in the future. "Who can you trust," she said, "if two or more entities agree to the restrictions?"

Starkweather, who chairs the Marin Conservation League's Bayfront Committee, said the restrictions are a "reasonable" use of the land.

"Let's keep to it," she said. "The airport property was the subject of recent citizens' complaints about the amount of landfill dumped there by a hazardous contractor. People living in Sausalito, Captain's Cove, and other nearby areas told the San Rafael City Council the level of fill was too high. The use permit for the property is due to expire, and a new one is currently being processed by the San Rafael Planning Department.

enforcement is virtually "hellish," Anderson said.

The County will perform random checks on boats in County waters. If the seal is broken, a \$500 fine will be levied against the boat's owner. The sealing procedure will cost approximately \$10.

Boat owners who have returned from outside the three-mile inland waterways will have to have their boats sealed again, Anderson said.

The city of Sausalito is also expected to adopt the new

PATRICK K. FAULKNER
COUNTY COUNSEL

JACK F. GOVI
ASSISTANT COUNTY COUNSEL

DOROTHY R. JONES
CHIEF DEPUTY

COUNTY COUNSEL OF MARIN COUNTY

3501 Civic Center Drive, Suite 275
San Rafael, California 94903-5222

(415) 499-6117

FAX (415) 499-3796
TDD (415) 473-2226

RECEIVED

JAN - 1 2010

COMMUNITY DEVELOPMENT
CITY OF SAN RAFAEL

December 28, 2009

Ray
MARI-ANN G. RIVERS
RENEE GIACOMINI BREWER
DAVID L. ZALTSMAN
MICHELE KENO
NANCY STUART GRISHAM
JENNIFER M. W. VULLERMET
PATRICK M. K. RICHARDSON
THOMAS F. LYONS
STEPHEN R. RAAB
STEVEN M. PERL
SHEILA SHAH LICHTBLAU
EDWARD J. KIERNAN
JESSICA F. MILLS
DEPUTIES
JEANINE MICHAELS
ADMINISTRATIVE ASSISTANT

VIA E-MAIL AND U.S. MAIL

Mr. Kraig Tambornini, Senior Planner
San Rafael City Hall
1400 Fifth Avenue
Post Office Box 151560
San Rafael, CA 94901

Re: San Rafael Airport Recreation Facility
Declaration of Restrictions in Favor County of Marin and City of San
Rafael (File No's.: ZC05-01/UP05-08/ED05-18)

Dear Mr. Tambornini:

Our office represents the County of Marin. We write this letter regarding the above referenced project as the owner –along with the City- of an enforceable interest in the real property which is the subject of this land use application and which restricts the uses to which this property may be put.

As you know, this property located at 397 – 400 Smith Ranch Road, commonly known as the San Rafael Airport, (APN's 155-230-10, 11, 12 and 13), is encumbered with a recorded "Declaration of Restrictions" that was executed and recorded by a prior owner of the property in favor of both the County of Marin as well as the City of San Rafael in 1983. (A copy of the Declaration of Restrictions is attached to the mailed copy of this letter for your convenience). And as stated in the staff report authored by another City of San Rafael planner with respect to this project, the current owner judicially challenged the validity of the covenants within the declaration. However, after extensive litigation in which both the City and County actively participated, the court upheld the restrictions contained in the declaration. (See the staff report authored by Raffi Boloyan, dated February 13, 2006).

Like your City Attorney's Office, our office has also reviewed this declaration, and agree with their conclusion that "...it means what it says – it is a restriction on the potential land uses for the property." We would add, however, the caveat that since this declaration of restrictions specifically runs with the land, the restrictions will exist in

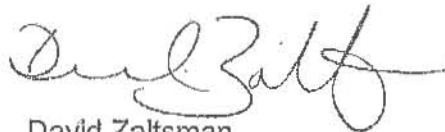
Mr. Kraig Tambornini
Re: San Rafael Airport Recreation Facility
December 28, 2009
Page 2

perpetuity. It is also important to remember that at the time the Declaration of Restrictions was approved by the County, the property owner stated the effect would be to "...prohibit any further development of the property..." (See the minutes of the Marin County Board of Supervisors meeting of 11/22/1983 also attached hereto.)_Because of this, the County believes it is critical to include in any future land use approvals for this project certain conditions that might not be applicable to land use permits where the regulatory/zoning authority approving the project does not also have a proprietary interest in the property.

Specifically, we would request that a copy of the Declaration be noted in, attached to and incorporated by reference in any land use approvals. In addition, a specific condition(s) should be included noting that any future uses of the structures and related facilities on the property are limited by Declaration of Restrictions. In that way, if for any reason the planned "recreational" use of this 85,700 square foot facility ceases, potential owners/lessees would be on notice of the additional restrictions on future uses of the structures and appurtenant facilities beyond those contained in the relevant general/specific plan and zoning.

Finally, we would also request that any land use permit require that future permit requests be sent to this office so that the County can be assured of its right to intervene should we determine that future uses are not within the scope of the Declaration of Restrictions.

Very truly yours,



David Zaltsman
Deputy County Counsel

Encls.

cc: Rob Epstein, City Attorney
Supervisor Susan Adams

OFFICIAL RECORDS COUNTY OF MARIN

83062935

RECORDED AT REQUEST OF

AGENCY SHOWN

AT MIN. PARCEL M.

DEC 15 1983

Official Records of Marin County, Calif.

W. J. ...

REC'D JTB RECORDER

RECORDING REQUESTED BY:

AFTER RECORDING MAIL TO:

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS is made and entered into by and between the City of San Rafael, a municipal corporation (hereinafter referred to as "City"), the First National State Bank, a national banking association (hereinafter referred to as "Owner"), and the County of Marin, a political subdivision of the State of California (hereinafter referred to as "County"), in connection with the following circumstances:

(a) City is processing at the request of Owner a tentative subdivision map and final subdivision map relating to certain real property of Owner, including the real property designated as "PARCEL B" in the exhibit attached hereto and incorporated herein.

(b) As a condition for approval of said tentative subdivision map and final subdivision map, City has required, and Owner has agreed to, this declaration of restrictions on the terms and conditions hereinafter set forth.

NOW, THEREFORE, the Owner declares that the real property designated as "PARCEL B" in the exhibit hereto shall be held, transferred, encumbered, used, sold, conveyed, leased, and occupied, subject to the restrictions and covenants herein contained, expressly and exclusively for the use and benefit of said real property and for each and every parcel of real property owned by City and by County and by each of them.

1. Limitations On Use. No use of said real property described shall be made or permitted except the following:

RETURN TO: City of San Rafael, Department of Public Works, P.O. Box 60, San Rafael, California 94915-0060, ATTN: Office Engineer

OFFICIAL RECORDS COUNTY OF MARIN

83062.35

8306290

- (a) Existing uses consisting of an airport and related uses.
- (b) Public utility uses as approved by the appropriate government agencies, including flood control, sanitary sewer, gas and electric, and public safety facilities.
- (c) Airport and airport related uses.
- (d) Roadways.
- (e) Open space.
- (f) Private and public recreational uses.
- ~~(g) Any other related uses agreed to by the City, County, and Owner.~~

2. Run With Land. This declaration of restrictions and the covenants contained herein are to run with the land, and for the benefit of the City and County, and each of them, and shall be binding on all parties and all persons claiming under them, including the successors and assigns of Owner.

3. Enforcement. Enforcement hereof shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any provision herein contained, either to restrain violation or to recover damages, or both. In the event of litigation arising from or relating to this Declaration of Restrictions, the prevailing party therein shall be entitled to an award in a reasonable amount to be set by the Court for attorney fees and costs incurred.

4. Severability. Invalidation of any one of these covenants by a judgment or court order shall in no way affect any other provision hereof, and the same shall remain in full force and effect.

Dated: Nov 9, 1983

OWNER - FIRST NATIONAL STATE BANK

BY: Edward L. Heil
Edward L. Heil
Senior Vice President

STATE OF NEW JERSEY]
COUNTY OF ESSEX] ss:

BE IT REMEMBERED, That on this Ninth day of November, 1983, before me, a Notary Public of New Jersey, personally appeared Edward L. Heil, Senior Vice President of First National State Bank, who I am satisfied is the person who has signed the within instrument; and I have first made known to him the contents thereof, he did acknowledge that he signed, sealed, and delivered the same as such officer aforesaid; and that the within instrument is the voluntary act and deed of said corporation and he has signed same with the full authority vested in him.

RUTH V. O'BOYLE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires March 7, 1984

Ruth V. O'Boyle

83062935

Dated: Dec 14, 1983

CITY

by Lawrence E. Mulryan
LAWRENCE E. MULRYAN, Mayor

ATTEST: by Jeanne M. Leoncini
JEANNE M. LEONCINI, City Clerk

Dated: Dec 14, 1983

COUNTY

by Bob Romiguere
by _____

RESOLUTION NO. 6680

A RESOLUTION AUTHORIZING THE SIGNING OF AN
 OPTION AGREEMENT AND DECLARATION OF RESTRICTION
 WITH FIRST NATIONAL STATE BANK OF NEW JERSEY
 (Civic Center North)

THE CITY COUNCIL OF THE CITY OF SAN RAFAEL RESOLVES as follows:

The MAYOR and CITY CLERK are authorized to execute, on behalf of the City of San Rafael, an option agreement and Declaration of Restriction with FIRST NATIONAL STATE BANK OF NEW JERSEY (Civic Center North) contingent upon approval by the City Attorney and the failure of any Councilmember, within 24 hours after receipt of true copies of said documents, to object to said documents.

I, JEANNE M. LEONCINI, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on Monday the fifth day of December, 1983, by the following vote, to wit:

AYES: COUNCILMEMBERS: Breiner, Frugoli, Nave, Russom & Mayor Mulryan
 NOES: COUNCILMEMBERS: None
 ABSENT: COUNCILMEMBERS: None

Jeanne M. Leoncini
 JEANNE M. LEONCINI, City Clerk

#18

OPEN TIME FOR URGENCY MATTERS (Continued from preceding page)

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 Planning Department and County Counsel, M/s Aramburu-Stockwell, to authorize the Chairman to execute the Deed.

AYES: ALL

Marin Community College District

Supervisor Brown advised that the College District is under pressure to meet a \$1.3 million shortfall by leasing and/or selling Indian Valley College and perhaps leasing part of the College of Marin. He noted that this change of land use impacts the local communities of Novato and Kentfield; also, any change of classes from one campus to the other affects traffic patterns on Highway 101 and feeder streets. He suggested that representatives of the Board meet with the College Trustees to jointly assess and plan land use decisions and traffic impact. M/s Aramburu-Giacomini, to appoint Supervisors Stockwell and Brown to represent the Board in discussions with the College District.

AYES: ALL

Supervisor Giacomini asked that the College District be requested to consider establishing class schedules so as not to conflict with commute periods.

#19

HEARING - COUNTY CODE REVISIONS REGARDING ANIMAL CONTROL

The Executive Director of the Marin Humane Society addressed the Board in support of a series of proposed amendments to the Animal Control Ordinance. With regard to Section 8.04.252(a) concerning transportation of animals, she explained that this new section would make it unlawful to carry any dog in the back of a vehicle unless it was contained or restrained in some way. Testimony was received from several students of the Sun Valley School, San Rafael, in support of this section of the proposed ordinance and a representative of the local Veterinarians' Association strongly supported the proposed legislation. A representative of the Marin County Farm Bureau and a West Marin ranch owner expressed concern that this section might cause a problem with transportation of working dogs.

Staff advised that the ordinance would be effective only in the unincorporated areas of the County and Highway 101, but that it was the intention of the Humane Society to seek uniformity throughout the County by requesting the cities to adopt similar legislation. In response to Board members' questions, a representative of the California Highway Patrol advised that they would not be able to make enforcement a top priority but only under exaggerated circumstances when a dog appeared to present a danger to itself or others, would the driver of the vehicle be stopped. Following discussion with staff regarding an exemption which would be satisfactory to the ranchers, M/s Aramburu-Stockwell, to approve Section 8.04.052(a) amended to include the following underlined language:

"No person, other than an individual actually working a dog for ranching purposes, shall transport . . ."

AYES: ALL

M/s Giacomini-Brown, to approve Section 8.04.252(b), with regard to leaving an animal in an unattended vehicle without adequate ventilation, as proposed.

AYES: ALL

With regard to Section 8.12.010, Permitting Dogs to Run Deer, Supervisor Stockwell advised of a possible State pre-emption and presented a new Section 8.12.005, as follows:

"Hunting. The provisions of this chapter shall not apply to individuals engaged in hunting activities during the periods and in the manner which is authorized by the California Fish and Game Code and the California Administrative Code."

M/s Stockwell-Giacomini, to adopt Section 8.12.010 as proposed, with the addition of Section 8.12.005 as set forth above.

AYES: ALL

With regard to Section 8.12.020, Allowing Certain Dogs at Large, M/s Giacomini-Stockwell, to approve this section, as proposed.

AYES: ALL

(Continued)

Linda Levey

From: Kraig Tambornini [Kraig.Tambornini@cityofsanrafael.org]
Sent: Monday, November 14, 2011 2:56 PM
To: linda@santavenetia.org
Cc: Mary Hanley; SUPERVISOR SUSAN ADAMS; NONA DENNIS
Subject: RE: San Rafael Airport / Soccer Complex - Letter from County Counsel

I will clarify this for the staff report on the FEIR. I agree that the remainder of the comment you noted on Page 11 should be attributed to the City only. I realize that I had initially separated this comment out for review of project merits to ensure the County Counsel recommended condition was reflected in a draft document. As you note, this was not a DEIR comment and the date stamp clearly is not correct.

With regard to the impact of this comment in the FEIR staff report, it is negligible for the FEIR hearing, as this is a merits issue. I have been advised that the City has concluded the recreational use restriction does not preclude structures, thus the FEIR has been required to analyze all potential impacts assuming this level of development.

From: Linda Levey [mailto:linda@santavenetia.org]
Sent: Monday, November 14, 2011 2:16 PM
To: Kraig Tambornini
Cc: 'Mary Hanley'; SUPERVISOR SUSAN ADAMS; NONA DENNIS
Subject: FW: San Rafael Airport / Soccer Complex - Letter from County Counsel
Importance: High

Hello Kraig -

Thank you for forwarding me the letter. As discussed, the letter from County Counsel is not new correspondence as you stated in your Staff Report. And it is also, as far as we can read, not a comment letter of approval. Rather, quite the opposite of the City Attorney's confirmation. And more disturbingly, this letter can not be found in the FEIR - it was not included and as far as we can tell, not even mentioned. The date on the letter is 12/28/09, after the 60-day DEIR deadline, but is stamped as received 1/1/10 (were you even open that day?).

We are all in agreement what the Declaration of Restrictions says - it is the intent of the agreement where we disagree. And in our opinion, County Counsel is in agreement with us as to the intent to "*prohibit any further development of the property....*" And the attachment, the minutes from 1983, are ALSO new news to us -

#18 OPEN TIME FOR URGENCY MATTERS (Continued from Preceding page)

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 would prohibit any further development of the property and with approval of Planning Department and County Counsel, M/s Aramburu-Stockwell, to authorize the Chairman to execute the Deed.

AYES: ALL

On page 11 of the Staff Report, you stated:

"The City Attorney and Marin County Counsel have both reviewed the declaration and

confirmed that the covenant is, as stated, a restriction on future land uses of the property; which does not preclude the level of development proposed, including construction of a recreational facility with structures."

This statement, as does your conclusions on page 28, packs a punch. We, as opponents of this Project, were knocked back on our heels when we read that - and we are an informed group. It's been two years since the last Public Meeting and for the newly interested parties, like the large number of proponents we expect to see at Tuesday night's meeting, it could be a decision-maker and/or deal-breaker for them... not to mention the Planning Commission which has had two weeks to review your Staff Report. How can this Project/Development site be wrong if City AND County Counsel are in agreement? Well, they are not!

You said you will "*clarify that for the PC*" - How can you do that with the same level of "potentially significant impact" as the Staff Report has? And do we need to write a new comment letter to address this error or will your explanation suffice and will this and follow-up emails be in the written documentation?

I am copying Supervisor Adams and other interested parties on this email. Susan - will you forward to County Counsel or shall I? (Thank you)

Thank you, Linda Levey & Mary Hanley

From: Kraig Tambornini [mailto:Kraig.Tambornini@cityofsanrafael.org]
Sent: Monday, November 14, 2011 1:07 PM
To: linda@santavenetia.org
Subject: RE: San Rafael Airport / Soccer Complex - Letter from County Counsel

Thanks. I must have an old email for you. As we discussed this is the Dec 2009 letter, which I must have swept up with new correspondence, and will need to clarify that for the PC.

Thanks

Kraig Tambornini
Senior Planner

From: Linda Levey [mailto:linda@santavenetia.org]
Sent: Monday, November 14, 2011 1:03 PM
To: Kraig Tambornini
Subject: San Rafael Airport / Soccer Complex - Letter from County Counsel

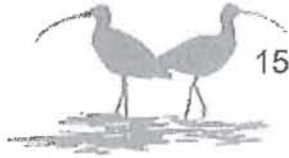
Hello Kraig -

I just realized forgot to give you my email address. In case you don't have, this is it.

Please forward me a copy of the 12/28/09 letter from County Counsel.

Thank you, Linda

5/24/2012



MARY M. HANLEY

1515 Vendola Drive · San Rafael · California · 94903

phone: 415-499-8737 · fax: 415-507-1590

email: maryinmarin@comcast.net

May 24, 2012

San Rafael Planning Commission
c/o Mr. Kraig Tambornini
City of San Rafael
1400 Fifth Avenue
San Rafael CA 94901

Re: San Rafael Airport Recreational Facility
Merits of the Project
SCH No. 2006012125

Dear Planning Commissioners:

Please accept the following comments for the project:

Regarding the statement from the 3/27/12 Staff Report, *"Airport safety has been a primary concern with this project, which resulting in the hiring of Mead & Hunt as an aeronautical safety consultant to evaluate this proposal."*

Please accept the following evidence that contradicts this statement. I have listed the three agencies responsible for safety oversight on the Project as well as quotes from pertinent information and reports from these Agencies: 1. City, 2. Mead & Hunt, and 3. CalTrans, Division of Aeronautics.

City Responsibilities:

- On page 30 of the 1/24/12 Staff Report, under the City of San Rafael, reads the following:

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*

These three points are the totality of safety regulations regarding the Airport operations. Other issues, such as flight paths, noise emissions, number of flights, size of planes, hours of operation, and even a noise ordinance were deferred by the City Attorney and unenforced by City Staff, because of an agreement that was made with Airport Management. The Applicant CLAIMED FAA pre-emption (although we have not seen

any evidence of this *pre-emption* from the Applicant or the FAA). This deal was made before January of 2005 and remains in effect today.

- From Raffi's 1/11/05 Staff Report, page 3 (attached):

"Subsequently, staff and the airport operator agreed to delay any further discussions of Federal preemption until after the airport rehabilitation work had been completed. If and when these discussions occur, the issue will be brought before the Planning Commission in a public hearing. In the meantime, the airport operator has agreed that they will make every attempt to comply with the existing conditions of approval."

- 3/29/04 Letter from Airport Attorney regarding pre-emption issues (attached):

"When the rehabilitation has been completed and the City and its citizens are, as we believe will be the case, satisfied with the integrity of the owner's intentions and with the physical look of the airport, we can, to the extent necessary, focus on pre-emption issues."

- From the San Rafael Airport website: "\$3 Million Airport Improvement Plan"

"\$3 Million in physical improvements, including 40 brand new executive hangars and a newly repaved runway among much more!"

Since the rehabilitation has been completed, why hasn't the Planning Commission held a public meeting to FINALLY discuss pre-emption issues, at least before accepting the application for the Soccer Complex?

- Despite repeated mentions of FAA requirements, there is NO comment or input from any FAA representatives. None. Why?
- Repercussions from the Attorney/Staff/Airport Management deal resulted in the Airport enforcing a voluntary noise control and "Fly Friendly" program for their pilots. These programs, while beneficial to the Airport, are not working for the public and surrounding communities. (See attached Herbst letter and Pilot Newsletter)
- The San Rafael Planning Commission is the "ad hoc" Airport Land Use Commission (ALUC) according to Raffi's email dated 1/10/06. (attached)
- Larry Paul, Planning Commissioner and Architect of the Complex. Although recused from hearings, he is also a member of the "ad hoc" ALUC and should know better.
- Bob Brown's email replying to my 10/12/06 email concerning nighttime landings is just more evidence of the lack of jurisdiction and enforcement capabilities of the City on the Airport. (email attached)

- The proposed solar panels on the Facility's roof have not been vetted by an aviation expert as to hazards to pilots from glare, i.e. the danger of laser pointers on pilots.
- The stadium lights are to be vetted by DRB. Who is the aviation expert on DRB?

Mead & Hunt Responsibilities (from the 4/15/08 Review):

1. The 4/15/08 Safety Review is information gleaned from Raffi's 2/28/06 report.
2. The stadium lights/poles were proposed on 3/11/09, after Mead & Hunt's review and were not included for analysis.

"It should be noted that the Marin County Airport Land Use Commission has a compatibility plan only for Gness Field, not San Rafael Airport. There are no ALUC safety criteria or policies applicable to San Rafael Airport."

"A review of the preliminary design of the Airport Sports Center indicates that the project would not pose significant safety concerns provided that certain safety enhancements and design adjustments are incorporated into the final design and ultimate construction of the project."

"Although avoidance of intensive uses is always preferable, a concept which may be acceptable in some situations is special risk-reduction building design. Buildings provide substantial protection from the crash of a small airplane. Special risk-reduction construction features include:

- *Single story height*
- *Concrete walls*
- *Upgraded roof strength*
- *Limited number of windows*
- *No skylights*
- *Enhanced fire sprinkler system (e.g., designed in a manner that the entire system would not be disabled by an accident affecting one area)*
- *Increased number of emergency exits beyond California Building Code requirements"*

Only one out of the seven features listed were absorbed into the Project.

"In addition to the physical hazards to flight posed by tall objects, other land use characteristics can present visual hazards. Visual hazards include distracting lights, glare, and sources of smoke."

For example, vehicle headlights on the new access road, the stadium lights, smoke from the café/heating operations on/in roof vents, glare from solar panels directed towards runway – Applicant also failed to take these recommendations into consideration.

The information provided on the proposed Airport Sports Center does not indicate the normal maximum occupancy of the facility. In order to assess the level of risk, the number of people who would occupy the overall site or any single acre of the project at any given time needs to be determined. The average usage intensity of the facility can be estimated using the following two methods:
1. Parking and 2. California Building Codes (CBC).

Mead & Hunt used the Parking Ordinance and California Building Code to determine maximum capacity. The intensity of use is very important in determining the risk so why didn't Mead & Hunt have the occupancy information from Sports City's two other locations in Sonoma County in order to have a more accurate number for their "Intensity of Use"?

"Outdoor parking lot lights and outdoor soccer field lights, in particular, should be shielded so that they do not aim above the horizon. Additionally, outdoor lights should be flight checked at night to ensure that they do not create glare during landings and takeoffs."

Who will do this?

Mead & Hunt is/was the Consultant on the 2002 California Airport Land Use Handbook and the NEW 2011 Handbook. Why didn't Mead & Hunt catch the updated definition of "Group Recreational Use" in the new 2011 Handbook?

"The results of this analysis are not intended to deem this project incompatible with airport operations, but rather to guide the final design of the project to ensure that future airspace penetrations do not occur after construction."

Who and **When** will the question be asked of Mead & Hunt, Aviation Expert Consultant, not just for guidelines, but... "Is this Project compatible with Airport Operations, Yes or No?" It should come from the Planning Commission, ad hoc ALUC.

Caltrans, Department of Transportation, Division of Aeronautics, Responsibilities:

1. 2/24/06 Letter/Safety Report/Review on Neg Dec (attached) and touted by Raffi as safety being thoroughly vetted from this 1 ¼ pages... Really?

The letter basically states: use of the Caltrans Airport Land Use Planning Handbook must be utilized as a resource in the preparation of the environmental documents. (copy attached)

2. 5/1/09 Letter/Review for the DEIR (attached). Also touted as safety being thoroughly vetted from this 1 ¼ pages... Really?

The letter basically states Project conforms with State-issued Airport Permit.

The 1999 State Permit can be reissued through the mail without any type of inspection. It's simply a fee-paid process. There is no enforcement capability with this permit. (letter and permit attached)

3. 3/9/12 Letter from Ron Bolyard, Aviation Planner (attached)

On the 1/24/12 PC meeting, toward the end, the Commission asked Staff (I'm paraphrasing here), "Who will give ultimate approval/sign off on safety issues for the proposed Project?" and Kraig responded, "CalTrans Aeronautic Division will review and approve AFTER the finished proposed project is constructed."

That was the first time we had heard of CalTrans signing off on the Project. So, I put in a call and spoke with Ron Bolyard (I had his card from when I purchased my copy of the 2002 Handbook) and I asked him simply, "Why doesn't the Division review the Project BEFORE it is built?" He said to me, "I'll look into it." The next thing I knew, Kraig forwarded a copy of the 3/9/12 letter. Again, another simple 1 ¼ page comment letter from the "Division." The major difference in this latest letter from the Division is that Mr. Bolyard ACTUALLY reviewed the proposed Project, Mead & Hunt's review, and the proposed hazard mitigation measures in the FEIR. The results from his research are found in his comment letter.

In conclusion, my merits comments regarding safety oversight for the Soccer Facility are...

Instead of embracing these new safety preventative measures outlined in Bolyard's letter, why are the City Attorney, Staff, Mead & Hunt Consultants, and the Applicant scrambling to vilify, minimize, and/or redefine the definition of "Group Recreational Uses?" (Marin IJ article attached) Why would the City want to approve an unsafe (as stated by The Division of Aeronautics) project? And, if this project is ultimately approved, why wouldn't the City want to make this as safe as possible? Shouldn't we all agree to take every, and all, safety precautions necessary? As the ad hoc ALUC, it is the Planning Commission's responsibility to do so.

Because of the significant impacts on our creek and wildlife, the deviation from the intent of the 1983 Declaration of Restrictions, and the lack of safety oversight – along with my full support of my neighbor's comment letters (in opposition to the project), I request you deny this project as proposed.

Thank you for your consideration,



Mary Hanley

the San Rafael Airport Master Use Permit (UP99-009/ED98-059)." This exhibit lists each of the adopted conditions of approval and a response by staff indicating the compliance status. Over the past year, staff has received phone calls and inquiries from the public regarding the airport project on issues relating to flight paths or potential for curfews. The following is staff's analysis of that issue:

Potential Federal Pre-Emption Issues

During the original review of the Master Use Permit, the City received numerous public comments regarding the concern with the flight paths, noise emissions, number of flights, size of planes utilizing the airport, and hours of operation for the airport. During the City Council meeting on March 19, 2001, the City Council ultimately decided to defer any restrictions on the hours of operation for the airport and noise emissions until the one and two year annual reviews. Around that time, the City was also updating its Noise Ordinance as well as its General Plan. At the time of the Council's approval of the Master Use Permit, there was no discussion of the alleged Federal preemption, since City Staff and the airport operator were unaware at the time that Federal law may preempt local control of certain airport activities.

Following the approval of the Master Use Permit and Environmental and Design Review Permit, the airport operator vested their approval by obtaining building and grading permits and beginning the construction of the airport rehabilitation project.

Just prior to the first annual review, staff was considering an additional condition of approval establishing a baseline noise threshold for the airport. The airport contested this issue and stated that they believed that Federal law would preempt the City from directly regulating noise emissions or aircraft operations. The applicant asked for a continuance to the first annual review (September 24, 2002) in order to further discuss this issue with staff and legal counsel.

Over the next year, staff met with the applicant on numerous instances to discuss this issue. The City Attorney's office was also included in these discussions and provided their recommendation on this issue. During this time, the City was completing its update to the Noise Ordinance. After research into this issue, the City Attorney's office advised staff and the City Council during consideration of the Noise Ordinance, that the City was preempted by Federal law from using the Noise Ordinance to directly regulate noise emissions from aircraft in flight. Based on this advice, the Noise Ordinance adopted by the City Council in November 2002 did not cover noise from aviation activities. A copy of the Noise Ordinance (Exhibit 8) exempts aviation uses from the Noise Ordinance.

Subsequently, staff and the airport operator agreed to delay any further discussions of Federal preemption until after the airport rehabilitation work had been completed. If and when these discussions occur, the issue will be brought before the Planning Commission in a public hearing. In the meantime, the airport operator has agreed that they will make every attempt to comply with the existing conditions of approval.

The issue of considering and mitigating noise impacts from the airport was also addressed in the recently adopted General Plan 2020. The recently adopted *General Plan 2020* includes a policy (*Noise Policy N-7 Airport/Heliport*), which states:

"to the extent allowed by Federal and state law, consider and mitigate noise impact of any changes in facilities or operation that require use permit mitigations or other land use permit at the San Rafael Airport in North San Rafael and at heliport in East San Rafael."

In regards to the City's ability to regulate the existing Use Permit for the Airport or add any new conditions, the City Attorney's office continues to recommend the following:

KUHN & LEVY
A PROFESSIONAL CORPORATION

Copy for
Rob, Eric,
Rick, Kristi

Richard R. Kuhn
Robert M. Levy

RECEIVED

35 Mitchell Blvd., Ste. 14
San Rafael, CA 94903

Telephone: 415 472 1000
Facsimile: 415 472 1009

MAR 30 2004
CITY OF SAN RAFAEL
PLANNING

E-Mail: kuhn.levy@sbcglobal.net
Web Page: kuhnlevy.com

March 29, 2004

Bob Brown, Community Development Director
City of San Rafael
1400 Fifth Avenue
P.O. Box 151560
San Rafael, CA 94915-1560

Re: 397-400 Smith Ranch Road / Master Use Permit / Pre-emption Issues

Dear Mr. Brown:

The owners and operators of the airport are, as I told the Planning Commission at the last meeting, very pleased with their progress to date on the rehabilitation of the facilities as well as with the very substantial reduction in community expression of objection to ongoing operation. This tells us that we are making good progress not only on the ground, but also in our efforts to restore (or perhaps create for the first time) a level of credibility and community support which has historically been minimally observable. The airport wants to be a good citizen and wants to have a credible reputation of doing what it can for the community as well as not doing things that are adverse to the best interests of the community, understanding that airports are not necessarily the most popular use of land no matter how operated and improved.

With that in mind, and having heard your comments about pre-emption at the last meeting, the owners have decided that it would be in the best interests of this ongoing effort to complete the rehabilitation while avoiding acrimony by way of making a commitment to the City. That is the objective of this letter.

Although we certainly are not adverse to the City unilaterally removing conditions it agrees are pre-empted, we will not force the issue at this time. We will not, without first giving the City written notice, intentionally or knowingly violate or intentionally or knowingly permit the violation of any of the Use Permit conditions, whether pre-empted or not, or whether the subject of disagreement as to whether or not they are pre-empted.

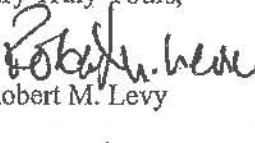
When the rehabilitation has been completed and the City and its citizens are, as we believe will be the case, satisfied with the integrity of the owner's intentions and with

File #: LP99-009/ED98-059
Title: Letter from Robert Levy, 3/29/04
Exhibit: 6-1

the physical look of the airport, we can, to the extent necessary, focus on pre-emption issues. Our anticipation would be that, if and when, following completion of our ongoing efforts, the airport sees it in its best interests to proceed in a manner which is not consistent with a Use Permit condition which we believe to be unenforceable due to pre-emption we will let the City know in writing and request removal of the condition. If the City disagrees on the pre-emption of the subject condition we can then select a forum for resolution or face and defend enforcement proceedings. In the meantime we will stay the course, so to speak, in our ongoing effort to be a good neighbor.

We would like to extend our belated appreciation to Raffi for his willingness to appear at the planning commission hearing notwithstanding the birth of his daughter. His reliable knowledge of the project and its current status provided an invaluable aid to the Commission, the applicant, and to interested citizens and was appreciated.

Very Truly Yours,



Robert M. Levy

cc: client

SAN RAFAEL AIRPORT LLC

January 5, 2005

Mr. Raffi Boloyan
Senior Planner
City of San Rafael

2173 EAST FRANCISCO BOULEVARD, SUITE D
SAN RAFAEL, CALIFORNIA 94901
TEL 415/453-0212
FAX 415/453-0421

Dear Mr. Boloyan:

As you know we have been working very hard over the last three years to significantly improve San Rafael Airport in the areas of physical appearance, pilot services, flight safety, and neighborhood friendly flight policies. We look forward to discussing our efforts and positive results at the January 11th Use Permit Review.

One area in particular where we have seen great progress is our Fly Friendly program. This refers to the joint efforts of the airport management and pilots to develop and implement neighbor friendly flight policies. Our efforts include the following:

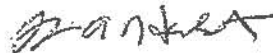
- New pilot briefing and info sheet describing recommended flight procedures
- Taxiway signage describing recommended flight procedures
- ✓ Periodic letter and email reminders to pilots about recommended flight procedures ✓
- Self policing by pilots and management when flight violations are observed
- Prompt response to neighbor complaints, including the following:
 - Speak with neighbor to get details of complaint
 - Investigate incident using surveillance equipment and pilot interviews
 - Speak with pilot about how to Fly Friendly in future
 - Follow-up with neighbor about results of investigation and action taken
 - Maintain detailed log of each incident
- File formal complaint with FAA if pilot violates FAA regulations (we are pre-empted by federal law from taking any disciplinary action ourselves) ?

As a direct result of these efforts, we have greatly minimized flight complaints from the surrounding neighborhoods. Over the last 18 months we received only 17 complaints total, less than one per month. 10 of these complaints involved no infraction. Only 3 complaints involved confirmed infractions. This record is reflective that our efforts outlined above are working.

To put it all in perspective, the FAA estimates that Gness Field in Novato has 135,000 annual flight operations. Their estimate for San Rafael Airport is only 9000, meaning we are 15x less busy than our neighboring airport to the north, which itself is considered a very small US airport. Of our 9000 estimated annual flight operations, less than 1/10th of 1% have generated any complaint at all, and less than 1/50th of 1% have involved confirmed infractions.

We will never be able to eliminate noise complaints entirely. We are however committed to continuing our Fly Friendly flight policies that to date have achieved the strong results outlined above.

Sincerely,



Bob Herbst
San Rafael Airport Manager

File #: UP99-009/ED98-059
Title: Letter from Bob Herbst, 1/05/05
Exhibit: 7

PILOT NEWSLETTER—SPRING 2004

I. FLIGHT PROCEDURES REMINDER

We have received several neighborhood complaints about flight activity at San Rafael Airport. The complaints fall into two main categories:

1. Pilots performing run-ups along the over-run.
2. Pilots flying over Contempo Marin Mobile Home Park.

Conditions 9 and 11 of our Use Permit with the City specifically forbid both of these activities (see attached conditions). Repeat violators are subject to eviction. The airport's right to operate may also be jeopardized. Please also note that condition 5f of the Use Permit prohibits any non-based aircraft from flying into the airport. Many of you have asked about flight instructors, mechanics, friends, etc. Unfortunately per the Use Permit only based aircraft can use the field.

Finally, condition 10 is new as of 2001, and it imposes a significant enforcement burden on the airport management. We are required to investigate complaints and if a violation occurred, provide the offender's N number to the City. If you witness improper flight practices, please talk to the pilot in question or write down the N number and contact us for follow-up. Our goal is to eliminate offensive behavior through education. Please respect our residential neighbors by Flying Friendly.

PROPER FLIGHT PROCEDURES

Run-ups should occur at the compass rose only (intersection of taxiway and runway), in order to minimize noise impacts on Santa Venetia residents across the creek.

*Take-offs and landings on runway 4 are generally discouraged due to noise impacts on Contempo Marin Mobile Home Park. When pilot safety and/or weather conditions dictate using runway 4, pilots are directed to fly **AROUND** the hill (not over), on the side away from Contempo Marin. The proper procedure is to follow the railroad tracks.*

II. MASTER PLAN CONSTRUCTION UPDATE

The last of the new hangars are now complete. The remaining Master Plan work should be completed by year's end, including:

- Paving and landscaping of entry circle, driveway, and guest parking area.
- New wash rack with power sprayer and vacuum.
- New caretaker and security guard residences to replace existing trailers.
- Airport administration offices and lounge in big hangar at entry (needs City approval)
- Clean-up and manicuring of central taxiway area where utility trenching was done.

From: Raffi Boloyan [mailto:Raffi.Boloyan@ci.san-rafael.ca.us]
Sent: Tuesday, January 10, 2006 11:04 AM
To: linda@abacusmarin.com
Subject: RE: San Rafael Airport - Soccer Complex Project

Thanks. I sure did have a good New Year's as well as a little vacation.
In response to you questions:

1. The Airport Land Use Commission is not a City organization, but rather a Commission that is part of the County of Marin. The Marin County web site includes information on this Commission. There is also a number listed there that you can call for more info.

<http://www.co.marin.ca.us/depts/bs/members/mcbds/Brdpage.cfm?BrdID=3>

2. The Airport Commission does not have review authority or jurisdiction over private airports. The Airport Commission has an airport land use plan that covers the public airports in the County and the only public airport is the Gness Field in Novato. Therefore, they have not reviewed this project.

3. Land use compatibility for this project will be reviewed by the City's Planning Commission and ultimately the City Council. As you may already be aware, the project was also referred to California Department of Transportation, Division of Aeronautics, for their review and comment. It sounds like you may have seen their correspondence in the project file. This Division has review of private airports such as this and they review projects with respect to airport-related noise and safety impacts and regional aviation land use planning issues. This Division also has the technical expertise in areas of airport operations safety and airport land use compatibility. If you haven't seen their comments, you are more than welcome to come down to view these in the project file. The letter is one dated June 20, 2005 from Sandy Hesnard, of Caltrans - Division of Aeronautics.

Hope that helps
Raffi

Raffi Boloyan
CITY OF SAN RAFAEL
Senior Planner

COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION
P.O. BOX 151560
SAN RAFAEL, CA 94915-151560

TEL.: (415) 485-3095
FAX: (415) 485-3184

-----Original Message-----

From: Linda Levey [mailto:linda@abacusmarin.com]

Sent: Sunday, January 08, 2006 4:16 PM

To: Raffi Boloyan

Subject: San Rafael Airport - Soccer Complex Project

Hi Raffi.

I hope you had a Happy New Year!

I have a couple of questions concerning the Soccer Complex at San Rafael Airport that I hope you can help me with:

- Who exactly are the members of the Airport Land Use Commission?
- Have they reviewed this project regarding land use safety issues?
- If so, how can I review their report/findings?

I'm inquiring because I researched/reviewed the report from the Division of Aeronautics and, in doing so, found out their findings include Airway and Flyway issues only and NOT Land Use Safety issues. I was told by Dan Gargas (DOT.DA) that was usually handled by the City Airport Land Use Commission.

Thank you for you help,

Mary Hanley

1515 Vendola Drive

San Rafael • California • 94903

phone - 415.499.8737

fax - 415.507.1590

e-mail - linda@goagil.com

From: Bob Brown [mailto:Bob.Brown@ci.san-rafael.ca.us]
Sent: Wednesday, October 11, 2006 4:37 PM
To: linda@lindalevey.com
Subject: RE: San Rafael Airport

Mary:

I double checked the Airport Use Permit and it does not limit the hours of landings or the size of planes (which are practically limited by runway length since the concern has always been about jets). I also checked on the state and federal preemptions related to private airports. The FAA is responsible for noise violations and Caltrans Division of Aeronautics is responsible for issues related to flight path (height of planes, direction, etc.). I will contact the airport management and note the complaint (without names).
BB

From: Bob Brown [mailto:Bob.Brown@ci.san-rafael.ca.us]
Sent: Wednesday, October 11, 2006 10:04 AM
To: linda@lindalevey.com
Subject: RE: San Rafael Airport

Mary:

The City is preempted from dealing with planes in the air by the FAA (Federal Aviation Administration). However, I will check with Raffi Boloyan, who is the planner that's been responsible for the Airport Use Permit, to check re: night flights and get back to you. I'm certain that there are no size restrictions on planes using the Airport, but only planes that are hangared at the airport can land there. I'll also be happy to discuss this incident with the Airport management, without naming names. Raffi is in meetings this morning, but I'll get back to you when I speak with him.
BB

From: Linda Levey [mailto:linda@lindalevey.com]
Sent: Wednesday, October 11, 2006 9:10 AM
To: Bob Brown
Subject: San Rafael Airport

Good Morning Mr. Brown,

I live on Las Gallinas Creek on the "other" Vendola Drive. Last night, around 8:45pm, I noticed in the distance, out over San Pablo Bay, a well-lit-up plane flying low from north to south. At first, I thought it was one of those big Coast Guard rescue helicopters doing a rescue or something over the Bay. I was pretty startled when I noticed it turned west and eventually landed at the San Rafael Airport.

It is my understanding that:

1. There is a limit to the size plane allowed to use the runway and
2. There's no night flying allowed out of that airport.

I've noticed this plane before, as well as a new big-loud seaplane. They just seem to stick out like a sore thumb compared to the other planes I'm accustomed to seeing. Due to present circumstances (lawsuit, etc.), I'm somewhat reluctant to call over there to inquire about this; which I believe is... protocol?

Maybe this was a one-time occurrence; maybe not. None-the-less, it startled me enough to email you this morning and bring it to your attention. Any suggestions for avoiding this from occurring again?

I would appreciate an email or phone call at your earliest convenience.

Thank you,

Mary Hanley

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LETTER 1 (continued)

February 24, 2006

Mr. Raffi Boloyan
San Rafael Planning Division
P.O. Box 151560
San Rafael, CA 94915-1560

Dear Mr. Boloyan:

Re: City of San Rafael Negative Declaration for the San Rafael Airport Recreational Facility;
SCH# 2006012125

The California Department of Transportation (Caltrans), Division of Aeronautics (Division), reviewed the above-referenced document with respect to airport-related noise and safety impacts and regional aviation land use planning issues pursuant to the California Environmental Quality Act (CEQA). The Division has technical expertise in the areas of airport operations safety and airport land use compatibility. We are a funding agency for airport projects and we have permit authority for public and special use airports and heliports. The Division considered the proposal in an earlier letter dated June 20, 2005. The following comments are offered with respect to the Negative Declaration.

The proposal is for the construction of a recreational facility on a 16.6-acre portion of San Rafael Airport. San Rafael Airport operates with a Special-Use Airport Permit issued by the Division. The Division's prior and current Aviation Safety Officers for Marin County, Dan Gargas and Patrick Miles, respectively, have evaluated the proposal and determined it should not require amending the Special-Use Airport Permit and does not appear to impact the Federal Aviation Regulation (FAR) Part 77. Please note, the applicant should be advised that the outdoor baseball field backstop and perimeter fence as depicted on page 32 of the Negative Declaration also must not penetrate FAR Part 77, 7:1 Transitional Surface. For questions concerning any of the above issues, please contact Patrick Miles, at (916) 654-5376.

According to the Negative Declaration, the applicant shall also incorporate the guidelines in the Federal Aviation Administration's (FAA) Advisory Circular 150/5370-2E, Operational Safety on Airports, during construction of the proposed project. We concur.

In accordance with CEQA, Public Resources Code Section 21096, the Caltrans Airport Land Use Planning Handbook (Handbook) must be utilized as a resource in the preparation of environmental documents for projects within an airport land use compatibility plan boundaries or if such a plan has not been adopted, within two miles of an airport. The Handbook is a resource that should be applied to all public use airports. Although San Rafael Airport is not a public use airport, we did consider density levels as recommended in the Handbook. The project does not appear to exceed the Handbook density guidelines.

"Caltrans improves mobility across California"

Mr. Raffi Boloyan
February 24, 2006
Page 2

These comments reflect the areas of concern to the Division with respect to airport-related noise and safety impacts and regional airport land use planning issues. We advise you to contact our District 4 Office 4 in Oakland at (510) 286-4444 concerning surface transportation issues.

Thank you for the opportunity to review and comment on this proposal. If you have any questions, please call me at (916) 654-5314.

Sincerely,

Original Signed by

SANDY HESNARD
Aviation Environmental Planner

c: San Rafael Airport

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RECEIVED

LETTER 1

MAY 12 2009

May 1, 2009

Mr. Kraig Tamborini
 City of San Rafael
 Planning Division
 P.O. Box 151560
 San Rafael, CA 94915-1560

COMMUNITY DEVELOPMENT
 CITY OF SAN RAFAEL

Dear Mr. Tamborini:

City of San Rafael's Draft Environmental Impact Report for the San Rafael Airport Recreational Facility; SCH# 2006012125

The California Department of Transportation (Caltrans), Division of Aeronautics (Division), reviewed the above-referenced document with respect to airport-related noise and safety impacts and regional aviation land use planning issues pursuant to the California Environmental Quality Act (CEQA). The Division has technical expertise in the areas of airport operations safety and airport land use compatibility. We are a funding agency for airport projects and we have permit authority for public and special use airports and heliports. The Division commented on the prior Negative Declaration for the proposal in the enclosed letter dated February 24, 2006. The following comments are offered with respect to the Draft Environmental Impact Report (DEIR).

The proposal is for the construction of a recreational facility on a 9.1-acre portion of the San Rafael Airport. The facility will consist of a 38-foot tall, 85,700 square-foot metal recreational building housing indoor fields and courts, a 14,400 square foot mezzanine level with spectator seating, offices, food and beverage service, arcade and meeting rooms, two outdoor fields with exterior lighting, landscaping, parking, and fencing improvements.

As discussed in the DEIR, San Rafael Airport operates with a Special-Use Airport Permit issued by the Division. Caltrans is the primary State agency responsible for permitting airports and heliports. Our mandated process is further described in the California Code of Regulations (CCR), Title 21, Section 3534(b). From the information provided, it does not appear that the proposal will affect the State airport permit. The new construction projects, however, must meet or exceed the minimum design standards for a permitted airport, as specified in the CCR, Title 21, Article 3, "Design Standards, Airports Only."

1-1

State Public Utilities Code Section 21659 prohibits structural hazards near airports. As discussed in DEIR, the Federal Aviation Administration (FAA) may require a Notice of Proposed Construction or Alteration (Form 7460-1) pursuant to Federal Aviation Regulation (FAR) Part 77. Form 7460-1 is available at <http://forms.faa.gov/forms/faa7460-1.pdf>. The guidance in the FAA Advisory Circular 150/5370-2E, *Operational Safety on Airports during Construction*, should also be incorporated into the project design in order to identify any permanent or temporary construction-related impacts including cranes.

1-2

"Caltrans improves mobility across California"

Mr. Kraig Tamborini
May 1, 2009
Page 2

Mitigation Measure (MM) Haz-1 states that the "intensity of use" will be restricted to a maximum of 200 people per single acre or "at a minimum" incorporate additional risk-reduction building design features into the design of the recreational building. MM Haz-2 addresses FAR Part 77 concerns.

1-3

For questions concerning the special-use airport permit criteria or FAR Part 77, please contact the Division's Aviation Safety Officer for Marin County, Patrick Miles, at (916) 654-5376.

These comments reflect the areas of concern to the Division with respect to airport-related noise and safety impacts and regional airport land use planning issues. We advise you to contact our District 4 Office 4 concerning surface transportation issues.

Thank you for the opportunity to review and comment on this proposal. If you have any questions, please call me at (916) 654-5314.

Sincerely,



SANDY HESNARD
Aviation Environmental Planner

Enclosure

c: State Clearinghouse, San Rafael Airport, Marin County ALUC

State of California

AIRPORT PERMIT

FOR A SPECIAL-USE AIRPORT

Pursuant to California Public Utilities Code Section 21662, the California Department of Transportation, Aeronautics Program, hereby issues this corrected Airport Permit No. Mrn-005 for the:

SAN RAFAEL AIRPORT
397 Smith Ranch Road
San Rafael, California

Latitude: 38° 00' 55" N.
Longitude: 122° 31' 20" W.

Owned by: San Rafael Airport, LLC
c/o Joe and Haidy Shekou
2173-D Francisco Boulevard
San Rafael, California 94901

This corrected permit reflects a change in name and ownership of the airport and supersedes the permit dated November 5, 1990. This permit is subject to the following conditions:

1. The airport is to be maintained in accordance with California Code of Regulations, Title 21, Sections 3525 through 3560.
2. The designated traffic pattern is as follows:
 - Right traffic for Runway 22.
 - Left traffic for Runway 04.
 - 1000 feet AGL.
3. The airport is approved for day and night use.
4. A variance is granted to the width of primary surface due to a drainage ditch.

99

EXHIBIT 15

5. A variance is granted to the 7:1 transitional surface which is penetrated by the dike to the north.
6. A variance is granted for a reduced runway length of 2140 feet.
7. A variance is granted to the 20:1 approach surface for Runway 04 for a hill that is 4,500 feet to the southwest.
8. 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 physical status of this special-use facility is described below:


Runway 4/22

- Physical length of the runway is 2140 feet.
- Runway is lighted.

This 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 Department to suspend, revoke, correct, or amend the permit pursuant to the California Public Utilities Code or the California Code of Regulations.

The airport's owner shall apply to the Department for an Amended/Corrected Airport Permit prior to any physical or operational changes at the airport which affect the conditions or physical status above or for a change in airport ownership.

Failure to maintain the airport in accordance with the conditions of this permit is a violation of Public Utilities Code Section 21666 and is punishable as a misdemeanor.


MARLIN BECKWITH, Program Manager
Aeronautics Program
Department of Transportation
State of California

March 25, 1999
Date

100

DEPARTMENT OF TRANSPORTATION

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*Flex your power!
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March 9, 2012

Mr. Kraig Tamborini
City of San Rafael
Planning Division
P.O. Box 151560
San Rafael, CA 94915-1560

Dear Mr. Tamborini:

The San Rafael Airport Recreational Facility

The California Department of Transportation (Department), Division of Aeronautics (Division), reviewed the above referenced project's Draft Environmental Document and sent comments in a letter dated May 1, 2009 and also the Negative Declaration in a letter Dated February 24, 2006. Since those reviews, the Division updated the California Airport Land Use Planning Handbook (Handbook) in 2011. State law requires airport land use commissions to guide land use decisions near public use airports. Because the San Rafael Airport is not a public use airport, it lacks this benefit. Please see the following for new Division guidance regarding this project.

The proposal is for the construction of a recreational facility adjacent to the San Rafael Airport. The facility will consist of a 38-foot tall recreational building housing indoor fields and courts with spectator seating, offices, food and beverage service, arcade and meeting rooms, two outdoor fields with exterior lighting, landscaping, parking and fencing improvements.

The project is located in Safety Zones 3 & 5 according to the updated Handbook. In these safety zones, the Handbook recommends prohibiting group recreational uses. In general, society gives special attention to protection of children. Special consideration should be given to facilities that cater to children such as recreation and sports facilities. We ask the City of San Rafael consider this new information in future decisions regarding this project.

The proposed parking area south of the recreational facility adjacent to the San Rafael Airports' runway violates Federal Aviation Regulation (FAR) Part 77.17 obstruction standards. Vehicles using this parking area may penetrate the 7:1 transitional surface and would be defined as obstructions to air navigation. According to FAR Part 77.17, an existing object, including a mobile object, is, and a future object would be an obstruction to air navigation if it of greater height than any of the following heights or surfaces: FAR Part 77.17 section (a)(5) The surface of a takeoff and landing area of an airport or any imaginary surface established under FAR Parts 77.19, 77.21, or 77.23, and section (b)(3) 10 feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road. New construction projects must meet or exceed the minimum design standards for a permitted airport, in

Mr. Kraig Tamborini
March 9, 2012
Page 2

accordance with the California Code of Regulations, Title 21, Article 3, "Design Standards, Airports Only."

Vehicles using the row of parking closest to the runway, taller than 5 feet will be an obstruction to air navigation. Failure to maintain obstruction free airspace may negatively impact the airport's permit and use of the airport.

Sincerely,

Original signed by

RON BOLYARD, Aviation Planner
Office of Aviation Planning

c: Marin County ALUC, San Rafael Airport

Hearing on San Rafael sports complex delayed due to Caltrans letter

By Jessica Bernstein-Wax
Marin Independent Journal

Posted: 04/01/2012 04:18:00 PM PDT



The runway at the San Rafael Airport can be seen as a straight line of pavement running through a green field in San Rafael, Calif. on Saturday, March 31, 2012. The private airport is situated near McInnis Park Golf Club, foreground. (IJ photo/Alan Dep)

San Rafael officials have delayed a hearing on a proposed \$6 million to \$8 million sports complex with indoor soccer fields at San Rafael Airport after receiving a letter from Caltrans that raised concerns about the project site.

In a March 9 letter, Caltrans' Division of Aeronautics asked San Rafael to review the agency's new land use planning handbook for airports.

"The project is located in Safety Zones 3 & 5 according to the updated handbook," Aviation Planner Ron Bolyard said in the letter. "In these safety zones, the handbook recommends prohibiting group recreational uses.

"In general, society gives special attention to protection of children," the letter continues. "Special consideration should be given to facilities that cater to children such as recreation and sports facilities."

Kraig Tambornini, senior planner for San Rafael, said city consultant Mead & Hunt has been meeting with Caltrans and is working on a response to the letter. San Rafael officials delayed a

Planning Commission hearing on the project's merits scheduled for March 27 so they could review the letter, he said. That meeting has been rescheduled for May 15.

"At this point it would be information that goes to the Planning Commission with a staff recommendation," Tambornini said of the city's response to the letter. "The project will still go forward."

Tambornini noted that the Caltrans handbook doesn't technically apply to San Rafael Airport because it's a private rather than public or municipal facility. However, the city has been following Caltrans' guidelines by choice.

"We don't have to, but we need something to evaluate the situation with," he said.

San Rafael Airport LLC's plan to build a 35-foot-tall building along Gallinas Creek with two indoor soccer fields, a dance and gymnastics training compound, a cafe that sells wine and beer, locker rooms and offices had been on hold for about two years when it was revived in 2011.

In addition to the indoor facility, the applicant also plans to construct two outdoor sports fields — one lighted — with synthetic "field turf" instead of grass and two parking lots with almost 300 spaces.

An estimated 700 to 1,000 patrons plus 12 full-time employees would use the complex daily from 9 a.m. to 11 p.m. Sunday through Thursday and 9 a.m. to midnight Friday and Saturday. Outdoor soccer would likely be played until 10 p.m.

The proposed recreational building is about 315 feet from the edge of the runway, Tambornini said.

Bob Herbst, the airport's manager, said the Caltrans letter mischaracterizes the project as "a stadium or group recreational use," designations that carry a much higher density of people than his project.

He added that many youth recreational facilities are next to airports — and Marin County desperately needs more playing fields.

"Bottom line is you are more likely to get hurt driving to the airport than you are playing sports at the airport," Herbst said in an email. "I've managed this airport for 15 years and have a 7- and 11-year-old who will use this facility extensively. I would not build this sports complex if it wasn't 100 percent safe."

But Robert Dobrin, president of the Santa Venetia Neighborhood Association — which has been critical of the project — said the letter raises important safety issues.

"You probably don't need a degree in planning to know that runways and children don't mix any better than water and electricity mix," Dobrin said. "We've been very consistent that we don't think (the project's) safe either."

Contact Jessica Bernstein-Wax at jbernstein-wax@marinij.com or via Twitter at <http://twitter.com/jbwax>.

To: City of San Rafael

From: Santa Venetia Community Planning Group

RE: Proposed Soccer Complex at the San Rafael Airport

May 24, 2012

To Whom It May Concern,

The Santa Venetia Community Planning Group is urging the San Rafael Planning Commission to reconsider allowing the construction of a Soccer Complex (San Rafael Sports Facility) at the San Rafael Airport. The Santa Venetia Community and many others have raised several concerns on impacts the Soccer Complex could have on safety and natural resources at and immediately adjacent to the proposed soccer Complex.

The Santa Venetia Community recently (2011) conducted a needs survey of local residents to identify community values and priority needs. This information is being used to guide future development of a Santa Venetia Community Plan. One of the top values identified was preservation of open space and character of the neighborhood and surrounding areas. The Soccer Complex would greatly diminish view sheds of the neighborhood and greatly diminish character of the neighborhood.

One of our greatest concerns is the impact the Soccer Complex could have on safety of local residents and users of the Complex. In addition to the direct safety hazard of placing a recreational facility at an airport, recent scientific literature suggest a correlation between increased lead levels in children in the vicinity of airports. A recent study published in Environmental Health Perspectives (July 13, 2011) provides the first evidence that lead levels in children are higher in the vicinity of airports.

From Science News (July 14, 2011)

<http://www.sciencenews.org/view/generic/id/332463/title/Airports%E2%80%99%20lead%20fallout%20may%20harm%20some%20kids>

“People who live near airports serving small planes are exposed to lead from aviation fuel. A new study links an airport’s proximity to slightly elevated blood-lead levels in children from area homes.”

“Environmental health scientists and statisticians at Duke University’s Nicholas School of the Environment in Durham, N.C., used state records to identify children who had been tested for blood-lead levels, and mapped their residences in relation to regional airports in several counties. Then the researchers correlated lead concentrations in those kids with the distance of their homes from those airports.”

“Children 7 and under who lived within 1,000 meters (six-tenths of mile) of an airport — and especially within 500 meters — had higher lead levels, generally, than youngsters living beyond that distance. This association remained “robust” even after adjusting for a host of other factors that might affect the

likelihood a child would be exposed to lead, such as living in an older home (which might have lead-based paint), observes study leader Marie Lynn Miranda.”

The study was published in Environmental Health Perspectives (July 13, 2011).

We ask that you please take into account concerns of local community members and related safety and environmental issues when you review the merits of this project.

Sincerely,

Giselle Block

Member, Santa Venetia Planning Group.

May 23, 2012

TO: Members of the San Rafael Planning Commission

RE: Proposed soccer fields at San Rafael Airport

I write to support the many neighborhood and environmental organizations who have voiced opposition to the proposed soccer complex at the San Rafael Airport. As a soccer fan and former soccer league parent volunteer, I favor soccer fields as a general principle. However, after reviewing the evidence, I believe that this proposal is ill-conceived for a variety of strong reasons. Among these are the disruptions to quality of life for nearby residents; disruptions and hazards for wildlife (despite supposed "mitigation" remedies); location on a flood plain in a time when seas are predicted to rise; and perilous proximity to small airplane traffic. If more soccer facilities are needed, and if such facilities need to be private and for fee, why not look to areas needing development, such as the long-vacant former Yardbirds site in San Rafael? Surely there must be even more such potential sites in these lean economic times.

My family and I have lived in a quiet neighborhood near the airport for 25 years; some neighbors have lived here much longer. Throughout this neighborhood's history, tranquility has been a prominent feature, notwithstanding occasional overflights by local aircraft. The existing ball fields provide some noise, but it largely abates in the evenings. The location of the proposed facilities harbingers an end to this relative serenity. Proposed mitigations provide little assurance that residents would continue to enjoy the neighborhood's historic quietude. This project would change life as local residents have known it for many decades.

Experts from prominent environmental organizations have made the case that this facility would have adverse effects on native wildlife, including the endangered clapper rail. The EIR provides nothing of substance to suggest that it would not. At the prior Planning Commission meeting, a consultant attempted to parry concerns about rail habitat. First, he maintained that rails in the area would simply move to the perimeters of their habitat during construction, eventually returning upon the end of construction (he said he would do the same if pile drivers visited his neighborhood). On return, he averred, the birds would stay below grade level to avoid lighting, noise, etc., suggesting that life would be tolerable after a while. (It should perhaps be noted that these rails do, if conditions permit, sometimes venture out above grade level, as I have observed on walks around the Gallinas Creek area.)

Second, the consultant said, species are adaptable, as witnessed by the peregrine falcons nesting under the Bay Bridge. Despite the consultant's attempts to put a tolerable face on the situation, the analogy did not measure up. It is enough here to note that (1) even under the best-case scenario painted by the consultant, the clapper rail experience

would be no picnic and would be significantly disrupted on a regular basis during and after construction; and (2) that what may be good enough for the peregrine in a pinch (and this, too, is dubious) is by no means necessarily good for the rail (a very different sort of feathered critter). Comparing falcons and rails may be slightly more off-kilter than the oft-derided comparison of apples and oranges. Moreover, the consultant said nothing about the stress and fright that construction and periodic shouting, etc., during games would visit on these threatened denizens of the marshland, even if they were to hunker down and tough it out.

In sum, the consultant's best efforts fell woefully short of target. On the other hand, a substantial aggregation of groups dedicated to environmental preservation has argued forcefully against the wisdom of building this facility in the proposed location. In considering the ecological merits of the project, I would urge the Commission to weigh the comparatively frail assurances of the project consultants against the expertise of the many groups in opposition including the Council on Biological Diversity, the Marin Audubon Society, and the Marin Conservation League.

Inasmuch as the proposed project lies on a flood plain, many might wonder why it is even under consideration. While the applicant is on record as strongly supporting development of waterland property, most forward-thinking people and agencies are looking at ways to preserve such natural assets while drawing back in the face of the sea-level rises expected by a robust consensus of researchers. This project would place a large structure on the flood plain, a prospect that prompts several legitimate and compelling concerns. For example, who would build and maintain the infrastructure needed to keep out the rising tidal waters and probable storm surges? Who would monitor the viability of such infrastructure? If, as history suggests, the project might serve as a Trojan Horse giving birth to further re-zoning, what are the potential implications of disaster under some other eventual use involving a large human presence? At the very least, such a project promises to cast a public image of San Rafael and Marin County as practitioners of ill-advised, chancy development decisions in this age of global warming and expanding oceans.

Lastly, there is the grand elephant in the room—the prospect of constructing a soccer facility, including indoor and outdoor fields, adjacent to a working airport. Proponents argue that such arrangements exist elsewhere around the country. In itself, that is not a convincing argument. Because some people do stupid things, that's no reason for us to copy them (or so our parents told us). Small plane crashes occur fairly frequently, as we know from news reports. Crashes during takeoff or landing are inevitable at such facilities, and pilot control of aircraft during crises is unpredictable. We also know, from the recent letter sent by the Caltrans Aeronautics Division, that situating playing fields so close to an airstrip violates current state standards for public safety. Approving such a situation would involve, at the least, ethical and moral, if not legal, liability for decision-makers. If a proposal such as the one under consideration were found

meritorious, it would mean the decision-makers had chosen to disregard not only a best practices criterion but a basic threshold of protection for both children and adults.

In sum, this project would provide people with resources a place to play soccer for fee, to drink beer, etc. It would provide the owner of record a game-changer in the enduring efforts to break the covenants agreed upon by city and county so many years ago. In the bargain, it would achieve also the following: 1. It would change significantly the quality of life in adjacent neighborhoods. 2. It would, by testimony of environmental groups across the spectrum, adversely impact resident species, endangered and otherwise. 3. It would make our local government a model of unwise and destructive land-use decisions in an era of climate change. 4. It would demonstrate conscious government action in opposition to prevailing public standards of safety with respect to air traffic and recreational activities. No amount of "mitigation" (while that may permit technical approval of sub-standard and/or harmful conditions) will serve to overcome the flaws that pervade this proposal or to construct an edifice of merit capable of sustaining it.

As I said at the outset, I like soccer, and my children played in San Rafael Youth Soccer. I was a volunteer, working to maintain the fields. I would like to see ample facilities for youth soccer. But this proposed project makes no sense. Imagine that someone were to propose constructing an airfield half a football field away from, say, the playing fields at San Rafael High, Davidson, or Pickleweed. Is there anyone who would approve such a project? Such action would be unthinkable — one would hope. In like manner, it should be unthinkable to situate athletic fields alongside an existing airfield.

Thank you for your consideration.

Sincerely,

Donald Johns



Kamman Hydrology & Engineering, Inc.

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Mr. Kraig Tambornini
Planning Division
Community Development Department
City of San Rafael
1400 Fifth Avenue
PO Box 151560
San Rafael, California 94915-1560

**SUBJECT: Merits Comments SAN RAFAEL AIRPORT RECREATIONAL FACILITY
397-400 SMITH RANCH ROAD, SAN RAFAEL, CALIFORNIA,
San Rafael Airport Soccer Facilities**

Dear Mr. Tamborini:

The City should reject the proposed rezoning and Soccer facility because it will directly and adversely impact special status species in the adjacent marshlands, poses undue risks to the users and environment, and will be an economic loss to the City and County.

The proposed project occupies a site that is historic bay land, surrounded on three sides by intertidal channels, and is at site grade comparable to the adjacent marshland. This proposed project should be considered as a coastal development project, and rejected as unnecessary on that basis. County, State and Federal planning guidelines for coastal Baylands require consideration of the costs and impacts of necessary infrastructure improvement. These costs, when considered in the climate change context of Sea Level Rise will exceed the potential value of the project for the City. The clear economic trend is the basis for regional, national and international movement toward policy of coastal retreat.

I believe a better value to the community would be realized by restoring functional wetland. Returning this parcel to bay land would reduce the infrastructure burden on the county, provide flood storage capacity for adjacent communities, and expand valuable habitat for resident endangered species.

Sincerely,

Rachel Z. Kamman, PE
Principal
Kamman Hydrology & Engineering, Inc.



GALLINAS WATERSHED COUNCIL

68 Mitchell Blvd., Suite 240, San Rafael, CA 94903

*The Mission of the Gallinas Watershed Council is to: **Connect** the people who live and work in the Las Gallinas Valley with their creek and watershed; **Advance** local conservation action, and **Promote** watershed restoration, protection and education.*

Mr. Kraig Tambornini
Planning Division
Community Development Department
City of San Rafael
1400 Fifth Avenue
PO Box 151560
San Rafael, California 94915-1560

Subject: Airport Soccer Complex Merits Hearing May 29, 2012

Dear Planning Commission:

The Gallinas Watershed Council has given written and verbal testimony before on the significant flaws of this project. As a watershed-centered public interest group, we cannot support this proposal. The proposed zoning modification and soccer complex pose unacceptably high risks to the users and the adjacent wetlands, and contains large hidden community infrastructure costs. We request that the City reject the San Rafael Airport zoning modification and soccer complex request.

Climate Change/Sea Level Rise

With Climate change and sea level rise looming, it makes zero sense to put additional infrastructure, and children, in harm's way. As the BCDC map (attached) clearly shows, this area will be under water by mid-century, unless there is significant and costly and ever-increasing levee repair and maintenance. It makes no economic sense to build in the path of future, unquestionable flooding. In their letter to SR, the County has clearly stated that they will take no responsibility for maintaining the levees under their jurisdiction (see attached letter). San Francisco Bay Regional agencies unanimously call for restoring historic baylands and pulling back from the shoreline to cope with inevitable rising seas.

At a minimum, the project should **identify the anticipatable impacts** associated with the projected rates of sea level rise. The State of California defined these rates in 2012 via the California Climate Action Team (CAT) that developed sea level rise

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projections (relative to sea level in 2000) for the state. These range from 10-17 inches by 2050, 17-32 inches by 2070, and 31-69 inches at the end of the century. If the Greenland Ice Sheet were to melt, as some scientists are predicting, these levels and rates would be both larger and sooner than anticipated.

Development behind failing infrastructure

This subtidal parcel is not currently flooded on a daily basis because it is surrounded by perimeter levee and served by a pump. The levee system is owned in part privately (by the applicant), by Marin County and by the State of CA. Authorization of this project should be rejected until the City can clearly identify the feasibility of and secure the funding for the levee improvements necessary to protect the public and this project over its design life.

Lost Opportunity

It makes more sense to allow this parcel, at least in part, to revert to its original landscape as wetland habitat which could be used to buffer sea level rise, or to attenuate floodwaters. **Restoration of managed wetlands** could provide important added tidal exchange energy necessary to maintain the existing tidal channel network, and **provide flood hazard protection** for the adjacent and upstream communities of Santa Venetia and Terra Linda. The acquisition of this parcel for flood protection and its ecological benefit should be considered as an opportunity to save taxpayers millions of dollars. Restoration of this parcel would act significantly to protect homes and businesses already in existence, rather than putting an additional burden on public infrastructure and emergency services.

San Rafael general plan policies also support protecting baylands. The entire site is diked baylands, former tidal marsh. San Rafael's policy does not require that wetland functions currently be present; and these could easily be developed, in line with historic function.

Endangered Species

GWC also speaks for the endangered species that inhabit the surrounding creek sides and marsh, in particular the endangered California Clapper Rail and Black Rail. (see Table 4 attached). The hired biologist has failed to make a factual case that these species will be unaffected by the soccer complex; indeed most sources show that lights, noise, traffic and sudden movements by people are most dangerous for wildlife, especially sensitive marsh birds. This is why the following protocols are standard for wildlife refuges:

Refuges have closing hours at sunset in order to protect wildlife. The following are minimally necessary to protect sensitive species:

- 1. Establish sanctuaries*
- 2. Establish buffer zones*
- 3. Temporal zoning to reduce pressures at critical periods; open hours sunrise to sunset*
- 4. Promote slow, quiet and predictable wildlife viewing*

All of these standard protocols are violated with the proposed soccer complex. Lights WILL spill over onto the marsh; noise and traffic will make an impact; trash will increase and bring additional predation from rats and other vermin that truly are habituated to human presence; and the Clapper Rail will lose one of its critical habitats, sending it further down the road to extinction.

PRBO's census of Clapper Rail populations identifies the Gallinas Creek area as one of the best.¹ For an endangered species to be threatened by any sort of development—especially one that could easily be located elsewhere—is not good public planning. It seems out of character that residents of Marin County or the state and federal regulatory agencies would allow this. Indeed, Marin Audubon, the Marin Sierra Club, Sustainable San Rafael, the Marin Conservation League, and the Center for Biological Diversity have all spoken out repeatedly against this environmentally insensitive project.

Inadequate Mitigations and Monitoring

Monitoring is only being done during construction. None is required for after the project is up and running. Monitoring afterwards is equally important to see that impacts on endangered species are not occurring, before the damage becomes irreversible. What mitigations or changes should the public expect should monitoring indicate that existing nesting populations are in decline or have been lost? These factors need to be given serious consideration and be spelled out.

The FEIR also fails to take into account the reality that San Rafael has cut staff in the enforcement department, so that many of the ordinances already on the books, such as the ones dealing with massage parlors, gang activity, and graffiti, are going unenforced due to lack of staff time. This makes the city's promises of response to community complaints regarding noise and other issues with this project ring hollow. Should this project receive approval, the City should hold a bond/guarantee from the builder to pay for monitoring and any necessary city enforcement costs after the project has finished construction and for at least 2-3 years into the future.

Greenhouse Gas Increase

Given that the project is off the major bus routes and far from the public it claims to serve, it will also cause an increase in greenhouse gasses due to the need for all people using this facility to drive here. It would be much wiser to locate this facility in town, near people and transportation. In fact, this location is in direct contradiction of San Rafael's much praised *Climate Change Action Plan*, which calls for reduction in driving and protection of wild lands.

¹ "The most populous site in San Pablo Bay was Gallinas Creek where we estimated an average of 244 (observer) to 251 (DISTANCE) Clapper Rails," 2005-2008 PRBO Report for California Dept of Fish and Game, http://www.prbo.org/cms/docs/wetlands/CLRA_DFG_Report_P0630020_FINAL.pdf

A Sensitive Site and Lack of Clear Land Use Parameters

There are no use restrictions agreement requiring that owner/developer keep this area as soccer recreation; in fact he has requested to have "flexibility" to change usage. If the biggest merit of the project is that it will add extra much needed soccer indoor and outdoor fields, this usage should be specified in this project and not be allowed to change.

Public Health and Safety

Fumes from traffic and airplanes and lead in fuels cause serious health effects on athletes and the young. And this usage for recreational facilities is specifically prohibited in Safety Zones 2 and 5 under the Airport Safety Handbook 2011.

Water from the airport area is currently pumped without NPDES regulation directly into marsh. Contamination will increase as the additional impervious surfaces of this project will contribute to more runoff and add the oil and fluids dripped from the 300-car parking lot. The plastic turf contains contaminants that will also directly wash into the marsh.

Deed of Restrictions

Owner/developer has consistently challenged the deed of restrictions on this property which were set for **public** as well as private, open space recreation; not a private sports facility, cafe serving alcohol, or for charity fundraisers.

Lack of Consideration for Alternatives

Other locations were listed in the original DEIR. They were not chosen due to various reasons, but their rejection does not give validity to this location. Since the project was first proposed many years ago, the economic climate has changed and more facilities closer to transportation and neighborhoods may have opened up.

Given the significant existing and potential ecological value of this site, the City should make every effort to vet alternatives. Before authorizing this project, the City should undertake a **current and comprehensive assessment of alternative site feasibility/costs/risks** that would include the costs of infrastructure repair and maintenance over the project life as well as the risks to users due to airport operations and flood hazards.

An Alternative Project

Reducing the impact of outdoor fields by reducing or eliminating lighting (lights from sunrise to sundown only), and placing the indoor facility closer in town, may address many concerns. Having playing fields without lights and not permitting the indoor complex would not require any zoning change.

We respectfully request that the Planning Commission consider the costs and negative impacts this zoning modification and project would bring, weigh them

against the short term economic benefits and come to a reasoned and clear decision to reject this proposal.

s/Alex Kahl, President
Gallinas Watershed Council

CC: USACE
RWQCB
USFWS
NMFS/NOAA
Marin Conservation League
Marin Audubon Society
Marin Sierra Club



San Francisco Bay
Conservation and Development Commission

16-INCH SEA LEVEL RISE BY MID-CENTURY CENTRAL BAY NORTH

Vulnerable areas

0 1.5 3 MILES



SOURCE: Inundation data from Knowles, 2008. Additional reef pond elevation data by Siegel and Bachand, 2002. Aerial imagery is NAIP 2005 data.
DISCLAIMER: Inundation data does not account for existing shoreline protection or wave activity. These maps are for informational purposes only. Users, by their use, agree to hold harmless and blameless the State of California and its representatives and its agents for any liability associated with its use in any form. The maps and data shall not be used to assess actual coastal hazards, insurance requirements, or property values or be used in lieu of Flood Insurance Rate Maps issued by the Federal Emergency Management Agency (FEMA).