



**Planning Commission
Regular Meeting**

**Tuesday, January 11, 2022, 7:00 P.M.
AGENDA**

Virtual Meeting

**Watch on Webinar: <https://tinyurl.com/pc-2022-01-11>
Watch on YouTube: <http://www.youtube.com/cityofsanrafael>
Telephone: (669) 900-9128
Meeting ID: 872-0645-4435#
One Tap Mobile: US: +16699009128,,87206454435#**

CORONAVIRUS (COVID-19) ADVISORY NOTICE

In response to Assembly Bill 361, the City of San Rafael is offering teleconference without complying with the procedural requirements of Government Code section 54953(b)(3). This meeting will be held virtually using Zoom.

How to participate in the meeting:

- Submit public comments in writing. Correspondence received by 5:00 p.m. the Wednesday before this public hearing will be provided with the agenda materials provided to the Commission. Correspondence received after this deadline but by 5:00 p.m. the day of the hearing will be conveyed to the Commission as a supplement. Send correspondence to the project planner and to planningpubliccomment@cityofsanrafael.org
- Join the Zoom webinar and use the 'raise hand' feature to provide verbal public comment.
- Dial-in to Zoom's telephone number using the meeting ID and provide verbal public comment.

Any member of the public who needs accommodations should contact the City Clerk (email city.clerk@cityofsanrafael.org or phone at 415-485-3066) who will use their best efforts to provide reasonable accommodations to provide as much accessibility as possible while also maintaining public safety in accordance with the City procedure for resolving reasonable accommodation requests.

Members of the public may speak on Agenda items.

CALL TO ORDER

RECORDING OF MEMBERS PRESENT AND ABSENT

APPROVAL OR REVISION OF ORDER OF AGENDA ITEMS

PUBLIC NOTIFICATION OF MEETING PROCEDURES

ORAL COMMUNICATIONS FROM THE PUBLIC

Remarks are limited to three minutes per person and may be on anything within the subject matter jurisdiction of the body. Remarks on non-agenda items will be heard first, remarks on agenda items will be heard at the time the item is discussed.

CONSENT CALENDAR

The Consent Calendar allows the Commission to take action, without discussion, on Agenda items for which there are no persons present who wish to speak, and no Commission members who wish to discuss.

1. Approval of the Planning Commission Meeting Minutes of December 14, 2021

Recommended Action – Approve minutes as submitted

2. Tiscornia Marsh Restoration Project, North of Canal Street

Request for a Use Permit and Environmental and Design Review Permit to approve the Tiscornia Marsh Restoration Project. The Tiscornia Marsh Restoration Project proposes to restore the 23-acre tidal marsh/mudflats and shoreline levee located north and outboard of Canal Street, as well as the five-acre, City-owned diked marsh located north of the Albert J. Boro Center/Pickleweed Park Playfields. APNs: 009-142-01, 009-032-08 and -09; Planned Development- Wetland Overlay (PD-WO) and Parks/Open Space-Wetland and Canalfront Review Overlay (P/OS-WO-C) Districts. Applicant: Marin Audubon Society; Property Owners: Marin Audubon Society and City of San Rafael.

Project Planner: Leslie Mendez Leslie.mendez@cityofsanrafael.org

Recommended Action - Adopt a resolution certifying the Tiscornia Marsh Restoration Project Final Environmental Impact Report (FEIR); Adopt a resolution adopting CEQA Findings of Fact and approving a Mitigation Monitoring and Reporting Program; and Adopt a resolution approving Use Permit UP21-001 and Environmental and Design Review Permit ED21-002

ACTION ITEMS

3. Northgate Mall Redevelopment Project (5800 Northgate Drive)

Scoping meeting for the Notice of Preparation of an Environmental Impact Report (EIR) for a Rezone to the Planned Development (PD) zone, a Use Permit, an Environmental and Design Review Permit, and a Tentative Map to allow the comprehensive redevelopment of the existing Mall into a new, phased mixed-use development with retail and approximately 1,443 residences on a 44.76-acre site. APNs: 175-060-12, -40, -59, -61, -66 & -67; General Commercial (GC) District; MeloneGeier Partners, owner/applicant; File Nos: ZC21-001, UP21-007, ED21-024, TS21-002, IS21-002 & DA21-001

Project Planner: Tricia Stevens Tricia.Stevens@cityofsanrafael.org

Recommended Action - Accept public comment and direct staff to prepare a Draft Environmental Impact Report (DEIR)

4. Annual Meeting 2022

Annual Meeting of Planning Commission for 2022 to include: a) election of officers; and b) review of Planning Commission "Rules and Procedures"; and c) selection of liaisons to DRB meetings

Project Planner: Leslie Mendez Leslie.mendez@cityofsanrafael.org
Recommended Action - Elect a new Chair and Vice Chair for 2022; Consider and accept any proposed changes to the Planning Commission "Rules and Procedures;" and Select Planning Commission liaisons to the DRB for 2022

DIRECTOR'S REPORT

COMMISSION COMMUNICATION

ADJOURNMENT

Any records relating to an agenda item, received by a majority or more of the Commission less than 72 hours before the meeting, shall be available for inspection online. Sign Language interpreters may be requested by calling (415) 485-3066 (voice), emailing city.clerk@cityofsanrafael.org or using the California Telecommunications Relay Service by dialing "711", at least 72 hours in advance of the meeting. Copies of documents are available in accessible formats upon request.

The Planning Commission will take up no new business after 11:00 p.m. at regularly scheduled meetings. This shall be interpreted to mean that no agenda item or other business will be discussed or acted upon after the agenda item under consideration at 11:00 p.m. The Commission may suspend this rule to discuss and/or act upon any additional agenda item(s) deemed appropriate by a unanimous vote of the members present. Appeal rights: any person may file an appeal of the Planning Commission's action on agenda items within five business days (normally 5:00 p.m. on the following Tuesday) and within 10 calendar days of an action on a subdivision. An appeal letter shall be filed with the City Clerk, along with an appeal fee of \$350 (for non-applicants) or a \$4,476 deposit (for applicants) made payable to the City of San Rafael, and shall set forth the basis for appeal. There is a \$50.00 additional charge for request for continuation of an appeal by appellant.



**Planning Commission
Regular Meeting**

**Tuesday, December 14, 2021, 7:00 P.M.
MINUTES**

Virtual Meeting

**Watch on Webinar: <https://tinyurl.com/pc-12-14-21>
Watch on YouTube: <http://www.youtube.com/cityofsanrafael>
Telephone: (669) 900-9128
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Present: Chair Samudzi
Commissioner Harris
Commissioner Haveman
Commissioner Lubamersky
Commissioner Saude
Absent: Commissioner Mercado
Vice Chair Previtali

Also Present: Leslie Mendez, Planning Manager
Steve Stafford, Senior Planner
Jayni Allsep, Contract Planner

Jeff Hamilton, Contract Planner
Sean Kennings, Contract CEQA Consultant

CALL TO ORDER

Chair Samudzi called the meeting to order at 7:00 p.m. He then invited Planning Manager Leslie Mendez to call the roll. All commissioners were present, except Commissioner Mercado and Vice Chair Previtali.

APPROVAL OR REVISION OF ORDER OF AGENDA ITEMS

None

PUBLIC NOTIFICATION OF MEETING PROCEDURES

Chair Samudzi invited Planning Manager Leslie Mendez who informed the community the meeting would be streamed live to YouTube and members of the public would provide public comment either on the telephone or through Zoom. She explained the process for community participation on the telephone and Zoom.

Chair Samudzi reviewed the procedures for the meeting.

ORAL COMMUNICATIONS FROM THE PUBLIC

None

CONSENT CALENDAR

Chair Samudzi invited public comment; however, there was none.

Commissioner Lubamersky moved and Commissioner Haveman seconded to approve the Consent Calendar.

1. Approval of the Planning Commission Meeting Minutes of October 26, 2021

Approved minutes as submitted

2. [UP21-006 & ED21-022] 800 Mission Ave. Project (“Aegis Living San Rafael”) – Corrected Resolution

Resolution of the City of San Rafael Planning Commission amending the effective date of Planning Commission Resolution No. 21-08

(Approval Of Development Permits For 800 Mission Avenue)

(APNS: 011-184-08 & -09)

Project Planner: Steve Stafford steve.stafford@cityofsanrafael.org

*RESOLUTION NO. 21-09 - RESOLUTION OF THE CITY OF SAN RAFAEL
PLANNING COMMISSION AMENDING THE EFFECTIVE DATE OF PLANNING
COMMISSION RESOLUTION NO. 21-08 (APPROVAL OF DEVELOPMENT PERMITS
FOR 800 MISSION AVENUE) (APNS: 011-184-08 & -09)*

3. Ross Terrace Street (39 & 41 Ross Street)

Request for a Lot Line Adjustment for property line adjustment, Exception, and Environmental and Design Review Permits to allow for the: (1) Construction of a 2,646 square-foot, single-family residence on vacant hillside Lot 59; (2) Construction of a 2,697 square foot residence on vacant hillside Lot 60; and (3) Construction of a two

lane access driveway within the undeveloped Ross Street Terrace right-of-way approximately 480 feet in length from Ross Street; APNs: 012-141-59 and 012-141-60; Single-family Residential (R7.5) District; Coby Freidman, applicant. File No(s): LLA19-008, ED19-090, ED19-091, and EX20-006.

Project Planner: David Hogan dave.hogan@cityofsanrafael.org

Continued item

AYES: Commissioners: Harris, Haveman, Lubamersky, Saude & Chair Samudzi

NOES: Commissioners: None

ABSENT: Commissioners: Mercado & Previtali

ABSTAIN: Commissioners: None

Motion carried 5-0

ACTION ITEMS

- 4. Aldersly Retirement Community, 326 and 308 Mission Avenue** - Scoping meeting for Notice of Preparation of an Environmental Impact Report (EIR) to assess impacts of the Aldersly Retirement Community Project. The project proposes phased improvements on the Aldersly Campus, including demolition and renovation of existing buildings and construction of new buildings. APNs: 014-054-31 and -32; Planned Development (PD-1775) Zoning District; Applicant: Peter Lin, Greenbriar Development; Property Owner: Peter Schakow, Aldersly Retirement Community.
Project Planner: Jayni Allsep jayni.allsep@cityofsanrafael.org

Leslie Mendez, Planning Manager introduced Jayni Allsep, Contract Planner who presented the Staff Report.

Staff and Applicant Team responded to questions from the Commissioners.

Chair Samudzi invited public comment.

Speakers: Derek Cavasian, Tymber Cavasian

Staff and Applicant Team responded to further questions from the Commissioners.

Commissioners provided comments.

Commissioner Lubamersky moved and Commissioner Haveman seconded to accept public comment and direct staff to prepare a Draft Environmental Impact Report (DEIR)

AYES: Commissioners: Harris, Haveman, Lubamersky, Saude & Chair Samudzi

NOES: Commissioners: None

ABSENT: Commissioners: Mercado & Previtali

ABSTAIN: Commissioners: None

Motion carried 5-0

5. Neighborhood at Los Gamos - Request for General Plan Amendment GPA 20-001 (from Hillside Resource Residential to Neighborhood Commercial Mixed Use); Zone Change ZC 20-002 (from Planned District – Hillside Development Overlay District (PD-H) and Residential – Hillside Development Overlay District (R2a-H) to Planned Development District (PD); Vesting Tentative Parcel Map (to combine and adjust the boundaries of the existing parcels); and Environmental and Design Review ED 20-058; for a mixed-use project with 192 multi-family residential units; an approximately 5,600-square-foot retail grocery store; a 5,000-square-foot community center; and 225 at-grade and semi-subterranean parking spaces; on a 10.24 acre site located on Los Gamos Road north of Oleander Drive; on APN 165-220-06 and 165-220-07; Christopher Hart, Applicant and Property Owner; Mont Marin/San Rafael Park Neighborhood. Project Planner: Jeff Hamilton jhamilton@migcom.com

Leslie Mendez, Planning Manager introduced Jayni Jeff Hamilton, Contract Planner who presented the Staff Report. She also introduced Sean Kennings, Contract CEQA consultant who is available for questions.

Staff responded to questions from the Commissioners.

Applicant Team gave a presentation.

Chair Samudzi invited public comment.

Speakers: Andrew Ward, Marin YMCA, Michele Hassid, San Rafael Chamber of Commerce, Bob Pendoley, Marin Environmental Housing Collaborative MEHC, Zack Zimmeran, BamCore, Jeff Bialik, Housing Crisis Action Marin Steering Committee, Rae Dawn Hirsch, Grace Geraghty, Responsible Growth Marin

Staff and Applicant Team responded to further questions from the Commissioners.

Commissioners provided comments.

Commissioner Lubamersky moved and Commissioner Saude seconded to approve and recommend going forward articles a-e and follow Staff's recommendation.

AYES: Commissioners: Harris, Haveman, Lubamersky, Saude & Chair Samudzi

NOES: Commissioners: None

ABSENT: Commissioners: Mercado & Previtalli

ABSTAIN: Commissioners: None

Motion carried 5-0

Adopted Resolutions recommending to the City Council a) adoption of the Mitigated Negative Declaration and MMRP; b) approval of the General Plan Amendment; c) approval of the Zone Change; d) approval of the Vesting Tentative Parcel Map with conditions; e) approval of the Environmental and Design Review application with conditions

RESOLUTION NO. 21-10 - RESOLUTION OF THE CITY OF SAN RAFAEL PLANNING COMMISSION RECOMMENDING TO THE CITY COUNCIL ADOPTION OF AN INITIAL

STUDY/MITIGATED NEGATIVE DECLARATION AND APPROVAL OF THE MITIGATION MONITORING AND REPORTING PROGRAM FOR A GENERAL PLAN AMENDMENT (GPA 20-001), ZONE CHANGE (ZC 20-002), VESTING TENTATIVE PARCEL MAP, AND ENVIRONMENTAL AND DESIGN REVIEW PERMIT (ED 20-058), FOR THE CONSTRUCTION OF A MIXED-USE PROJECT CONSISTING OF 192 RESIDENTIAL APARTMENT UNITS, A 5,600 SQUARE-FOOT MARKET, A 5,000 SQUARE FOOT COMMUNITY CENTER, AND 225 AT-GRADE AND SEMI-SUBTERRANEAN PARKING SPACES, ON A 10.24 ACRE SITE LOCATED AT THE SOUTHERLY TERMINUS OF LOS GAMOS ROAD NORTH OF OLEANDER DRIVE (THE NEIGHBORHOOD AT LOS GAMOS) (APNS: 165-220-06 AND 165-220-07)

RESOLUTION NO. 21-11 - RESOLUTION OF THE CITY OF SAN RAFAEL PLANNING COMMISSION RECOMMENDING TO THE CITY COUNCIL APPROVAL OF A GENERAL PLAN AMENDMENT FROM HILLSIDE RESOURCE RESIDENTIAL TO NEIGHBORHOOD COMMERCIAL MIXED USE (GPA 20-001) AND ADOPTION OF AN ORDINANCE REZONING CERTAIN PROPERTY FROM PLANNED DISTRICT – HILLSIDE DEVELOPMENT OVERLAY DISTRICT (PD-H) AND RESIDENTIAL – HILLSIDE DEVELOPMENT OVERLAY DISTRICT (R2A-H) TO PLANNED DEVELOPMENT DISTRICT (PD) (ZC 20-002), FOR THE CONSTRUCTION OF A MIXED-USE PROJECT CONSISTING OF 192 RESIDENTIAL APARTMENT UNITS WITH TEN BELOW MARKET RATE UNITS AVAILABLE TO LOW INCOME HOUSEHOLDS, A 5,600 SQUARE-FOOT RETAIL GROCERY STORE, A 5,000 SQUARE FOOT COMMUNITY CENTER, AND 225 AT-GRADE AND SEMI-SUBTERRANEAN PARKING SPACES, ON A 10.24 ACRE SITE LOCATED AT THE SOUTHERLY TERMINUS OF LOS GAMOS ROAD NORTH OF OLEANDER DRIVE (THE NEIGHBORHOOD AT LOS GAMOS) (APNS: 165-220-06 AND 165-220-07)

RESOLUTION NO. 21-12 - RESOLUTION OF THE CITY OF SAN RAFAEL PLANNING COMMISSION RECOMMENDING THAT THE CITY COUNCIL APPROVE A VESTING TENTATIVE PARCEL MAP AND ENVIRONMENTAL AND DESIGN REVIEW PERMIT (ED 20-058), ON A 10.24 ACRE SITE LOCATED AT THE SOUTHERLY TERMINUS OF LOS GAMOS ROAD NORTH OF OLEANDER DRIVE (THE NEIGHBORHOOD AT LOS GAMOS) (APNS: 165-220-06 AND 165-220-07)

DIRECTOR'S REPORT

Planning Manager reported on the following items:

- The League of California Cities Planning Commissioners Academy to be held in March 2022 in San Ramon.
- On December 20, 2021, City Council will hear Senate Bill 9 (SB 9) guidelines and will propose a new ordinance.
- Next Planning Commission meeting will be on January 11, 2022. At this meeting a new Chair and Vice Chair will be selected and the 2022 schedule will be adopted.

COMMISSION COMMUNICATION

- Discussion regarding January meeting items and temporary shelter in the Canal.
- Commissioner Lubamersky announced his resignation.

ADJOURNMENT

Chair Samudzi adjourned the meeting at 9:21 p.m.

LINDSAY LARA, City Clerk

APPROVED THIS ____ DAY OF _____, 2022

SHINGAI SAMUDZI, Chair

DRAFT



SAN RAFAEL
THE CITY WITH A MISSION

Community Development Department – Planning Division

Meeting Date: January 11, 2022
Agenda Item: 2
Case Numbers: UP21-001, ED21-002, & IS21-001
Project Planner: Leslie Mendez, Planning Manager

REPORT TO PLANNING COMMISSION

SUBJECT: Tiscornia Marsh Restoration Project, North of Canal Street – Request for a Use Permit and Environmental and Design Review Permit to approve the Tiscornia Marsh Restoration Project. The Tiscornia Marsh Restoration Project proposes to restore the 23-acre tidal marsh/mudflats and shoreline levee located north and outboard of Canal Street, as well as the five-acre, City-owned diked marsh located north of the Albert J. Boro Center/Pickleweed Park Playfields. APNs: 009-142-01, 009-032-08 and -09; Planned Development- Wetland Overlay (PD-WO) and Parks/Open Space-Wetland and Canalfront Review Overlay (P/OS-WO-C) Districts. Applicant: Marin Audubon Society; Property Owners: Marin Audubon Society and City of San Rafael.

EXECUTIVE SUMMARY

Marin Audubon Society (MAS), project applicant, has filed Use Permit and Environmental and Design Review Permit applications to pursue a restoration of the 23-acre Tiscornia Marsh, and the adjacent five-acre, City-owned diked marsh located north of Canal Street. In late 2020, these planning applications and restoration plans were reviewed by City staff, and it was determined that the project has the potential to result in significant, physical environmental effects. Preparation of an Environmental Impact Report (EIR) was initiated to assess the impacts of the project. In Fall 2021, a Draft EIR (DEIR) was prepared in accordance with the CEQA Guidelines. A 45-day public review period for the DEIR was observed, and on October 26, 2021, the Planning Commission held a public hearing to accept comments on the DEIR. The DEIR found that all potentially significant impacts can be mitigated to a less-than-significant level through implementation of recommended mitigation measures, and the Planning Commission directed that a Final EIR (FEIR) be prepared. The FEIR has been completed and is available on the [Tiscornia Marsh webpage](#). An action to certify the FEIR is recommended (see Attachment 1), along with adopting of CEQA Findings of Fact and approval of a Mitigation Monitoring and Reporting Program (MMRP) (see Attachment 2). These actions must be taken prior to taking action on the planning applications.

As proposed and conditioned, the project is consistent with the pertinent policies and programs of the San Rafael General Plan 2040 (see Attachment 4), and the provisions of the Planned Development – Wetland Overlay (PD-WO) and Parks/Open Space – Wetland and Canalfront Review Overlay (P/OS-WO-C) zoning districts. Approval of the Use Permit and Environmental and Design Review Permit applications is recommended subject to conditions, which include the incorporation of the FEIR mitigation measures.

RECOMMENDATION

It is recommended that the Planning Commission take the following actions:

1. Adopt a resolution certifying the Tiscornia Marsh Restoration Project Final Environmental Impact Report (FEIR) (Attachment 1);
2. Adopt a resolution adopting CEQA Findings of Fact and approving a Mitigation Monitoring and Reporting Program (Attachment 2); and
3. Adopt a resolution approving Use Permit UP21-001 and Environmental and Design Review Permit ED21-002 (Attachment 3).

PROPERTY FACTS

Address/Location:	North of Canal Street	Parcel Number(s):	009-142-01, 009-032-08 and 09
Property Size:	28 acres	Neighborhood:	Canal/Spinnaker Point
Site Characteristics			
	General Plan Designation	Zoning Designation	Existing Land-Use
Project Site:	Conservation Water Parks, Recreation and Open Space	PD-WO (Planned Development – Wetland Overlay) District P/OS-WO-C (Parks/Open Space-Wetland Overlay, Canalfront Review Overlay) District	Tidal marsh and submerged tidelands Upland shoreline levee and access path Undeveloped, diked marsh
North:	Water Parks, Recreation & Open Space Low-Density Residential	W M-C R7.5	San Rafael Canal, Yacht Club Single-Family Residences
South:	Medium Density Residential Parks, Recreation and Open Space	PD-1255 P/OS-C	Townhomes Community Center and Park
East:	Water	W	Bay Tidelands
West:	Parks, Recreation and Open Space Low-Density Residential	P/OS-C R5-C	Community Center and Park Single-Family Residences

Site Description & Setting:

The Tiscornia Marsh site covers 23 acres of tidal marsh and bay lands and well as 2,000 feet of shoreline levee/trail located north of East Canal Street. The property, which is owned by MAS is bound to the: a) south by a shoreline levee, Schoen Park (small City-owned park/playground) and Canal Street; b) west by the Albert J Boro Community Center and Pickleweed Park; c) east by the San Rafael Bay; and d) north by the San Rafael Creek. The neighboring Albert J Boro Community Center and Pickleweed Park covers approximately 15 acres which includes an active community center, community park, and an expansive playfield. Included in the City-owned holdings is an undeveloped, four-acre diked salt marsh, which is located north of the large playfield. Although subject to flooding in the winter months, this diked salt marsh is enclosed by a perimeter levee and contains a well-used, informal pedestrian trail, which loops through the area.

The Tiscornia Marsh has experienced considerable erosion along its bayward edge, which is attributed to direct wave action from the bay. Over the last 30 years, approximately three acres of the tidal marsh has been lost to this erosion, which has dramatically impacted habitat for species such as the California Ridgway’s Rail and Salt Marsh Harvest Mouse. Under current conditions, it is expected that this erosion will continue and will likely increase as sea level rises. The second critical issue for this general area is flooding. The adjacent Canal neighborhood is low-lying and is currently at risk to coastal flooding (as well as sea level rise).

Figure 1: Tiscornia Marsh Restoration Project Location



History:

In June 2016, the voters of the nine Bay Area counties approved Measure AA, a parcel tax measure. The tax measure is a \$12.00 per year tax on every parcel in the Bay Area. The purpose of Measure AA is to generate \$500 million over a 20-year period for critical tidal marsh restoration projects around the San Francisco Bay. The goal is to improve water quality, restore habitat for wildlife, protect communities from flooding and increase shoreline public access.

Applications for Measure AA funds for local restoration projects are initiated annually by the San Francisco Bay Restoration Authority. In fall 2018, a second call for applications was released and MAS applied for funding. As required by the application process MAS was required to submit an endorsement of the application by the local jurisdiction (City). On October 1, 2018, the City Council reviewed this request and adopted Resolution No. 14592 authorizing the application endorsement. As part of this review, the City Council acknowledged its role as the lead agency on this project for permitting and environmental review.

PROJECT DESCRIPTION

Marin Audubon Society is pursuing the restoration of the Tiscornia Marsh, which would include the contiguous City-owned dike marsh. The project objectives are as follows:

- Restore the project area to improve ecological function and habitat quantity, quality, and connectivity for native marsh species and marsh upland transition species, including special-status species.

- Protect the project site marshlands from future marsh edge erosion.
- Increase the level of flood protection for the Canal neighborhood and other nearby communities of Central San Rafael.
- Create sustainable benefits that consider future environmental changes such as sea level rise and sedimentation.
- Maintain and improve public access to passive recreation and outdoor education opportunities (e.g., hiking, jogging and bird watching).

Tiscornia Marsh would be restored to its former extent by beneficially reusing dredged material from local sources. A coarse beach would be constructed along the bay ward edge of the restored marsh to resist future erosion. Tidal action would also be restored to the City-owned diked marsh at the north end of Pickleweed Park. Altogether, the project would reconstruct approximately four acres of eroded tidal marsh, preserve, and protect the approximately eight remaining acres of Tiscornia Marsh, and restore approximately five acres of diked marsh (City-owned area north of the Pickleweed Park playfields) by reconnecting it to tidal inundation. The project also proposes to construct a new 600-foot setback levee and improve approximately 1,100 feet of shoreline levee to achieve greater flood protection, public access, and habitat benefits. In sum, the major project elements include the:

- Introduction of a coarse, rocky beach;
- Reconstruction of the eroded tidal marsh;
- Restoring the diked marsh to the bay;
- Shoreline levee improvements; and
- Development of an ecotone slope.

Figure 2: Restoration Plan



Since the initial development of the restoration plan, minor revisions to the plan have been made to align with several City-sponsored projects within the park and community center area. Among these projects is a storm drain outfall and trash capture program, which, if implemented, would necessitate some adjustments that would transition to and join with the elevated western levee in the restoration plan.

In January 2021 MAS filed Use Permit and Environmental and Design Review Permit applications for this project. The grading and restoration of wetlands (including filling and cutting/dredging) requires a Use Permit per SRMC Sections 14.13.030 and 14.13.050 (Wetland Overlay District). Grading as a primary use (not linked to the construction of a building) requires an Environmental and Design Permit per SRMC Section 14.25.040A.3.b, as it is considered a major site improvement (involves in excess of 1,000 cubic yards of fill and 2,000 cubic yards of cut). Construction-related City permits required for this project include a Grading Permit and a Tideland Permit. Permits and clearances are required by other regulatory agencies including, but not limited to the US Army Corps of Engineers, Bay Conservation and Development Commission (BCDC), California Department of Fish & Wildlife (CDFW), and the California Regional Water Quality Control Board (RWQCB).

ANALYSIS

General Plan 2040 Consistency:

A detailed analysis of the project consistency with the General Plan 2040 has been prepared in table format and is provided as Attachment 4 to this report. A summary of key policies and programs is provided below. Staff has identified a number of key General Plan 2040 policies and programs that should be considered. First, as proposed, the project is consistent with the pertinent policies of the Land Use Element including: Policy LU-2,1 (Land Use Map and Categories – Parks/Recreation and Open Space, Water, and Conservation); Policy LU-1.15 (Planned Development Zoning). The project proposes to maintain, expand, and improve wetlands and the shoreline levee project, which are uses and improvements that: a) are promoted in the applicable land use categories; and b) would facilitate orderly planning as required by the PD (Planned Development) District zoning. Further, the project is appropriate for the project site area as it would improve the bay front environment by creating new wetlands, promoting new wildlife habitat, improving hydrology and stormwater drainage, and providing some defense to projected sea level rise. Other key policies that are pertinent to this project are as follows:

Conservation and Climate Change Element

C-1.2. Wetlands and Sea Level Rise.

Optimize the role of wetlands in buffering the San Rafael shoreline against the future impacts of sea level rise.

Response: As a whole, the project is designed to enhance and restore wetlands to their natural condition. The project features include raising the shoreline levee and creating an “ecotone” (outboard, horizontal levee), which are key to combating and adapting to sea level rise.

C-1.3. Wetland Protection and Mitigation.

In order to protect and preserve valued wetlands, loss of wetlands due to filling shall be avoided. Compensatory mitigation for the loss of wetlands shall be required in the event that preservation is not possible or practical due to conditions such as the location, configuration, and size of the wetland.

Response: As proposed, the project would not result in the loss of wetlands but would enhance wetlands that are currently protected. Although the development of an “ecotone” in an area of submerged tidelands

and diked marsh will require some filling of the bay, this filling would be offset by the removal of fill in the diked marsh area.

Parks, Recreation and Open Space Element

PROS-1.8. Linear Parks and Trails.

Encourage linear parks and trails along the Bay shoreline, the San Rafael Canal, local creeks, and transportation corridors such as the SMART right-of-way. Where feasible, spur trails should connect linear parks to nearby neighborhoods, parks, and open spaces.

The project would result in an improved and increased linear park and trails system for the Southeast San Rafael neighborhood. The proposal to raise and shift the alignment of the shoreline levee will not only mitigate increased flooding and combat projected sea level rise, but it would also provide for a more protected and improved public trail that is well used by the community.

Safety Element

S-3.4. Mitigating Flooding and Sea Level Rise.

Consider and address increased flooding and sea level rise impacts in vulnerable areas (see Figure 8-3) in development and capital projects, including resiliency planning for transportation and infrastructure systems.

Response: The project features include raising the shoreline levee and creating an “ecotone” (outboard, horizontal levee), which are key to mitigating increased flooding, as well as combating and adapting to projected sea level rise.

S-3.7. Shoreline Levees.

Improve and expand San Rafael’s shoreline levee system. When private properties are developed or redeveloped, require levee upgrading as appropriate, based on anticipated high tide and flood conditions.

Response: The project would raise and realign the existing shoreline levee, which would reduce flooding assist in adapting the area to projected sea level rise.

Neighborhoods Element

NH-3.6. Public Access.

Increase and improve public access to the Canal through the creation of waterfront promenades, a potential new pedestrian bridge east of Grand Avenue, additional access points within new development, and waterside access for boats.

Response: The project includes the raising and realignment of the shoreline levee that is within the project area. The new levee top will be developed with a new pedestrian/bicycle path, which will be accessible to the public. The path would improve public access.

NH-3.8. Flood Control Improvements.

Coordinate development and redevelopment of uses along the Canal with a comprehensive strategy to reduce flood hazards, adapt to sea level rise and create a more resilient shoreline. This should include improvements to levees and sea walls, pump stations, and storm drainage infrastructure.

Response: The project includes the raising and realignment of the shoreline levee that is within the project area, along with the creation of new marshland in areas that are currently submerged tidelands and diked marshland. As determined by the Tiscornia Marsh EIR, these improvements will improve flood control for an area that is prone to flood risk.

As proposed and as conditioned, staff finds that overall, the project is consistent with these and all pertinent policies and programs of the San Rafael General Plan 2040. The project has been designed to maintain and improve public access along the bay front, while complimenting and minimizing impacts to neighboring properties and improvements.

Zoning Ordinance Consistency:

SRMC Chapters 14.07 and 14.10 - Base District Regulations (PD and P/OS Districts)

The majority of the project site (23 acres) that is owned by MAS is located within the Planned Development (PD) District. The purpose of the PD District is to customize the zoning regulations so as to “master plan” the site for cohesive planning. The provisions set forth in Chapter 14.07 (PD District) of the San Rafael Municipal Code (Zoning Ordinance) state that no use other than an existing use or a temporary use shall be approved without a “development plan” (aka, “master plan”), which is adopted by ordinance of the City Council. However, as the proposed project would not dramatically change but would enhance the existing land use, no development plan is required. However, as provided in SRMC Section 14.07.020, approval of a Use Permit is required. Proposed Use Permit UP21-001 complies with this requirement.

The five-acre, City-owned diked marsh portion of the project site is subject to the land use regulations and development standards of the underlying Parks/Open Space (P/OS) zoning district, pursuant to Chapter 14.10 of the San Rafael Municipal Code (Zoning Ordinance). The project would not result in the conversion of the existing diked marsh to a tidal marsh. The resulting use would be defined as a “wildlife preserves or sanctuary,” which is consistent with and a permitted use within the P/OS District.

SRMC Chapters 14.13 and 14.15 - Overlay District Regulations (-WO and -C Districts)

Overlay Districts apply to areas and sites where there are special conditions, which require application of additional regulations and requirements. Two Overlay Districts apply to the project site, the Wetland Overlay (-WO) and Canalfront Review Overlay (-C) Districts.

The entire project area is located within the Wetland Overlay (-WO) District as it contains known wetlands as defined and regulated by the US Army Corps of Engineers. The purpose of the -WO Overlay District is to: protect wetlands as an environmental resource; discourage filling or destruction of wetlands; and to require mitigation or replacement if wetlands are lost or destroyed to development. The project would be consistent with the purposes of the -WO District (SRMC Section 14.13.010) in that it would: 1) preserve and enhance wetlands; 2) contribute to improve water quality for the general area; 3) enhance wildlife habitat, particularly for rare and endangered species; and 4) expand public recreational activities (shoreline levee path) that would be compatible with the wetland habitat. Further, the project is consistent with the provisions and requirements of SRMC Section 14.13.050 as the planning applications being considered includes the subject Use Permit and a wetland restoration plan. Lastly, as conditioned, the project will be subject to a wetland management plan.

The five-acre, City-owned diked marsh is within the Canalfront Review Overlay (-C) District. SRMC Chapter 14.15 of the Zoning Ordinance sets forth general site and use regulations that are applicable to the -C Overlay District. The project would be consistent with the purposes of this District (Section 14.15.010) in that it would: 1) improve and enhance public views to the canal front; 2) protect the unique physical and social characteristics of the canal front area; and 3) would not impair or block the navigable channel of the San Rafael Canal.

Chapter 14.22 – Use Permit

As discussed above, a Use Permit is required for the project grading (fill and dredging to achieve the restoration) as the property is located within the -WO Overlay District. SRMC Section 14.22.080 requires that findings be made to support the approval of a Use Permit. Further, special findings are required by SRMC Section 14.13.070 (-WO Overlay District findings) As outlined in the attached resolution (Attachment 3), the required findings can be made to support the approval of the Tiscornia Marsh Restoration Project. Specifically, the project would: a) meet the applicable and pertinent General Plan 2040 policies and programs; b) comply with the provisions of the PD-WO and P/OS-WO/-C Districts and other applicable provisions of the Zoning Ordinance including the criteria of SRMC Chapter 14.25 (Environmental and Design Review Permit, see below); and c) would not be detrimental to the public health, safety, or welfare, or be materially injurious to properties or improvements in the vicinity. The project would promote the continuation and improvement of an environmental resource, which is critical to the protection of public safety and health to the community at large.

Chapter 14.25 – Environmental and Design Review Permit

The project is subject to the review criteria for Environmental and Design Review Permits, pursuant to SRMC Section 14.25.050 (Review criteria: Environmental and Design Review Permits) of the Zoning Ordinance. As proposed and as conditioned, the project complies with the criteria required to approve Environmental and Design Review Permit ED21-002 as follows:

1. As proposed, the site plan is acceptable for the site and intended use is generally harmonious with the other neighboring natural resources, as well as the variety of urban uses and improvements surrounding the project site. The project site plan has been designed to minimize impacts to adjacent properties, while maximizing opportunities for habitat enhancement, flood control and sea level rise protection, and public shoreline access.
2. As proposed and as conditioned, the project presents a competent design which has been prepared by environmental professionals (hydrologists and biologists) skilled in designing wetland restoration projects. The competency of the project design has been confirmed by the findings presented in the Tiscornia Marsh Restoration Project FEIR.
3. To address temporary impacts associated with project construction, as proposed and conditioned, the project proposes site access and circulation that promotes safe access for construction vehicles and apparatus without impairing street circulation.

ENVIRONMENTAL REVIEW

Completion of Final Environmental Impact Report (FEIR)

Pursuant to the requirements of the California Environmental Quality Act (CEQA) Guidelines, this project is subject to environmental review. In early 2021, it was determined that the project has the potential to result in significant impacts on the environmental, and that an Environmental Impact Report (EIR) should be prepared to assess these potential impacts.

In Fall 2021, a Draft EIR (DEIR) was prepared in accordance with the CEQA Guidelines. The DEIR presented the following conclusions and findings:

- Of the topic areas that were assessed and studied, the restoration project would result in no unavoidable adverse environmental impacts that cannot be mitigated.
- The restoration project would result in 16 potentially significant impacts. However, the DEIR recommends 13 mitigation measures that would reduce these impacts to a less-than-significant

level. Mitigation measures are recommended for potentially significant impacts to: a) air quality (temporary impacts associated with grading and construction); b) biological resources; c) cultural and tribal resources; and d) traffic and transportation (temporary impacts associated with project construction).

A 45-day public review period was observed to accept comments on the DEIR. Comments were submitted by one public agency (State of California Dept of Fish & Wildlife) and thirteen individuals. On October 26, 2021, the Planning Commission held a public hearing to accept and provide comments on the DEIR. The Planning Commission: a) found the DEIR to be adequate and complete; and b) directed staff to proceed with completing a Final EIR (FEIR), which is to include responding to all comments on the DEIR.

The FEIR has been completed and is available on the [Tiscornia Marsh webpage](#). The FEIR includes a response to all comments submitted on the DEIR. The DEIR comments have resulted in several minor changes/edits in the DEIR text and to three of the recommended mitigation measures related biological resource impacts. Staff recommends that the FEIR be certified as complete and adequate. A resolution has been prepared, which recommends FEIR certification (see Attachment 1).

CEQA Findings and Mitigation Monitoring & Reporting Program:

Prior to taking action to approve/conditionally approve the planning applications (Use Permit and Environmental and Design Review Permit), it must be determined that: a) the certified FEIR adequately assesses the environmental impacts of the project to support this action; and b) the FEIR mitigation measures are suitable for and can be incorporated into this action. A resolution has been prepared (see Attachment 2), which presents detailed CEQA Findings of Fact supporting conditional approval of the planning applications. Further, as required by the CEQA Guidelines, this resolution includes the approval of a Mitigation Monitoring and Reporting Program (MMRP). The MMRP is required to demonstrate how these measures are incorporated into the approval of the project, and how they will be implemented to ensure that they effectively reduce or eliminate potential. Consistent with the recommendations of the MMRP, the FEIR mitigation measures have been incorporated into the recommended conditions of approval for the planning applications.

Tribal Consultation – AB 52

Consistent with the requirements and protocols of State Resources Code Section 21080.3.1 (AB 52) and CEQA Guidelines Section 15064.5, the City, as a lead agency must offer an opportunity for early consultation with the local Native American tribe. In February 2021, the City initiated the tribal consultation process through a request with the Federated Indians of Graton Rancheria (FIGR).

City staff met with representatives of the FIGR in spring 2021, which included an exchange of the cultural resources assessment prepared for the project area provide by ESA, Inc. In this meeting, there was a discussion of the resources assessment as well as recommended grading and construction protocols and requirements. These grading and construction protocols and requirements have been included as mitigation measures in the cultural resource section of the FEIR, which have been carried over into the MMRP and recommended conditions of approval for Environmental and Design Review Permit ED21-002.

PUBLIC OUTREACH AND CORRESPONDENCE

Property owners, residents, and businesses within 500 feet of the Tiscornia Marsh Restoration Project site were provided notice of this public hearing, as well interested parties (see Attachment 5). In

addition, a notice board was posted on the subject property informing the public about the scope of the project and the date/time of the Planning Commission meeting.

Correspondence received as of the writing (or publication) of this staff report is Attachment 6. Correspondence received after Wednesday, January 5, 2022 to Tuesday, January 11, 2022 will be forwarded to the Commission under separate cover and will be posted on the [Tiscornia Marsh webpage](#).

OPTIONS

The Planning Commission has the following options:

1. Certify the FEIR and approve the project and planning applications as presented (staff recommendation); or
2. Approve the project and planning applications with certain modifications, changes, or additional conditions of approval; or
3. Continue the project to allow the applicant to address any of the Commission's comments or concerns; or
4. Deny the project and planning applications and direct staff to return with a revised resolution.

EXHIBITS

1. Resolution certifying the Tiscornia Marsh Restoration Project FEIR
2. Resolution adopting CEQA Findings of Face and approving a Mitigation Monitoring and Reporting Program (MMRP) supporting action on the planning applications
Exhibit A: Mitigation Monitoring and Reporting Program
3. Resolution approving Use Permit UP21-001 and Environmental and Design Review Permit ED21-002
4. [Preliminary Restoration Plans](#), prepared by ESA (available via link)
5. General Plan 2040 Consistency Table
6. Correspondence

FEIR, plans/documents and supportive studies can be accessed on the [Tiscornia Marsh webpage](#).

EXHIBIT 1

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL PLANNING COMMISSION CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT (FEIR) (SCH #2021020362) PREPARED FOR THE TISCORNIA MARSH RESTORATION PROJECT, EAST CANAL STREET (CASE NOS. UP21-001, ED21-002, IS21-001)

WHEREAS, the Tiscornia Marsh covers 23 acres of tidal marsh and Baylands, as well as over 2,000 lineal feet of shoreline levee that are bay ward of Albert J Boro Community Center and Pickleweed Park. The Tiscornia Marsh is owned by Marin Audubon Society; and

WHEREAS, over the past decades, the Tiscornia Marsh property has experienced considerable erosion along its bay ward edge, which is attributed to the wave action from the San Francisco Bay. As a result, approximately three acres of valuable tidal marsh has been lost due to erosion; and

WHEREAS, in June 2016, the Bay Area counties approved Measure AA, a parcel tax measure which places a \$12.00 per year tax on every parcel in the Bay Area. The purpose of the Measure AA tax is to generate funds for marsh restoration projects around the San Francisco and San Pablo Bays. The goal is to improve water quality, restore wildlife habitat, and to protect communities from increased flooding and sea level rise; and

WHEREAS, in 2018, Marin Audubon Society applied for and successfully secured a Measure AA grant to fund the design, permitting, and CEQA/environmental review for a restoration of the Tiscornia Marsh. The Measure AA application was endorsed by the San Rafael City Council on October 1, 2018 (adoption of City Council Resolution 14592). As part of the Measure AA application process, the restoration project was expanded to incorporate/include the City-owned, five-acre, diked marsh located north of the Pickleweed Park playfields; and

WHEREAS, on January 3, 2021, Marin Audubon Society applied for planning applications (Use Permit, UP21-001 and Environmental and Design Review Permit ED21-002) to seek City approval of the Tiscornia Marsh Restoration Project. Per the SRMC Title 14 (Zoning), these applications are required as the project is located within the PD (Planning Development) and WO- (Wetland Overlay) Districts; and

WHEREAS, the Tiscornia Marsh Restoration Project is defined as a “project” under the California Environmental Quality Act (CEQA). Therefore, environmental review is required. The City of San Rafael serves as the lead agency for CEQA/environmental review; and

WHEREAS, as the project is subject to environmental review, on January 28, 2021, in accord with Public Resources Code Sections 5097.94, 21073, 21074, 21080.3.1, 21080.3.2 (SB52), the Community Development Department staff sent an offer for tribal consultation to the representatives of the Federated Indians of the Graton Rancheria (Federated Indians). Tribal consultation is required for all projects that require CEQA/environmental review. The purpose of the tribal consultation is to consult with the local tribe representatives on potential impacts to Native American places, features and objects described in the California Public Resources Code. The prescribed 30-day period was observed for the Federated Indians to respond to the offer for tribal consultation. On March 16, 2021, a tribal consultation meeting was held between the Federated Indians and City of San Rafael staff; and

EXHIBIT 1

WHEREAS, on January 23, 2021, the City of San Rafael issued Notice of Preparation (NOP) that announced the initiation of the Environmental Impact Report (EIR) preparation process and to solicit comments regarding the scope of issues to be included and studied in the EIR. The NOP provided a 30-day review period for public comment. On February 23, 2021, the Planning Commission held an appropriately noticed public scoping hearing on the NOP. The Planning Commission directed staff to prepare an EIR for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) to address the following issues, Aesthetics, Air Quality, Biological Resources, Cultural and Tribal Cultural Resources, Geology and Soils, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Noise and Vibration, Public Services and Recreation, Transportation, Utilities and Service Systems, Wildfire, and a reasonable range of alternatives to the project. The topic areas of Agriculture and Forestry Resources, Energy, Mineral Resources, and Population/Housing were dismissed from the scope of EIR study as the project would result in no impacts to these topic areas; and

WHEREAS, per the CEQA Guidelines, the Draft EIR (DEIR) was prepared, released, and circulated for a 30-day public review period (State Clearinghouse #2021020362). The DEIR incorporates and is supported by technical studies and reports provided in Appendices of the document; and

WHEREAS, on October 26, 2021, the Planning Commission held a duly noticed public hearing to consider and accept comments on the DEIR. Based on written and oral comments received from the public on the DEIR and its own review of the DEIR, the Planning Commission directed staff to prepare a Final Environmental Impact Report (FEIR) and respond to comments received on the DEIR; and

WHEREAS, pursuant to Public Resources Code Section 21091(d)(2)(A) and CEQA Guidelines Sections 15088, 15089 and 15132, the City has responded to all the environmental comments that were submitted on the DEIR during the public review period and a FEIR was completed; and

WHEREAS, on December 28, 2021, Notice of Availability for the FEIR/Response to Comments (FEIR), was mailed to responsible and trustee agencies, organizations, interested persons and others including those persons and parties that provided written and oral comments on the DEIR and was duly noticed in the Marin Independent Journal; and

WHEREAS, on January 11, 2022, the Planning Commission held a duly noticed public hearing on the FEIR and considered it along with the land use and development applications filed for this project (UP21-001 and ED21-002), accepting all public testimony and the written report of the Community Development Department staff; and

WHEREAS, the custodian of documents which constitute the record of proceedings upon which this decision is based, is the Community Development Department.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission hereby certifies the Tiscornia Marsh Restoration Project FEIR, based upon the following findings required by CEQA Guidelines Section 15090:

1. The Final Environmental Impact Report (FEIR), which consists of the Draft Environmental Impact Report (DEIR) dated September 2021, and the Response to Comments Document dated December 28, 2021 has been prepared in accordance with CEQA, including Public

EXHIBIT 1

Resources Code Section 21083.3, and the provisions of the City of San Rafael Environmental Assessment Procedures Manual.

2. The FEIR has been prepared and completed in compliance with the California Environmental Quality Act (CEQA) Guidelines and the City of San Rafael Environmental Assessment Procedures Manual by following the appropriate format, content, technical analysis of the potential impact areas and project alternatives identified in the initially authorized scope of work. Further, all prescribed public review periods and duly noticed hearings were held for the project Notice of Preparation (NOP), Notice of Completion (NOC) for public review of the DEIR and Notice of Availability following publication of the FEIR.
3. The Planning Commission has exercised its independent judgment in evaluating the FEIR and has considered the comments received during the public review period on the DEIR.
4. The FEIR reflects the independent judgment and analysis of the City of San Rafael Community Development Department and Planning Commission. The Planning Commission has reviewed and considered all information contained in the FEIR prior to taking action on the land use and development applications for the Tiscornia Marsh Restoration Project (UP 21-001 and ED21-002) finding that it:
 - a) Appropriately analyzes and presents conclusions on the impacts of the project;
 - b) Analyzes a reasonable range of alternatives to the project that could feasibly attain most of the basic objectives of the project while avoiding or substantially lessening any significant effect of the project;
 - c) Identifies or recommends mitigation measures to substantially lessen, eliminate or avoid the otherwise significant adverse environmental impacts of the project, and
 - d) Includes findings and recommendations supported by technical studies prepared by professionals experienced in the specific areas of study, and which are contained within the document and/or made available within the project file maintained by the City of San Rafael Community Development Department, the custodian of all project documents.
5. The information contained in the FEIR is current, correct, and complete for document certification. As a result of comments submitted on the DEIR, the FEIR provides responses to comments received on the DEIR and provides clarification and incorporates edits to the DEIR text. No significant new information has been added to the DEIR that does not deprive the public of meaningful opportunity to comment upon the significant adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect that the City has declined to implement. Specifically, no new, significant information is presented in the FEIR that would result in, disclose, or result in following:
 - a) A new, significant environmental impact resulting from the project or a new mitigation measure needed to implement a new significant environmental impact;
 - b) A substantial increase in the severity of the impacts that were disclosed and analyzed in the DEIR;
 - c) Any new feasible project alternatives or mitigation measures considerably different from others previously analyzed that would clearly lessen significant environmental impacts of the project, but which the City refuses to adopt; and

EXHIBIT 1

- d) A finding that the DEIR is so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.
6. The FEIR presents factual, quantitative, and qualitative data and studies, which find and support the conclusion that the project will result in several potentially significant impacts that necessitate mitigation. At the time the Planning Commission considers action on the land use and development applications for the Tiscornia Marsh Restoration Project, it will be necessary to make complete and detailed findings pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a). For each significant effect identified in the EIR, the Planning Commission will be required to make one or more of the following findings:
- a) That changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR; that such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding, and that such changes have been adopted by such other agency or can and should be adopted by such other agency;
 - b) That specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the FEIR; and
 - c) As the project would result in several significant, unavoidable impacts, findings of overriding consideration will be required. Such findings will require that the City weigh the benefits of the project with the environmental impacts that cannot be mitigated.
7. The Planning Commission is taking an action to certify the FEIR for the project, recognizing it as an informational document for assessment of the Tiscornia Marsh Restoration Project. The CEQA Guidelines recognize that an environmental document is prepared for public disclosure of potential project impacts and that it is used as an informational document to guide decision-makers in considering project merits. Certification of the FEIR, as presented, would not result in a land use entitlement or right of development for a specific project or site. When taking action on land use and development applications for the Tiscornia Marsh Restoration Project, the FEIR document must be reviewed to determine whether it adequately assesses the impacts of the project.

The foregoing resolution was at the regular City of San Rafael Planning Commission meeting held on the 11th day of January 2022.

Moved by Commissioner _____ and seconded by Commissioner _____.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Leslie Mendez, Secretary

Shingi Samudzi, Chair

EXHIBIT A

RESOLUTION NO.

**RESOLUTION OF THE SAN RAFAEL PLANNING COMMISSION ADOPTING CEQA
FINDINGS OF FACT AND APPROVING A MITIGATION MONITORING & REPORTING
PROGRAM TO SUPPORT CONDITIONAL APPROVAL OF USE PERMIT (UP21-001) AND
AN ENVIRONMENTAL AND DESIGN REVIEW PERMIT (ED21-002) FOR THE
DEVELOPMENT OF THE TISCORNIA MARSH RESTORATION PROJECT,
EAST CANAL STREET
(CASE NOS. UP21-001, ED21-002)**

WHEREAS, the Tiscornia Marsh covers 23 acres of tidal marsh and Baylands, as well as over 2,000 lineal feet of shoreline levee that are bay ward of Albert J Boro Community Center and Pickleweed Park. The Tiscornia Marsh is owned by Marin Audubon Society; and

WHEREAS, over the past decades, the Tiscornia Marsh property has experienced considerable erosion along its bay ward edge, which is attributed to the wave action from the San Francisco Bay. As a result, approximately three acres of valuable tidal marsh has been lost due to erosion; and

WHEREAS, in June 2016, the Bay Area counties approved Measure AA, a parcel tax measure which places a \$12.00 per year tax on every parcel in the Bay Area. The purpose of the Measure AA tax is to generate funds for marsh restoration projects around the San Francisco and San Pablo Bays. The goal is to improve water quality, restore wildlife habitat, and to protect communities from increased flooding and sea level rise; and

WHEREAS, in 2018, Marin Audubon Society applied for and successfully secured a Measure AA grant to fund the design, permitting, and CEQA/environmental review for a restoration of the Tiscornia Marsh. The Measure AA application was endorsed by the San Rafael City Council on October 1, 2018 (adoption of City Council Resolution 14592). As part of the Measure AA application process, the restoration project was expanded to incorporate/include the City-owned, five-acre, diked marsh located north of the Pickleweed Park playfields; and

WHEREAS, on January 3, 2021, Marin Audubon Society applied for planning applications (Use Permit, UP21-001 and Environmental and Design Review Permit ED21-002) to seek City approval of the Tiscornia Marsh Restoration Project. Per the SRMC Title 14 (Zoning), these applications are required as the project is located within the PD (Planning Development) and WO- (Wetland Overlay) Districts; and

WHEREAS, pursuant to the provisions of the California Environmental Quality Act (CEQA) Guidelines, the Tiscornia Marsh Restoration Project is subject to environmental review. It was determined that the project has the potential to result in potentially significant environmental effects, and the preparation of an Environmental Impact Report was recommended. Following the provisions of the CEQA Guidelines, and Environmental Impact Report was prepared to assess the impacts of the restoration project (Tiscornia Marsh Restoration Project Final Environmental Impact Report [FEIR]). The Planning Commission has: a) reviewed the FEIR finding it to be adequate and complete; and b) certified the FEIR by separate resolution; and

WHEREAS, prior to taking action to approve the planning applications for the project, the CEQA Guidelines require that the findings and recommendations of the FEIR be considered, and that all FEIR mitigation measures be incorporated into this action. To comply with this requirement, by separate resolution, the Planning Commission has adopted CEQA Findings of

EXHIBIT A

Fact and adopting a Mitigation Monitoring and Reporting Program (MMRP) to support action on the planning applications; and

WHEREAS, on January 11, 2022, the Planning Commission held a duly noticed public hearing to review the draft CEQA Findings of Fact and the MMRP and considered all oral and written public testimony and the written report of the ~~Community~~ Development Department.

NOW, THEREFORE, BE IT RESOLVED, the Planning Commission of the City of San Rafael hereby: a) adopts the following CEQA Findings of Fact; b) approves the MMRP presented in Exhibit A, finding that the MMRP has been prepared in accordance with the CEQA Guidelines:

FINDINGS OF FACT

I. California Environmental Quality Act (CEQA)

A. Final EIR

By separate Resolution, the Planning Commission reviewed and certified the FEIR. As part of this action and as outlined in this separate resolution, the Planning Commission reaffirms the findings made in the separate Planning Commission Resolution that: a) supported the certification of the FEIR; b) found that the FEIR has been prepared in accordance with the CEQA Guidelines and the City of San Rafael Environmental Assessment Procedures Manual; and c) found and concluded that the FEIR adequately assesses the environmental effects of the Project and represents the independent judgment of the City.

B. Incorporated Documents/ Record of Proceedings

The following information is incorporated by reference and made part of the record supporting these findings:

- All Project plans and application materials, including supportive technical reports and drawings;
- The DEIR and Appendices (September 2021) and FEIR (December 28, 2021), and all documents relied upon, cited therein or incorporated by reference;
- The Mitigation Monitoring and Reporting Program (MMRP) prepared for the Project;
- The City of San Rafael *General Plan 2020* and *General Plan 2020* FEIR;
- Zoning Ordinance of the City of San Rafael (SRMC Title 14);
- Subdivision Ordinance of the City of San Rafael (SRMC Title 15);
- All records of decision, resolutions, staff reports, memoranda, maps, exhibits, letters, synopses of meetings, summaries, and other documents approved, reviewed, relied upon, or prepared by any City commissions, boards, officials, consultants, or staff relating to the Project;
- Any documents expressly cited in these findings, in addition to those cited above; and

EXHIBIT A

- Any other materials required for the record of proceedings by case law and/or Public Resources Code section 21167.6, subdivision (e).

Pursuant to CEQA Guidelines Section 15091(e), the documents and other materials that constitute the record of proceedings upon which the City has based its decision are located in and may be obtained from the City's Department of Community Development, Planning Division, at 1400 Fifth Street, Third Floor, San Rafael, CA 94901.

II. Findings of Fact in Support of Project Action

The FEIR, prepared in compliance with CEQA, evaluates the potentially significant environmental impacts that could result from approval of the Project. Because the FEIR concludes that implementation of the Project would result in potentially significant environmental impacts associated with the Project and specifies measures designed to mitigate adverse environmental impacts to less than significant, the City is required by CEQA to make certain findings with respect to these impacts (CEQA Guidelines Section 15091). These findings list and describe the following, as analyzed in the EIR: a) impacts determined to be not applicable or have no impact in the EIR; b) impacts found to be less than significant in the EIR; c) significant impacts that can be avoided or reduced with mitigation; and d) Project alternatives that were developed and studied as provided in the CEQA Guidelines.

These findings are supported by substantial evidence in the entirety of the record of proceedings before the City, which is incorporated herein by this reference. Further explanation of these environmental findings and conclusions can be found, without limitation, in the DEIR and FEIR, and these findings hereby incorporate by reference the discussion and analysis in those documents supporting the FEIR determinations regarding mitigation measures and the Project's impacts and mitigation measures designed to address those impacts. In making these findings, the Planning Commission ratifies, adopts, and incorporates in these findings the determinations and conclusions of the DEIR and FEIR relating to environmental impacts and mitigation measures, except to the extent any such determinations and conclusions are specifically and expressly modified by these findings.

A. IMPACTS DETERMINED TO NOT APPLICABLE OR NO IMPACT

During the Project's scoping period and Initial Study development, the City determined that some resource topics would not be affected by the Project resulting in a determination of non-applicability or no impact, including Agriculture and Forestry Resources; Geology & Soils (rupture of known earthquake fault, soils capable of supporting septic tanks, paleontological resources); Hazards & Hazardous Materials (Cortese List hazardous materials sites, airport land use plan); Land Use & Planning; Mineral Resources; Noise & Vibration (airport land use plan); Population & Housing, Public Services (schools), Utilities & Service Systems (wastewater treatment), and Wildfire (cumulative). For these topics, in accordance with CEQA Guidelines Section 15128, no need for further environmental assessment was required for the preparation of the FEIR.

Finding: The Project's DEIR contains brief statements identifying possible impacts that were determined to be insignificant, along with the reasons for those determinations. The Planning Commission adopts those statements and concludes that the referenced environmental effects are insignificant and no further analysis in the FEIR is required.

EXHIBIT A

B. IMPACTS DETERMINED TO BE LESS-THAN-SIGNIFICANT

The NOP and scoping period identified a number of potential environmental impacts to be analyzed in the DEIR. Through that analysis, impacts relating to Aesthetics, Greenhouse Gas Emissions, Hydrology and Water Quality, Energy, Geology and Soils, Hazards and Hazardous Materials, Noise, Public Services, Recreation, Utilities and Service Systems, and Wildfire were determined to be less-than-significant and, thus, no mitigation measures are necessary or required, as noted below.

Finding: The Planning Commission adopts these statements and concludes that the referenced environmental impacts would be less than significant for the reasons stated below and contained within the entirety of the record of proceedings.

1) Aesthetics

a. The Project will not have a substantial adverse effect on a scenic vista.

Facts in Support of Finding: As discussed on pages 3.2-15 to 3.2-19 of the DEIR and supported by evidence contained within the entirety of the record of proceedings, the Project will not have a substantial adverse effect on a scenic vista. Project construction will not have a substantial adverse effect on a scenic vista because there is only a limited number of public vantage points with views onto the Project site that present scenic or panoramic views, and a lack of gathering places for contemplative views of the site. Upon Project completion, the existing views of the site will remain largely unchanged, benefiting from the expanded and restored tidal marsh systems and the Project will create new opportunities for visitors to access scenic views within the Project site on more accessible trails and improved vantage points from the soccer field. This impact will therefore be less than significant.

b. The Project will not conflict with regulations governing scenic quality.

Facts in Support of Finding: As discussed on page 3.2-20 of the DEIR and supported by evidence contained within the entirety of the record of proceedings, the Project will not conflict with regulations governing scenic quality due to maintaining structural setbacks in proximity to San Rafael Creek and San Rafael Bay, and developing the coarse beach and levees to heights much lower than the "low-scale" building development allowed by the site's Canalfront Review Overlay. By protecting sensitive wildlife areas, enhancing habitat, adding seating and signage to the new trails, encouraging natural vegetation, and improving public access, the Project will advance the policies and programs set forth in the General Plan 2040 and the recommendations in the Canalfront Conceptual Design Plan. This impact will therefore be less than significant.

c. The Project will not create a new source of substantial light or glare that would adversely affect day or nighttime views.

Facts in Support of Finding: As discussed on pages 3.2-21 of the DEIR and supported by evidence contained within the entirety of the record of proceedings, the Project will not increase light and glare due to construction occurring during daylight hours and no permanent lighting being associated with the Project. Project construction will occur during the daylight hours and will not use portable lighting, and Project operation does not call for the installation of any permanent lighting. The Project will not create a new source of substantial light or glare that will

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adversely affect day or nighttime views in the area. This impact will therefore be less than significant.

d. The Project will not result in cumulative aesthetic impacts.

Facts in Support of Finding: As discussed on pages 3.2-21 to 3.2-22 of the DEIR and supported by evidence contained within the entirety of the record of proceedings, the Project will not result in cumulative visual impacts. The timing of the Project construction will not overlap with some cumulative projects. A cumulative project would require closure of the soccer field, which would reduce the already limited potential public vantage points of the Project site. An ongoing creek dredging maintenance project would use equipment similar to the barge and offloading equipment used by the Project. The Project, in combination with other projects in the cumulative scenario, will not cause a significant, adverse cumulative impact on aesthetic resources, and thus this impact will be less than significant.

2) Air Quality

a. The Project will be consistent with the Bay Area Clean Air Plan.

Facts in Support of Finding: As discussed on DEIR pages 3.3-18 to 3.3-19 and supported by evidence contained within the entirety of the record of proceedings, the Project will be consistent with the 2017 Clean Air Plan. The 2017 Clean Air Plan Transportation Control Measure TR22, Construction, Freight, and Farming Equipment, is the only measure that addresses emissions from a construction project. It provides incentives for the early deployment of electric, Tier 3, and Tier 4 off-road engines used in construction. The measure is designated for implementation by the Bay Area Air Quality Management District to provide incentives and would not be applicable to individual project applicants. Consequently, the Project will be consistent with the 2017 Clean Air Plan. This impact will be less than significant.

b. The Project will not result in emissions that lead to odors affecting a substantial number of people.

Facts in Support of Finding: As discussed on DEIR pages 3.3-24 to 3.3-25 and supported by evidence contained within the entirety of the record of proceedings, the Project will not generate substantial odors because diesel combustion emissions from Project construction will be temporary, intermittent, and spatially dispersed. Associated odors will dissipate quickly. During excavation, organic materials will be temporarily exposed to the air. Such exposure is not anticipated to result in substantial emission of odors, because water levels will be drawn down below the organic layer, allowing sediments to partially dry out, rather than stagnating and generating odors. Also, Project construction activities will include covering this layer early in the construction period, allowing associated odors to dissipate quickly. Therefore, Project impacts related to odors will be less than significant.

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3) Biological Resources

- a. **The Project will not have substantial adverse effects on jurisdictional wetlands and waters.**

Facts in Support of Finding: As discussed on DEIR pages 3.4-42 to 3.4-45 and supported by evidence contained within the entirety of the record of proceedings, the Project will not have substantial adverse effects on jurisdictional wetlands and waters because construction impacts will be temporary and minor and permanent impacts will be offset by a net gain in wetland and water function and values after Project implementation. Temporary impacts on wetlands and waters as a result of a temporary access road, crane platform, and barge offloading location will affect less than 1 percent of wetland and waters habitat, and these areas can naturally reestablish. Due to sea level rise, the Project site is expected to gain future benefits to existing habitats due to increased ecological connectivity, improved tidal hydrology, and marsh erosion protection over the next 50 years, which will enhance wetlands, waters, and upland areas in and adjacent to the Project site. Although there will be some conversion of wetland and water types and a nominal loss of approximately 0.40 acre of wetlands and waters, the Project will increase the ecological function and long-term benefits of 24 acres of wetlands and waters on site including an increase in over 6 acres of tidal marsh. This impact will be less than significant.

- b. **The Project will not have a substantial adverse effect on any riparian habitat or other sensitive natural community.**

Facts in Support of Finding: As discussed on DEIR pages 3.4-48 to 3.4-49 and supported by evidence contained within the entirety of the record of proceedings, the Project will not have substantial adverse effects on riparian habitat or other sensitive natural community because there is no riparian habitat or eelgrass beds in the Project area, and Pickleweed Mat Alliance habitat will increase under the Project. This impact will be less than significant.

4) Cultural Resources

- a. **The Project will not cause a substantial adverse change in the significance of a historical resource.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on pages B-6 to B-7 and supported by evidence contained within the entirety of the record of proceedings, the Project will not cause a substantial adverse change in the significance of a historical resource because no historical resources are present within the Project site. This impact will be less than significant.

5) Energy

- a. **The Project will not waste energy resources.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on pages B-10 to B-11 and supported by evidence contained within the entirety of the record of proceedings, the Project will not result in a potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy. Construction activities

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and corresponding fuel energy consumption will be temporary and localized, as the use of diesel fuel and heavy-duty equipment will not be a long-term condition of the Project. The total fuel use during construction will be equivalent to less than 3.4 percent of the total diesel fuel sold in Marin County in 2019, and approximately 0.0004 percent of the gasoline fuel sold in Marin County. In addition, there are no unusual Project characteristics that will require the use of less energy efficient construction equipment. This impact will be less than significant.

b. The Project will not conflict with a plan for renewable energy or energy efficiency.

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-11 and supported by evidence contained within the entirety of the record of proceedings, the Project will not conflict with or obstruct a state or local plan for renewable energy or energy efficiency. With respect to transportation energy, the Project will comply with the Low Carbon Fuel Standard, standards established by the U.S. Environmental Protection Agency and California Air Resources Board, and the energy-related measures of the City of San Rafael Final Draft Climate Change Action Plan 2030. The Project will not involve waste disposal as no demolition is proposed. Excavated materials will be reused on-site. The Project therefore will not conflict or obstruct a state or local plan for renewable energy or energy efficiency. This impact will be less than significant.

c. The Project, in combination with reasonably foreseeable future projects, will not result in significant energy impacts.

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-12 and supported by evidence contained within the entirety of the record of proceedings, the adverse Project-related impacts on electricity demand will be negligible, and will not significantly impact peak or base power demands during construction, operation, or maintenance. Accordingly, the Project's less-than-significant incremental contribution to cumulative peak and base demands will not be cumulatively considerable. This impact will be less than significant.

6) Geology & Soils

a. The Project will not directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving strong seismic ground shaking.

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-15 and supported by evidence contained within the entirety of the record of proceedings, the Project will not directly or indirectly cause potential substantial adverse effects involving strong seismic ground shaking. The restoration and enhancement of marsh habitats will not require protection from seismic shaking because no structures will be constructed, and the Project will not substantially increase visitation to the site due to shoreline levee/trail improvements, as compared to existing conditions. Therefore, impacts relative to seismic shaking during Project construction and operation will be less than significant.

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- b. The Project will not directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving seismic-related ground failure, including liquefaction.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on pages B-15 to B-16 and supported by evidence contained within the entirety of the record of proceedings, the Project will not directly or indirectly cause potential substantial adverse effects involving seismic-related ground failure, including liquefaction. While seismic-induced liquefaction may damage trails and restored habitat areas, the damage will not result in risks to people, and the damaged trails and habitat could be easily repaired. During the operational phase, the Project will not change the risk of liquefaction or ground failure from existing conditions, which include the same structure types. Therefore, impacts relative to seismic-induced ground failure such as liquefaction will be less than significant.

- c. The Project will not directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving landslides.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-16 and supported by evidence contained within the entirety of the record of proceedings, the Project will not directly or indirectly cause potential substantial adverse effects involving landslides. The relatively flat topography of the area makes landslides unlikely in the Project site; landslide risk maps show no risk areas in the Project site. The Project's wetland restoration activities will not create slopes susceptible to landsliding. Therefore, impacts relative to seismically induced landslides will be less than significant.

- d. The Project will not result in substantial soil erosion or the loss of topsoil.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on pages B-16 to B-17 and supported by evidence contained within the entirety of the record of proceedings, the Project will not result in substantial erosion or the loss of topsoil. The Project will comply with the requirements of the Construction General Permit requiring preparation and implementation of a Stormwater Pollution Prevention Plan, which requires applications of best management practices to control runoff and runoff from construction work sites. Once constructed, the restored wetland habitats will be largely self-maintaining after the initial period of vegetation establishment. With compliance with existing regulations and implementation of the adaptive management activities, impacts associated with erosion will be less than significant.

- e. The Project will not be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the Project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-17 and supported by evidence contained within the entirety of the record of proceedings, neither construction nor operation of the Project includes the extraction of groundwater or

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oil and will not otherwise create soil that is unstable. Therefore, impacts will be less than significant.

- f. The Project will be located on expansive soil, as defined in Table 18 1 B of the Uniform Building Code (1994), but will not create substantial direct or indirect risks to life or property.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-17 and supported by evidence contained within the entirety of the record of proceedings, soils within the Project site primarily include xerorthents, a soil with a low potential to expand. In addition, the site is underlain by Bay Mud, which has expansive properties. The presence of expansive soils will not prevent the restoration of tidal habitat. While expansive soils may cause cracks in trails, the cracks will be a minor nuisance that will be easily repaired with minor maintenance, assuming the cracks were large enough to become an issue. In addition, soils used for levee improvements will be imported from an upland source, which will further minimize the expansive properties of the soils at the Project site. Therefore, impacts relative to expansive soils will be less than significant.

- g. The Project, in combination with reasonably foreseeable future projects, will not result in significant cumulative impacts related to geology and soils.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-18 and supported by evidence contained within the entirety of the record of proceedings, there are no rare or special geological features or soil types on the Project site that will be affected by Project activities and no other known activities or projects with activities that affect the geology and soils of this site. In addition, the Project, as with all foreseeable projects, will be required to comply with the applicable state and local requirements, such as the Construction General Permit. Therefore, the Project's contribution to cumulative geotechnical and soil impacts is less than significant.

7) Greenhouse Gas Emissions

- a. The Project will not generate greenhouse gas emissions that would exceed the Bay Area Air Quality Management District's threshold of significance for greenhouse gas emissions.**

Facts in Support of Finding: As discussed on pages 3.5-11 to 3.5-12 of the DEIR and supported by evidence contained within the entirety of the record of proceedings, the Project's construction over the three-year construction period will generate a total of 1,307 metric tons of carbon dioxide equivalent emissions. The Project's total amortized construction and operational greenhouse gas emissions (including if truck transport is required to accommodate additional export and import of foundational soil), based on a 30-year Project life span, will be below the Bay Area Air Quality Management District's operational threshold of significance for nonstationary sources, as adjusted to reflect year 2030 emission reduction targets. Therefore, this impact will be less than significant.

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b. The Project will not conflict with applicable plans, policies, and regulations adopted for the purposes of reducing greenhouse gas emissions.

Facts in Support of Finding: As discussed on pages 3.5-13 of the DEIR and supported by evidence contained within the entirety of the record of proceedings, the Project will be consistent with the City of San Rafael's Final Draft Climate Change Action Plan 2030. The Project will comply with construction and demolition debris plan requirements because the Project will not involve waste disposal, as no demolition is proposed, and excavated materials will be reused on-site. The Project will support the Climate Change Action Plan 2030's requirements to prepare for and adapt to rising sea level. One of the primary goals of the Project is to create sustainable benefits that consider future environmental changes such as sea-level rise and sedimentation. The Project will be in conformance with the Bay Area Air Quality Management District's greenhouse gas emissions thresholds, and Project construction will generally be consistent with applicable provisions of the 2017 Scoping Plan Update. Therefore, the Project will comply with the City's applicable plans, policies, and regulations for reducing greenhouse gas emissions, and this impact will be less than significant.

c. Cumulative Greenhouse Gas Impacts

Facts in Support of Finding: As discussed on pages 3.5-13 to 3.5-14 of the DEIR and supported by evidence contained within the entirety of the record of proceedings, the greenhouse gas emissions from an individual project, even a very large development project, would not individually generate sufficient greenhouse gas emissions to measurably influence global climate change, and thus, the assessment of greenhouse gas emissions impacts is inherently cumulative. The evaluation of cumulative greenhouse gas impacts evaluates whether the Project will make a considerable contribution to cumulative climate change effects. As such, the analysis in Findings discussion 7a above (The Project will not generate greenhouse gas emissions that would exceed the Bay Area Air Quality Management District's threshold of significance for greenhouse gas emissions) considers the potential greenhouse gas cumulative impacts of the Project. Implementation of the Project will not result in a cumulatively considerable contribution to annual greenhouse gas emissions. As such, implementation of the Project will not result in a cumulatively considerable impact.

8) Hazards & Hazardous Materials

a. The Project will not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials or through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on pages B-22 to B-23 and supported by evidence contained within the entirety of the record of proceedings, hazardous materials (e.g., fuels, oils, and lubricants) will be routinely transported, stored, and used at the Project site during construction. Because the Project will result in soil disturbance greater than 1 acre, management of soil and hazardous materials during construction will be subject to the requirements of the Construction General Permit, which requires preparation and implementation of a Stormwater Pollution Prevention Plan that lists hazardous materials; describes

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spill prevention measures, equipment inspections, equipment, and fuel storage; identifies protocols for responding immediately to spills; and describes best management practices for controlling site runoff. The transportation of hazardous materials will be regulated by the United States Department of Transportation, California Department of Transportation, and the California Highway Patrol. In the event of a hazardous materials spill, a coordinated response will occur at the federal, state, and local levels, including the involvement of the Marin County Hazardous Materials Response Team. After construction, maintenance for the tidal marsh, ecotone slope, and coarse beach during the 3- to 5-year establishment period will include the removal of invasive plants using localized herbicides or mechanical means, and temporary irrigation of ecotone slope plantings. The California Department of Pesticide Regulation, California Code of Regulations (Title 3. Food and Agriculture) Division 6, Pesticides and Pest Control Operations (Sections 6000 – 6960) will regulate the use of herbicides at the site. Compliance with the laws and regulations that govern the transportation, use, handling, and disposal of hazardous materials will limit the potential for hazardous conditions due to the use or accidental release of hazardous materials, and, therefore, the impact will be less than significant.

- b. The Project will not emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on pages B-23 to B-24 and supported by evidence contained within the entirety of the record of proceedings, construction equipment and vehicles will use low toxicity materials including gasoline, diesel fuel, oil, and lubricants, which are all commonly used in construction. After construction, maintenance for the tidal marsh, ecotone slope, and coarse beach during the 3- to 5-year establishment period will include the removal of invasive plants using localized herbicides or mechanical means, and temporary irrigation of ecotone slope plantings. While two schools are located within 0.25 mile of the Project, the low toxicity of the materials associated with construction and maintenance, and required compliance with the laws and regulations that govern the transportation, use, handling, and disposal of hazardous materials will reduce impacts on area schools to a less-than-significant level.

- c. The Project will not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on pages B-24 to B-25 and supported by evidence contained within the entirety of the record of proceedings, there is no emergency response plan or evacuation plan actions specific to the Project site or immediate vicinity; the nearest designated evacuation route is Point San Pedro Road (on the north side of San Rafael Creek from the Project site), which serves as a primary wildfire evacuation route. Construction activities will occur within the habitat area to be restored and not on public roads. Spinnaker Point Drive, Canal Street, and other nearby City streets may be used for access but will not require closure or restriction of any lanes. Materials and equipment will be transported to and from the site via barge. In addition, in-water work will occur

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in an area with existing boating and personal boat docks. As such, water traffic will occur near the Project site. Boat traffic may be temporarily reduced during construction for safety reasons, but boaters will be able to pass around the Project site. After construction, access for Project maintenance and inspections will occur via Spinnaker Point Drive and Canal Street, but will not require the closure or restriction of any lanes. As a result, the Project will not impair implementation of an adopted emergency response plan or emergency evacuation plan. Thus, the impact will be less than significant.

- d. The Project will not expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-25 and supported by evidence contained within the entirety of the record of proceedings, the Project site is within a Local Responsibility Area and is designated by CAL FIRE as Non-Very High Fire Hazard Severity Zone. The use of mechanized equipment during Project construction or operation/maintenance could cause a wildfire if spark-arresting equipment is not installed on hot surfaces such as mufflers. However, the California Vehicle Code, Section 38366, requires spark-arresting equipment on vehicles that travel off-road. This code applies to the Project, and vehicles that work in off-road areas will be required to have spark-arresting equipment to reduce the risk of wildfires. Therefore, the Project will have a less-than-significant impact related to wildland fire hazards.

- e. The Project, in combination with reasonably foreseeable future projects, will not result in significant cumulative impacts related to hazards and hazardous materials.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on pages B-25 to B-26 and supported by evidence contained within the entirety of the record of proceedings, the contribution of hazardous materials use and hazardous waste disposal associated with the Project is minimal, and combined hazardous materials effects from past, present, and reasonably foreseeable projects within the City and immediate area will not be significant. Project construction and operation will involve the use of potentially hazardous materials (e.g., localized herbicides, solvents, and diesel and petroleum fuels), that when used correctly and in compliance with existing laws and regulations, will not result in a significant hazard to visitors or workers in the vicinity of the Project site. Impacts associated with the potential to encounter unknown hazardous debris and waste that may exist on site during construction will be reduced to a less-than-significant level through environmental review pursuant to CEQA. Furthermore, the Project and all other projects in the cumulative area are required to comply with the existing regulations related to hazards and hazardous materials. Consistency with federal, state, and local regulations will prevent the Project, as well as other projects, from creating cumulative impacts in terms of hazards and hazardous materials. For the reasons outlined above, implementation of the Project will not result in an incremental contribution to cumulative impacts related to hazards and hazardous materials that are cumulatively considerable; therefore, cumulative hazards and hazardous materials impacts are considered less than significant.

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9) Hydrology and Water Quality

- a. **The Project will not violate water quality standards or waste discharge requirements or otherwise substantially degrade water quality.**

Facts in Support of Finding: As discussed on pages 3.6-16 to 3.6-17 of the DEIR and supported by evidence contained within the entirety of the record of proceedings, construction activities have the potential to adversely affect water quality through the release of pollutants associated with construction equipment (e.g., fuel, motor oil) or sediments released due to excavation and fill placement. The Project will comply with the requirements of the Construction General Permit and local stormwater ordinances, including implementation of a Stormwater Pollution Prevention Plan requiring the use of best management practices to control runoff and runoff from construction. With compliance with existing regulations, impacts associated with water quality during construction will be less than significant. Once constructed, the restored wetland habitat will be largely self-maintaining after the vegetation has been re-established. To ensure the Project performs as anticipated, the Project will include performance monitoring and adaptive management activities. With compliance with existing regulations and implementation of performance monitoring and adaptive management activities, construction and operation impacts associated with water quality will be less than significant.

- b. **The Project will not substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner that will result in substantial erosion or siltation on or off site; substantially increase the rate or amount of surface runoff in a manner that will result in flooding on or off site; create or contribute runoff water that would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or impede or redirect flood flows.**

Facts in Support of Finding: As discussed on pages 3.6-18 to 3.6-19 of the DEIR and supported by evidence contained within the entirety of the record of proceedings, construction of the Project will include earthmoving activities such as excavation, trenching, grading, and importation of fill. Compliance with the Construction General Permit, the Stormwater Pollution Prevention Plan, and City of San Rafael Best Management Practices for construction activities will control the volume and velocity of runoff, if any. The Project will include the installation of a sediment curtain outboard of the in-water construction areas to prevent sediment from being discharged to the Bay. In addition, construction will be phased so that the coarse beach is installed first to contain the dredged material and provide sediment control during placement to prevent erosion, siltation, flooding, and pollution. Upon completion, the goal of the Project is to enhance the ecological function of the Tiscornia Marsh and increase flood protection for the Canal neighborhood. The Project will include performance monitoring at 1-, 3-, 5-, and 10-years post-construction for permit compliance and to meet performance objectives. Compliance with the Construction General Permit, existing regulations, and implementation of the performance monitoring activities will reduce construction and operation impacts relative to altering the existing drainage pattern to a less-than-significant level.

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c. The Project will not risk the release of pollutants in flood hazard, tsunami, or seiche zones.

Facts in Support of Finding: As discussed on pages 3.6-19 to 3.6-20 of the DEIR and supported by evidence contained within the entirety of the record of proceedings, the Project site is located entirely within the 100-year flood zone, partially within the tsunami hazard zone, and partially within a seiche zone due to its proximity to San Rafael Creek. Required preparation and implementation of the Stormwater Pollution Prevention Plan will include best management practices to contain chemicals (e.g., fuel, motor oil) from being released during construction, including straw wattles, silt fences, and sediment curtains. These measures will be in place during the unlikely event of a flood, tsunami, or seiche. Upon completion, the goal of the Project is to enhance the ecological function of the Tiscornia Marsh and increase flood protection for the Canal neighborhood. The levees will be restored to heights above the base flood elevation, reducing the potential for flooding. The restored wetland habitat, jetty, and coarse beach constructed outboard of the levees will provide additional protection from flooding, tsunamis, and seiches by absorbing much of the energy of such events. The Project will include performance monitoring at 1-, 3-, 5-, and 10-years post-construction for permit compliance and to meet performance objectives. With compliance with existing regulations and implementation of best management practices and performance monitoring activities, construction and operation impacts associated with flooding, tsunamis, and seiches will be less than significant.

d. The Project will not conflict with or obstruct the implementation of a water quality control plan or sustainable groundwater management plan.

Facts in Support of Finding: As discussed on pages 3.6-20 to 3.6-21 of the DEIR and supported by evidence contained within the entirety of the record of proceedings, the Project is not located within a medium or high priority groundwater basin and is therefore not subject to a sustainable groundwater management plan. Required preparation and implementation of the Stormwater Pollution Prevention Plan will include best management practices to contain chemicals (e.g., fuel, motor oil, sediment) from being released during construction, including straw wattles, silt fences, and sediment curtains. These measures will reduce the potential for construction activities to adversely affect water quality, which will make the Project consistent with the Basin Plan. Once constructed, the restored wetland habitat will be largely self-maintaining after the vegetation has been re-established. Project operations will include the removal of invasive plants using localized herbicides or mechanical means, and the temporary irrigation of ecotone slope plantings. In addition, the flood protection levees and trails will require periodic inspection to identify maintenance and adaptive management needs. The Project will include physical and biological monitoring at 1-, 3-, 5-, and 10-years post-construction to meet performance objectives, which will include preventing sediments from being released into the Bay. With compliance with existing regulations, implementation of BMPs, and physical and biological monitoring, impacts relative to the Basin Plan during construction and operation will be less than significant.

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- e. **The Project, combined with cumulative development in the Project vicinity, will not result in significant cumulative impacts relative to hydrology or water quality.**

Facts in Support of Finding: As discussed on pages 3.6-21 to 3.6-23 of the DEIR and supported by evidence contained within the entirety of the record of proceedings, the state Construction General Permit will require each project that disturbs 1 or more acres to prepare and implement a Stormwater Pollution Prevention Plan during construction. The Stormwater Pollution Prevention Plans will describe best management practices to control runoff and prevent erosion and flooding for each project. Through compliance with this requirement, construction-related runoff and erosion impacts on water quality will be controlled and will not be cumulatively considerable. Once constructed, the restored wetland habitat for the Project will be largely self-maintaining after the vegetation has been re-established. Performance monitoring will ensure that the levees are maintained to prevent erosion and adverse water quality impacts. The Project and all cumulative projects with stormwater runoff that drain into the City's stormwater system are required to comply with the State Water Resources Control Board Stormwater National Pollutant Discharge Elimination System Permit for small municipal separate storm sewer systems (also known as MS4s), including Provision E.12, Post-Construction Stormwater Management Program. This provision mandates municipalities to require specified features and facilities to control pollutant sources; control runoff volumes, rates, and durations; and to treat runoff before discharge from the site. With compliance with MS4 requirements, the operation of the Project and cumulative projects will not have a cumulatively considerable contribution to the cumulative impact on water quality. No significant cumulative impacts are identified.

10) Noise & Vibration

- a. **The Project will not result in the generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the Project in excess of established standards.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on pages B-35 to B-37 and supported by evidence contained within the entirety of the record of proceedings, construction activities of all phases of the Project will generate noise levels at the nearest sensitive receptors below the 90 dBA criterion of Section 8.13.050(A) of the San Rafael Municipal Code. Once all construction activities are completed, the Project will not create any new permanent noise sources (e.g., pumps, generators). Periodic maintenance of the levee and restoration areas will be similar to existing conditions. Operation and maintenance of the Project will not generate a substantial increase in noise levels in excess of standards established in the local general plan or noise ordinance. The temporary increase in ambient noise levels during Project construction and operation will result in a less-than-significant impact.

- b. **The Project will not result in the generation of excessive ground-borne vibration or ground-borne noise levels.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on pages B-37 to B-38 and

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supported by evidence contained within the entirety of the record of proceedings, the construction of the Project will include compaction and pile driving, which can generate significant levels of vibration. For adverse human reaction, the analysis applies the “strongly perceptible” threshold of 0.9 inch/second peak particle velocity for transient sources, and a threshold of 0.3 inch/second peak particle velocity to assess damage risk for buildings. There are no historic structures in the vicinity of the Project site that could be adversely affected by Project construction-related vibration. There are single-family residences located 470 feet north of the proposed temporary crane platform where driving of piles will occur. These single-family residences will be exposed to a vibration level of less than 0.026 inch/second peak particle velocity, well below the applied human annoyance and building damage threshold. Compaction activities for the new levee will occur as close as 150 feet east of existing residences at the terminus of Sorrento Way. These single-family residences will be exposed to a vibration level of less than 0.029 inch/second peak particle velocity, also well below the applied human annoyance and building damage threshold. Consequently, existing sensitive receptors and structures near the Project site will not be affected by substantial ground-borne vibration during Project construction. This impact will therefore be less than significant.

- c. The Project, in combination with reasonably foreseeable future projects, will not result in significant noise or vibration impacts.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on pages B-38 to B-39 and supported by evidence contained within the entirety of the record of proceedings, the construction activities of the Project will generate noise levels of up to 74.4 dBA at the nearest receptors, which is below the 90 dBA criterion of Section 8.13.050(A) of the San Rafael Municipal Code. It is unlikely that either of the two relevant cumulative projects, individually, will result in an equivalent intensity of construction activity as that of the Project. However, if it were conservatively assumed that each of these two projects will generate the same noise levels as those of the Project, the resultant noise level will be up to 79.2 dBA, which will still be below the 90 dBA criterion of Section 8.13.050(A) of the San Rafael Municipal Code. Consequently, the cumulative noise impact will be less than significant. Neither of the two relevant cumulative projects will be expected to involve the use of vibration-generating construction equipment. Therefore, because the Project will have a less-than-significant construction impact with respect to vibration, as discussed above, the cumulative vibration impact will also be less than significant.

11) Public Services

- a. The Project will not result in substantial adverse physical impacts associated with the provision of government facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable performance objectives for fire protection.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-44 and supported by evidence contained within the entirety of the record of proceedings, Project construction will not significantly increase the demand for fire protection services throughout the Project vicinity due to population growth and will not change any uses on the site. For these reasons, the Project will not be expected to substantially

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affect the San Rafael Fire Department's ability to maintain service ratios, response times, or other performance objectives or require new or physically altered facilities. For this reason, and because Project operations will be consistent with existing conditions, the Project's impact with respect to fire services will be less than significant.

- b. The Project will not result in substantial adverse physical impacts associated with the provision of government facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable performance objectives for police protection.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-44 and supported by evidence contained within the entirety of the record of proceedings, the Project will not be expected to substantially affect the City of San Rafael Police Department's ability to maintain service ratios, response times, or other performance objectives or require new or physically altered facilities. The Project's impact with respect to the provision of police protection during construction and operations will be less than significant.

- c. The Project will not result in substantial adverse physical impacts associated with the provision of government facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable performance objectives for parks.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-45 and supported by evidence contained within the entirety of the record of proceedings, the Project site includes unpaved segments of the Bay Trail at the existing levee crest. The Project will improve and pave these trail segments and will add educational signage. The Project will not result in increased population such that there will be additional demand for park facilities during or after construction, and the completed Project will expand accessibility to the trail segments within the Project site. The Project's impacts related to new or expanded park facilities to maintain acceptable service ratios will be less than significant.

- d. The Project will not result in substantial adverse physical impacts associated with the provision of government facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable performance objectives for other public facilities.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-45 and supported by evidence contained within the entirety of the record of proceedings, the Project will not involve the employment of new permanent employees or residents, and Project operations will be consistent with existing conditions; therefore, it is not expected to increase the use of other public facilities (such as libraries or hospitals), and the impact with respect to other public facilities will be less than significant.

- e. The Project, in combination with reasonably foreseeable future projects, will not result in significant cumulative impacts on public services.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-45 and supported by

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evidence contained within the entirety of the record of proceedings, the geographic scope of potential cumulative public services impacts encompasses the Project site and its vicinity. Cumulative scenario projects include the Pickleweed Field and Park Project and the Schoen Park Conversion to Parking. However, the Project and cumulative projects will replace existing land uses, or result in a new land use that is compatible with existing land uses, and will not result in an increase in population or visitation that will require the construction of new public service facilities. Therefore, a cumulative public services impact will not occur, and the Project's contribution to cumulative public services impacts will not be cumulatively considerable.

12) Recreation

- a. **The Project will not increase the use of existing recreational facilities such that substantial physical deterioration would occur. The Project includes recreational facilities or requires the construction or expansion of recreational facilities which might have an adverse physical effect on the environment.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on pages B-46 to B-47 and supported by evidence contained within the entirety of the record of proceedings, the Project includes the construction and operation of a recreational resource, the implementation of which could cause adverse physical effects on the environment. The impacts that could result from Project construction and operation are addressed in the corresponding topical sections of the EIR. However, construction and operation of the Project is not expected to have substantial adverse effects related to increased use of nearby parks or facilities such that deterioration or degradation will occur. The Project will include changes to the existing shoreline levee that traverses the Project site, which is currently used as a recreational trail. During Project construction, the levee trail will be closed to access; however, use of the soccer field and Pickleweed Park play areas and community facility will not be affected. Trail users will be able to continue along the Bay Trail by utilizing the pedestrian sidewalk along Spinnaker Point Drive during construction. It is not anticipated that existing recreation users will use other recreation resources at a level that will result in the deterioration of other nearby recreation facilities. Under Project operation, the levee trails will be improved and new signage and seating will be added. Implementation of the Project will not result in the increased use of other recreational facilities that will result in substantial physical deterioration of the facilities. This impact will therefore be less than significant.

- b. **The Project, in combination with reasonably foreseeable future projects, will not result in significant cumulative impacts on recreation resources.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-47 and supported by evidence contained within the entirety of the record of proceedings, the Project will result in the temporary closure of access to the levee trail during construction. It is anticipated that local users will detour to the pedestrian sidewalk along Spinnaker Point Drive to continue on the Bay Trail. Cumulative scenario projects that could result in a restriction of access to recreational opportunities include the Pickleweed Field and Park Project and the Schoen Park Conversion to Parking. The potential for active construction on elements of these projects that will affect access to

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recreational facilities during the same period as the Project is expected to be limited. Even if closures to recreational facilities were to co-occur with the Project, several other parks and recreational facilities in the vicinity will remain open and unaffected by construction of the Project or of the cumulative scenario projects. Therefore, the Project's contribution to a cumulative loss of recreational opportunities, or to cumulative increases in the use of parks or recreational facilities, will not be cumulatively considerable and will be less than significant.

13) Transportation

- a. The Project will not conflict with a program, plan, ordinance, or policy addressing the circulation system, including transit, roadway, bicycle, and pedestrian facilities.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on pages B-49 to B-52 and supported by evidence contained within the entirety of the record of proceedings, direct traffic impacts from construction of the Project will be short term and temporary. The maximum number of truck trips generated by construction activity at the Project site will be 16 daily round trips, or 32 one-way trips (16 inbound, 16 outbound), and the truck trips will be spread over the course of an 8-hour workday. The maximum number of construction workers on site at any given time will be 19, which will generate 38 daily one-way trips, conservatively assuming that all workers will drive alone and not carpool. Construction-generated traffic will be temporary and, therefore, will not result in any long-term degradation in operating conditions on any locally used roadways for the Project. Drivers could experience delays if they were traveling behind a heavy truck; however, as noted above, only 32 trucks per day (16 inbound, 16 outbound) are expected to travel to/from the Project site during the peak of construction activities, and those truck trips will occur over the course of the 8-hour workday. Construction-related traffic from the Project will not be substantial in relation to traffic flow conditions on U.S. 101, I-580, or local access roadways. Project trips will fall within the daily fluctuations of traffic volumes on U.S. 101 and I-580 (not perceptible to the average motorist), and so while the traffic generated by construction activities will be noticeable (i.e., would represent a higher percent increase in traffic volumes) on the local-serving roadways serving the construction site, the effect on traffic flow will be less than significant.

In terms of pedestrian, bicycle, and transit facilities, construction of the Project will neither directly nor indirectly eliminate existing or planned alternative transportation corridors or facilities (i.e., bike paths, lanes, etc.), including changes in policies or programs that support alternative transportation, nor construct facilities in locations where future alternative transportation facilities may be planned. As such, the Project will not conflict with adopted policies, plans, and programs supporting alternative transportation. Construction activities associated with the Project will not generate traffic volume increases that will significantly affect traffic flow on area roadways. The performance of public transit, in-street bicycle, and pedestrian facilities in the area likewise will not be adversely affected.

Operational vehicle trips will be for monitoring and maintenance, and potentially for adaptive management. The number of workers and equipment required to perform operations and maintenance activities will be lower than for Project construction, and will generate no more than 20 one-way daily vehicle trips.

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Therefore, construction and operation of the Project will not conflict with any adopted policies, plans, or programs related to public transit or bicycle and pedestrian facilities, nor will it affect the safety of such services/facilities, and impacts will be less than significant.

b. The Project will not conflict or be inconsistent with CEQA Guidelines Section 15064.3, Subdivision (b).

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-53 and supported by evidence contained within the entirety of the record of proceedings, the Project will meet the Small Developments criterion of the City of San Rafael vehicle miles traveled screening criteria and thresholds, which states that projects that generate fewer than 110 trips per day will result in a less-than-significant vehicle miles traveled impact. The Project will generate a maximum of 70 daily vehicle trips (32 one-way truck trips and 38 one-way construction worker trips) during Project construction, and no more than 20 daily vehicle trips during Project operation/maintenance. Since the Project meets the Small Developments criterion, the Project will result in a less-than-significant impact related to CEQA Guidelines Section 15064.3.

c. The Project will not result in inadequate emergency access.

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-54 and supported by evidence contained within the entirety of the record of proceedings, the Project is located in an area with multiple access roads allowing adequate egress/ingress to the Project site in the event of an emergency. During construction, heavy construction-related vehicles could interfere with emergency response to the site or emergency evacuation procedures in the event of an emergency (e.g., slowing vehicles traveling behind the truck). However, construction-related traffic from the Project will not be substantial in relation to traffic flow conditions on U.S. 101, I-580, or local access roadways. After construction, the Project will include internal access roadway improvements and will allow for adequate emergency access. Operational traffic will not cause a significant increase in congestion and will not significantly affect roadway operations. Furthermore, the Project will not require the closures of public roads, which could inhibit access by emergency vehicles. This impact will therefore be less than significant.

14) Utilities & Service Systems

a. The Project will not require the relocation or construction of new or expanded water, wastewater treatment, stormwater drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects.

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on pages B-61 to B-62 and supported by evidence contained within the entirety of the record of proceedings, the Project site supports two PG&E towers, a stormwater drain, and a sanitary sewer. The Project does not include any modifications to the PG&E towers or sanitary sewer line. Construction will have the potential to damage power lines and expose construction workers to hazardous conditions, particularly through the use

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of vertical construction equipment such as cranes. To avoid this potential damage, construction workers will follow the Power Line Safety standards from the Department of Industrial Relations. With respect to the stormwater drain, there are two options for tying the west end of the new levee into the shoreline that may involve some modification of the stormwater drain. Neither option will require a change in capacity or service of the stormwater line, nor will result in its relocation or construction of new or expanded facilities. No other utilities or telecommunication facilities will be affected in the course of the construction or operation of the Project. This impact will therefore be less than significant.

- b. The Project will have sufficient water supplies available to serve the Project and reasonably foreseeable future development during normal, dry, and multiple dry years.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-62 and supported by evidence contained within the entirety of the record of proceedings, Project construction will require the intermittent use of potable water for drinking and sanitary needs at the site over an approximately 6-month construction window for 3 to 4 years. Project construction will also require water for dust control, which the construction contractor will obtain from available water sources near the Project site and/or will store on the Project site. Irrigation water will be required for new plantings in upland and transition zones for the first 3 years, or until plants have matured. Irrigation water will be purchased by the landscaping contractor or through temporary connections to the adjacent Pickleweed Park landscape irrigation system. Post-construction operations will not require water use beyond the temporary irrigation of plantings via drip irrigation. Given that the Project has relatively minimal demands for water supply during construction and no long-term water use requirements, there will be a less-than-significant impact on water supplies available to serve the Project.

- c. The Project will be served by a landfill with sufficient permitted capacity to accommodate the Project's solid waste disposal needs and will not impair the attainment of solid waste reduction goals.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-63 and supported by evidence contained within the entirety of the record of proceedings, the Project will generate approximately 9,500 cubic yards of excavated material from earthwork. The intent is to store excavated material on site for reuse in the marsh reconstruction phase, but any contaminated soils will be off-hauled and disposed of at an approved hazardous waste landfill in the area. However, even if all excavated material were removed from the site, the amount of off-hauled materials will be negligible and will not contribute substantially to landfill capacity reduction. Recreational uses during Project operation may generate solid waste, but the intensity of recreational usage is expected to be consistent with existing conditions and will not be substantial compared to City-wide solid waste generation. Local landfill usage for the City of San Rafael is limited to the Potrero Hills Landfill and Redwoods Landfill. The Redwoods Landfill is planned for closure in 2024, but the Potrero Hills Landfill has operational capacity through 2048, and the City also works with landfills across the state as needed. The Project will also comply with Zero Waste Marin's waste reduction goals, which support the solid waste reduction

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mandates of the state. As a result, the Project will have a less-than-significant impact on the sufficiency of landfill capacity and solid waste reduction goals.

d. The Project will comply with federal, state, and local management and reduction statues and regulations related to solid waste.

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-63 and supported by evidence contained within the entirety of the record of proceedings, excavated soil will be used on site to the extent practicable during construction. However, in the event that some soil is contaminated or can otherwise not be used for the Project, the contaminated soil will be disposed of at the nearest landfill capable of accepting the excavated materials. The potential disposal need will be negligible and will not contribute substantially to landfill capacity reduction. Project operation will generate solid waste from recreating visitors and will be similar to current conditions. The Project will also comply with applicable local, state, and federal regulations concerning solid waste management, including the solid waste diversion initiatives administered by Zero Waste Marin. Impacts will be less than significant.

e. The Project, in combination with reasonably foreseeable future projects, will not result in significant cumulative impacts related to disruption of utility service or relocation of utilities.

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-64 and supported by evidence contained within the entirety of the record of proceedings, the Project will not require additional facilities to serve the Project and reasonably foreseeable future development during normal, dry, and multiple dry years. It will not combine with impacts from other cumulative scenario impacts and, therefore, will not result in a cumulatively considerable impact related to water supply and utilities. With respect to solid waste, the Project could require disposal of excavated materials. However, none of the other cumulative projects identified in the EIR are anticipated to require disposal of large volumes of waste in landfills. Therefore, the waste disposal impacts of the Project will not combine with waste disposal impacts from other cumulative scenario projects, and will not result in a cumulatively considerable impact on solid waste. This impact will therefore be less than significant.

15) Wildfire

a. The Project will not substantially impair an adopted emergency response plan or emergency evacuation plan.

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-65 and supported by evidence contained within the entirety of the record of proceedings, the Project will result in an increase of construction-related traffic. However, the increased construction-related traffic will not cause a significant increase in congestion and will not significantly affect roadway operations. Additionally, the Project will not require the closures of public roads or block access along local roadways. For these reasons, the Project will not impair an adopted emergency response plan or emergency evacuation plan. This impact will therefore be less than significant.

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- b. Due to slope, prevailing winds, and other factors, the Project will not exacerbate wildfire risks, and thereby expose Project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-66 and supported by evidence contained within the entirety of the record of proceedings, the Project is not located within or near state responsibility areas or lands classified as very high fire hazard severity zones. Construction activities will require the use of heavy equipment, vehicles, and temporary storage areas that could lead to an increased risk of ignition, which could ignite a fire in an area with flammable vegetation or material. However, the risk of igniting a wildfire will be low because the Project site consists of highly eroded marshlands, a shoreline levee, and recreational trails with relatively flat topography. Additionally, contractors will be required to comply with hazardous materials storage and fire protection regulations, which will reduce the potential for wildfire. This impact will therefore be less than significant.

- c. The Project will not require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines, or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts on the environment.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-66 and supported by evidence contained within the entirety of the record of proceedings, the Project will result in the construction of approximately 600 feet of new levee and restore approximately 1,100 feet of shoreline levee. No new roads or other infrastructure will be installed as part of the Project. The Project will not induce a need for housing or otherwise result in population growth in the area necessitating the installation of fuel breaks, water sources, power lines, or other utilities that may exacerbate fire risk, and the impact will be less than significant.

- d. The Project will not expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes.**

Facts in Support of Finding: As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on pages B-66 to B-67 and supported by evidence contained within the entirety of the record of proceedings, under existing conditions, portions of the Project site (i.e., shoreline segments on the Tiscornia and Pickleweed Park properties) are currently at risk of overtopping during extreme coastal flood events, which would result in flooding of low-lying portions of the adjacent Canal neighborhood. Implementation of the Project will result in beneficial impacts to prevent flooding by increasing the level of flood protection for the Canal neighborhood and other nearby communities of central San Rafael. While the restored wetland habitats will be largely self-maintaining, it is anticipated that operation and maintenance activities (i.e., removal of invasive plants, temporary irrigation of ecotone slope plantings, and physical and biological monitoring) will be needed up to 10 years post-construction. However, these activities will not expose people or structures to significant risks, such as flooding or landslide as a result of runoff, post-fire slope instability, or drainage changes. In addition, the Project site's flat topography and moist soils will not exacerbate fire

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risk or create post-fire conditions involving slope instability, landslides, downslope or downstream flooding, or changes in drainage. Therefore, the Project will not expose people or structures to significant post-fire changes, and this impact will be less than significant.

C. SIGNIFICANT IMPACTS THAT CAN BE AVOIDED OR REDUCED WITH MITIGATION

The Planning Commission, as authorized by Public Resources Code Section 21081 and CEQA Guidelines Sections 15091 and 15092, identifies the following significant impacts that can be eliminated or reduced to a less-than-significant level with the implementation of mitigation measures recommended in the EIR. As identified in the Summary Chapter, Table S-1, Summary of Impacts and Mitigation Measures (pages S-3 to S-25) of the DEIR and supported by evidence contained within the entirety of the record of proceedings, these mitigation measures are hereby adopted and incorporated into the description of the Project and their implementation will be monitored through the Mitigation Monitoring and Reporting Program (Exhibit A: Mitigation Monitoring and Reporting Program).

1) Air Quality

- a. **Impact 3.3-2: The Project could result in a cumulatively considerable net increase of a criteria air pollutant for which the San Francisco Bay Area Air Basin is in nonattainment under applicable federal and state ambient air quality standards.**

Significant Impact

As discussed on pages 3.3-19 to 3.3-22 and summarized in the Summary Chapter (pages S-3 to S-4) of the DEIR, and supported by evidence contained within the entirety of the record of proceedings, Project-related construction activities at the Project site may cause emissions of fugitive dust that could generate particulate matter into the atmosphere representing a nuisance impact. For mitigation of fugitive dust emissions, the Bay Area Air Quality Management District recommends using specific best management practices to control fugitive dust emissions to a less than significant level. (Exhibit A: **Mitigation Measure 3.3-1**).

Finding

The Planning Commission finds that implementation of Mitigation Measure 3.3-1 will reduce this impact to a level of less than significant. As authorized by Public Resources Code Section 21081(a)(1) and Title 14, California Code of Regulations Section 15091(a)(1), the Planning Commission finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The Planning Commission further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact will be less than significant.

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b. Impact 3.3-3: The Project could expose sensitive receptors to substantial pollutant concentrations.

Significant Impact

As discussed on pages 3.3-22 to 3.3-24 and summarized in the Summary Chapter (page S-4) of the DEIR, and supported by evidence contained within the entirety of the record of proceedings, construction activities at the Project site could expose existing sensitive receptors to substantial pollution concentrations resulting in an incremental cancer risk greater than the Bay Area Air Quality Management District threshold, a potentially significant impact. Use of EPA Tier 4 engines will reduce cancer risks from Project construction to below the applicable threshold to a less than significant level. The Project applicant will implement Bay Area Air Quality Management District Basic Construction Measures to minimize the generation and emission of dust during construction and control fugitive dust emissions to a less than significant level. (Exhibit A: **Mitigation Measure 3.3-1 and Mitigation Measure 3.3-2**).

Finding

The Planning Commission finds that implementation of Mitigation Measure 3.3-1 and Mitigation Measure 3.3-2 will reduce this impact to a level of less than significant. As authorized by Public Resources Code Section 21081(a)(1) and Title 14, California Code of Regulations Section 15091(a)(1), the Planning Commission finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The Planning Commission further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact will be less than significant.

c. Impact 3.3-5: The Project could result in cumulative emissions of air pollutants.

Significant Impact

As discussed on pages 3.3-25 to 3.3-27 and summarized in the Summary Chapter (page S-4) of the DEIR, and supported by evidence contained within the entirety of the record of proceedings, Project-related construction activities at the Project site will cause emissions of toxic air contaminants exposing sensitive receptors to an incremental cancer risk. The cumulative Health Risk Assessment for both the unmitigated and the mitigated Project established pollutant concentrations will be below the Bay Area Air Quality Management District cumulative cancer risk threshold. Use of EPA Tier 4 engines will reduce cancer risks from Project construction to well below the applicable threshold. The health risk impact will not be cumulatively considerable, and the cumulative impact will be less than significant with mitigation. (Exhibit A: **Mitigation Measure 3.3-2**).

Finding

The Planning Commission finds that implementation of Mitigation Measure 3.3-2 will reduce this impact to a level of less than significant. As authorized by Public Resources Code Section 21081(a)(1) and Title 14, California Code of Regulations

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Section 15091(a)(1), the Planning Commission finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The Planning Commission further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact will be less than significant.

2) Biological Resources

- a. **Impact 3.4-1: Construction or operation of the Project could have a substantial effect on special-status birds, common nesting migratory birds, or raptors in the study area.**

Significant Impact

As discussed on pages 3.4-28 to 3.4-32 and summarized in the Summary Chapter (pages S-4 to S-7) of the DEIR, and supported by evidence contained within the entirety of the record of proceedings, equipment staging and Project construction could render the Project site temporarily unsuitable for breeding rails and other special-status and protected breeding birds due to noise, vibration, and increased activity levels and human presence. These activities could cause the direct destruction of an active nest, or cause birds that have established a nest prior to the start of construction to change their behavior or abandon an active nest, putting eggs and nestlings at risk for mortality, a potentially significant impact. However, this impact will be reduced to a less-than-significant level by requiring worker environmental awareness training, limiting construction vehicle speeds, avoiding plastic erosion control netting, avoiding construction during the breeding season to the extent feasible and during extreme high tides, conducting species/nest surveys, and requiring a biological monitor. (Exhibit A: **Mitigation Measure 3.4-1, Mitigation Measure 3.4-2, and Mitigation Measure 3.4-3**).

Finding

The Planning Commission finds that implementation of Mitigation Measure 3.4-1, Mitigation Measure 3.4-2, and Mitigation Measure 3.4-3 will reduce this impact to a level of less than significant. As authorized by Public Resources Code Section 21081(a)(1) and Title 14, California Code of Regulations Section 15091(a)(1), the Planning Commission finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The Planning Commission further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact will be less than significant.

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- b. **Impact 3.4-2: The Project could have substantial adverse effects on salt marsh harvest mouse and salt marsh wandering shrew.**

Significant Impact

As discussed on pages 3.4-32 to 3.4-34 and summarized in the Summary Chapter (pages S-8 to S-9) of the DEIR, and supported by evidence contained within the entirety of the record of proceedings, construction activities could directly and indirectly impact salt marsh harvest mouse and salt marsh wandering shrew, including earthwork associated with the levees and ecotone slope, excavating the new tidal channel, constructing a temporary access road across the marsh, and potentially, equipment staging. Direct impacts that could occur include mortality or mutilation. Indirect impacts could occur if construction activity render otherwise suitable habitat temporarily unsuitable. These impacts are considered a potentially significant impact. However, the impacts will be reduced to a less-than-significant level by requiring worker environmental awareness training, limiting construction vehicle speeds, avoiding plastic erosion control netting, avoiding ground disturbance in suitable habitat to the extent feasible, utilizing wildlife exclusion fencing, using low ground pressure equipment, scheduling construction activity to avoid extreme high tides, and requiring a biological monitor. (Exhibit A: **Mitigation Measure 3.4-1 and Mitigation Measure 3.4-4**).

Finding

The Planning Commission finds that implementation of Mitigation Measure 3.4-1 and Mitigation Measure 3.4-4 will reduce this impact to a level of less than significant. As authorized by Public Resources Code Section 21081(a)(1) and Title 14, California Code of Regulations Section 15091(a)(1), the Planning Commission finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The Planning Commission further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact will be less than significant.

- c. **Impact 3.4-3: Construction or operation of the Project could have a substantial effect on special-status plants.**

Significant Impact

As discussed on pages 3.4-34 to 3.4-36 and summarized in the Summary Chapter (pages S-9 to S-10) of the DEIR, and supported by evidence contained within the entirety of the record of proceedings, implementation of the Project could result in direct impacts on existing populations of special-status plant species, if present. Earthwork associated with the Project could result in direct removal or trampling of special-status plants, a potentially significant impact. However, impacts will be reduced to a less-than-significant level by requiring worker environmental awareness training, limiting construction vehicle speeds, avoiding plastic erosion control netting, conducting a special-status plant survey, establishing appropriate buffer areas for each special-status plant population, installing temporary fencing, following plan guidance to minimize impacts on

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special-status plants, and monitoring seeded/planted/relocated special-status plants. (Exhibit A: **Mitigation Measure 3.4-1 and Mitigation Measure 3.4-5**).

Finding

The Planning Commission finds that implementation of Mitigation Measure 3.4-1 and Mitigation Measure 3.4-5 will reduce this impact to a level of less than significant. As authorized by Public Resources Code Section 21081(a)(1) and Title 14, California Code of Regulations Section 15091(a)(1), the Planning Commission finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The Planning Commission further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact will be less than significant.

- d. **Impact 3.4-4: The Project could have a substantial adverse effect, either directly or through habitat modification, on marine species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife, U.S. Fish and Wildlife Service, or National Oceanic and Atmospheric Administration.**

Significant Impact

As discussed on pages 3.4-36 to 3.4-42 and summarized in the Summary Chapter (pages S-10 to S-11) of the DEIR, and supported by evidence contained within the entirety of the record of proceedings, implementation of the Project will require earth-moving construction activities, and some activities will occur within, or adjacent to, the aquatic environment having the potential to impact special-status marine species or protected habitat. The construction of Project elements, including a temporary crane platform, will require substantial amounts of work within the intertidal and aquatic environment. Most of this work will occur in the form of fill placement in support of the conversion of habitat from intertidal and mudflat into restored tidal marsh and coarse beach. Installation and removal of the temporary crane platform's 12 to 16 steel piles vibratory hammer driven to a depth of 60 to 70 feet will create underwater noise at a level harmful to protected fish and marine mammal species, a potentially significant impact. However, this impact will be reduced to a less-than-significant level by preparing and implementing a sound attenuation monitoring plan to protect fish and marine mammals and adhering to National Marine Fisheries Service-approved in-water work windows. Maintenance and monitoring work within the tidal, wetted channel could disrupt aquatic species and habitat, a potentially significant impact. Similarly, this impact will be reduced to a less-than-significant level by limiting maintenance work to June 1 through November 30 to minimize the potential presence of special-status aquatic species within the Project site. (Exhibit A: **Mitigation Measure 3.4-6**).

Finding

The Planning Commission finds that implementation of Mitigation Measure 3.4-6 will reduce this impact to a level of less than significant. As authorized by Public

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Resources Code Section 21081(a)(1) and Title 14, California Code of Regulations Section 15091(a)(1), the Planning Commission finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The Planning Commission further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact will be less than significant.

- e. **Impact 3.4-6: The Project could interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.**

Significant Impact

As discussed on pages 3.4-45 to 3.4-47 and summarized in the Summary Chapter (page S-11) of the DEIR, and supported by evidence contained within the entirety of the record of proceedings, central San Francisco Bay serves as a migration corridor for special-status anadromous fish species as they move between spawning habitat and the Pacific Ocean. The presence of marine mammals in San Francisco Bay is related to the distribution and presence of prey species and foraging habitat, and the presence of marine mammals in the Project area is likely to be confined to a few rafting or foraging individuals. Project-related construction activities could interfere with the movement of special-status marine species, a potentially significant impact. Given the rarity and transient nature of regionally occurring special-status species, no sustained presence of special-status aquatic species is expected occur. With a low-likelihood of occurrence of special-status marine species, a substantial impact on marine movement corridors would be unlikely. Nevertheless, preparing and implementing a sound attenuation monitoring plan to protect fish and marine mammals and adhering to National Marine Fisheries Service-approved in-water work windows will ensure that any construction-related impacts on marine movement corridors will be less than significant. (Exhibit A: **Mitigation Measure 3.4-6**).

Finding

The Planning Commission finds that implementation of Mitigation Measure 3.4-6 will reduce this impact to a level of less than significant. As authorized by Public Resources Code Section 21081(a)(1) and Title 14, California Code of Regulations Section 15091(a)(1), the Planning Commission finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The Planning Commission further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact will be less than significant.

- f. **Impact 3.4-7: Construction and operation of Project could conflict with local policies or ordinances protecting biological resources; and could conflict with the provisions of an adopted Habitat Conservation Plan,**

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Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

Significant Impact

As discussed on pages 3.4-47 to 3.4-48 and summarized in the Summary Chapter (page S-11) of the DEIR and supported by evidence contained within the entirety of the record of proceedings, the City provides for the protection of street trees, and outlines requirements for removal and replacement of certain street trees in the Municipal Code Section 11.12 and 14.25.050. The Project will remove approximately one native and seven non-native trees to accommodate Project construction; and construction activities will occur in the vicinity of trees located adjacent to Spinnaker Point Drive. The native tree to be removed will be replaced as part of the Project. However, if the Project proponent does not implement tree removal and replacement and protection of trees to be retained on site in accordance with Municipal Code Section 11.12 and 14.25.050, an impact will occur. Any tree-related work (removal, planting, or pruning) will adhere to the requirements of Municipal Code Section 11.12 and 14.25.050, including obtaining a written permit before removing, planting or pruning of street trees. As a result, construction-related impacts will be less than significant. (Exhibit A: **Mitigation Measure 3.4-7**).

Finding

The Planning Commission finds that implementation of Mitigation Measure 3.4-7 will reduce this impact to a level of less than significant. As authorized by Public Resources Code Section 21081(a)(1) and Title 14, California Code of Regulations Section 15091(a)(1), the Planning Commission finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The Planning Commission further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact will be less than significant.

g. Impact 3.4-9: Cumulative loss of sensitive biological resources during construction and operations.

Significant Impact

As discussed on pages 3.4-49 to 3.4-52 and summarized in the Summary Chapter (page S-12) of the DEIR, and supported by evidence contained within the entirety of the record of proceedings, cumulative impacts related to terrestrial biological resources and fisheries resources are summarized below.

Terrestrial Biological Resources. The Project could adversely affect special-status birds (California Ridgway's rail, California black rail, northern harrier, salt marsh common yellowthroat, San Pablo song sparrow, and other nesting migratory birds and raptors), special-status mammals (salt marsh harvest house and salt marsh wandering shrew), and special-status plant species, which would be potentially significant impacts. However, these Project impacts will be reduced to a less-than-significant level by requiring worker environmental awareness training, limiting construction vehicle speeds, avoiding plastic erosion control netting,

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avoiding construction during the breeding season to the extent feasible and during extreme high tides, conducting species/nest surveys, avoiding ground disturbance in suitable habitat to the extent feasible, establishing appropriate buffer areas, utilizing wildlife exclusion fencing, and requiring a biological monitor. The cumulative projects could also have the potential to affect these species, and could result in similar effects as the Project. However, each of these cumulative projects would be required to complete CEQA analysis similar to that completed for the Project, but it is unknown whether the CEQA process would identify and mitigate potential terrestrial biological resources impacts associated with those projects. Impacts on special-status birds, mammals, and plants would be cumulatively considerable pre-mitigation, but less than cumulatively considerable with adherence to the biological resources mitigation measures. (Exhibit A: **Mitigation Measure 3.4-1, Mitigation Measure 3.4-2, Mitigation Measure 3.4-3, Mitigation Measure 3.4-4, and Mitigation Measure 3.4-5**).

Fisheries Resources. The direct impacts of the Project will include impacts on special-status native fish species and their aquatic habitat during Project construction, including underwater noise impacts, a potentially significant impact. However, this Project impact will be reduced to a less-than-significant level by preparing and implementing a sound attenuation monitoring plan to protect fish and marine mammals and adhering to National Marine Fisheries Service-approved in-water work windows. Cumulative projects that involve in-water construction and that, in combination with the Project, have the potential to result in significant cumulative impacts on marine resources are limited to ongoing operations and maintenance actions within San Rafael Creek, which primarily consist of the periodic dredging of the San Rafael Creek channel and adjacent environment of San Rafael Bay. Having last been partially dredged by the U.S. Army Corps of Engineers in 2011, dredging is slated to commence summer 2022 within San Rafael Creek. As the commencement of construction for the Project will not be until 2023, no overlap in timing will occur between these two projects. Thus, any cumulative impacts as a result of Project implementation are expected to be less than significant with mitigation. (Exhibit A: **Mitigation Measure 3.4-6**).

Finding

The Planning Commission finds that implementation of Mitigation Measure 3.4 1, Mitigation Measure 3.4 2, Mitigation Measure 3.4 3, Mitigation Measure 3.4 4, Mitigation Measure 3.4-5, and Mitigation Measure 3.4 6 will reduce this impact to a level of less than significant. As authorized by Public Resources Code Section 21081(a)(1) and Title 14, California Code of Regulations Section 15091(a)(1), the Planning Commission finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The Planning Commission further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact will be less than significant.

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3) Cultural Resources

- a. **Impact B.3-b: Will the Project cause a substantial adverse change in the significance of an archaeological resource as defined in Section 15064.5?**

Significant Impact

As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on pages B-7 to B-8 and summarized in the Summary Chapter (pages S-14 to S-15) of the DEIR, and supported by evidence contained within the entirety of the record of proceedings, in the unlikely event that a previously unrecorded archaeological resource were identified during Project ground-disturbing activities and found to qualify as a historical resource or a unique archaeological resource, any impacts on the resource resulting from the Project could be potentially significant. By ensuring that work is halted in the vicinity until a qualified archaeologist can make an assessment and provide additional recommendations if necessary, including contacting Native American tribes, the potentially significant impact will be reduced to less than significant. (Exhibit A: **Mitigation Measure CUL-1**).

Finding

The Planning Commission finds that implementation of Mitigation Measure CUL-1 will reduce this impact to a level of less than significant. As authorized by Public Resources Code Section 21081(a)(1) and Title 14, and California Code of Regulations Section 15091(a)(1), the City finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The Planning Commission further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact will be less than significant.

- b. **Impact B.3-c: Will the Project disturb any human remains, including those interred outside of formal cemeteries?**

Significant Impact

As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-8 and summarized in the Summary Chapter (page S-15) of the DEIR, and supported by evidence contained within the entirety of the record of proceedings, there is no indication from the archival research that any part of the Project area has been used for human burial purposes in the recent or distant past. Therefore, it is unlikely that human remains will be encountered during construction of the Project. However, the possibility of inadvertent discovery cannot be entirely discounted, and would result in a potentially significant impact. This impact will be reduced to a less-than-significant level by requiring work to halt in the vicinity of a find and immediately notifying the County coroner, and if the human remains are Native American, the California Native American Heritage Commission and following all recommendations. (Exhibit A: **Mitigation Measure CUL-2**).

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Finding

The Planning Commission finds that implementation of Mitigation Measure CUL-2 will reduce this impact to a level of less than significant. As authorized by Public Resources Code Section 21081(a)(1) and Title 14, and California Code of Regulations Section 15091(a)(1), the City finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The Planning Commission further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact will be less than significant.

- c. **Impact B.3-d: Will the Project, in combination with reasonably foreseeable future projects, result in significant cumulative impacts on archeological resources or human remains?**

Significant Impact

As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-9 and summarized in the Summary Chapter (page S-15) of the DEIR, and supported by evidence contained within the entirety of the record of proceedings, there are no known archaeological resources or human remains within the Project site. While there is the potential for the Project to encounter archaeological resources, which could include prehistoric archeological features or deposits, or human remains, the Project will not be expected to result in significant impacts even if such resources are found. There are reasonably foreseeable future projects, specifically the Pickleweed Field and Park Project and the Schoen Park Conversion to Parking, that could impact the same archaeological resources as the Project, if any such resource is identified. However, these projects would involve the implementation of similar types of mitigation measures as the Project, which will reduce potential for impacts on these resources and any other as-yet undiscovered resources to a less-than-significant level. (Exhibit A: **Mitigation Measure CUL-1 and Mitigation Measure CUL-2**).

Finding

The Planning Commission finds that implementation of Mitigation Measure CUL-1 and Mitigation Measure CUL-2 will reduce this impact to a level of less than significant. As authorized by Public Resources Code Section 21081(a)(1) and Title 14, and California Code of Regulations Section 15091(a)(1), the City finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The Planning Commission further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact will be less than significant.

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4) Transportation

- a. **Impact B.13-c: Will the Project substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?**

Significant Impact

As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on pages B-53 to B-54 and summarized in the Summary Chapter (page S-22) of the DEIR, and supported by evidence contained within the entirety of the record of proceedings, the land uses adjacent to and included in the Project vicinity include single- and multi-family residential, community uses (i.e., community center, library, park), and an elementary school. Due to the proximity of these uses to the Project site, this area is frequented by residents and visitors on a regular basis. As such, the temporary introduction of construction equipment required to construct the Project on roadways in and around the Project site will not be compatible with existing uses and will pose a potential safety hazard, a potentially significant impact. However, impacts will be reduced to a less-than-significant level by defining truck haul routes that avoid residential streets, utilizing temporary signing and traffic control devices, providing construction personnel to direct traffic at the driveway on Spinnaker Point Drive, notifying San Rafael Schools at least 2 months in advance of all construction activities, and requiring the construction contractor to ensure Project construction does not inhibit access to Bahia Vista Elementary School. (Exhibit A: **Mitigation Measure TRAN-1**).

Finding

The Planning Commission finds that implementation of Mitigation Measure TRAN-1 will reduce this impact to a level of less than significant. As authorized by Public Resources Code Section 21081(a)(1) and Title 14, and California Code of Regulations Section 15091(a)(1), the City finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The Planning Commission further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact will be less than significant.

- b. **Impact B.13-e: Will the Project, in combination with reasonably foreseeable future projects, result in significant cumulative impacts on transportation?**

Significant Impact

As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-55 and summarized in the Summary Chapter (page S-22) of the DEIR, and supported by evidence contained within the entirety of the record of proceedings, impacts on traffic associated with construction (e.g., an intermittent reduction in street and intersection operating capacity, potential conflicts with pedestrians/ bicyclists, overlap with construction of nearby related projects) are typically considered as potential short-term impacts. As noted under Impact B.13-c, the Project will result in a potentially significant traffic impact during

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construction activities. However, construction impacts on transportation facilities will be reduced to a less-than-significant level by defining truck haul routes that avoid residential streets, utilizing temporary signing and traffic control devices, directing traffic at the driveway on Spinnaker Point Drive, notifying schools in advance of construction activities, and ensuring school access is not inhibited. Each of the cumulative projects would be required to comply with jurisdictional requirements regarding haul routes and would implement mitigation measures and/or include project characteristics, such as traffic controls and scheduling to reduce potential traffic impacts during construction. Accordingly, Project-related contributions to cumulative construction traffic conditions during construction will be less than significant with mitigation. (Exhibit A: **Mitigation Measure TRAN-1**).

Finding

The Planning Commission finds that implementation of Mitigation Measure TRAN-1 will reduce this impact to a level of less than significant. As authorized by Public Resources Code Section 21081(a)(1) and Title 14, and California Code of Regulations Section 15091(a)(1), the City finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The Planning Commission further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact will be less than significant.

5) Tribal Cultural Resources

- a. **Impact B.14-a.i: Will the Project cause a substantial adverse change in the significance of a tribal cultural resource, defined in PRC Section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in PRC Section 5020.1(k).?**

Significant Impact

As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on pages B-57 to B-58 and summarized in the Summary Chapter (page S-23) of the DEIR, and supported by evidence contained within the entirety of the record of proceedings, there are no known tribal cultural resources at the Project site. In the event that tribal cultural resources are identified during Project construction or operation, any impacts on the resource resulting from the Project could be potentially significant. This impact will be reduced to a less-than-significant level by ensuring that work is halted in the vicinity of a find until a qualified archaeologist and a Native American tribal representative can make an assessment and provide additional recommendations. (Exhibit A: **Mitigation Measure CUL-1**).

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Finding

The Planning Commission finds that implementation of Mitigation Measure CUL-1 will reduce this impact to a level of less than significant. As authorized by Public Resources Code Section 21081(a)(1) and Title 14, and California Code of Regulations Section 15091(a)(1), the City finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The Planning Commission further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact will be less than significant.

- b. **Impact B.14-a.ii: Would the Project cause a substantial adverse change in the significance of a tribal cultural resource, defined in PRC Section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is a resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in Subdivision (c) of PRC Section 5024.1? In applying the criteria set forth in Subdivision (c) of PRC Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.**

Significant Impact

As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on page B-58 and summarized in the Summary Chapter (page S-23) of the DEIR, and supported by evidence contained within the entirety of the record of proceedings, there are no known tribal cultural resources at the Project site. In the event that tribal cultural resources are identified during Project construction or operation, any impacts on the resource resulting from the Project could be potentially significant. This impact will be reduced to a less-than-significant level by ensuring that work is halted in the vicinity of a find until a qualified archaeologist and a Native American tribal representative can make an assessment and provide additional recommendations. (Exhibit A: Mitigation Measure CUL-1).

Finding

The Planning Commission finds that implementation of Mitigation Measure CUL-1 will reduce this impact to a level of less than significant. As authorized by Public Resources Code Section 21081(a)(1) and Title 14, and California Code of Regulations Section 15091(a)(1), the City finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The Planning Commission further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact will be less than significant.

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- c. **Impact B.14-b: Will the Project, in combination with reasonably foreseeable future projects, result in significant cumulative impacts on tribal cultural resources?**

Significant Impact

As discussed in Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR on pages B-58 to B-59 and summarized in the Summary Chapter (page S-23) of the DEIR, and supported by evidence contained within the entirety of the record of proceedings, there are no known tribal cultural resources within the Project site. While there is the potential for the Project to encounter archaeological resources, which could include prehistoric archeological features or deposits considered tribal cultural resources, the Project will not be expected to result in significant impacts even if such resources are found. There are reasonably foreseeable future projects, specifically the Pickleweed Field and Park Project and the Schoen Park Conversion to Parking, that could impact the same archaeological resources as the Project, if any such resource is identified. However, these projects would involve the implementation of similar types of mitigation measures as the Project, which will reduce potential for impacts on these resources and any other as-yet undiscovered resources to a less-than-significant level. (Exhibit A: **Mitigation Measure CUL-1**).

Finding

The Planning Commission finds that implementation of Mitigation Measure CUL-1 will reduce this impact to a level of less than significant. As authorized by Public Resources Code Section 21081(a)(1) and Title 14, and California Code of Regulations Section 15091(a)(1), the City finds that changes or alterations have been required herein, incorporated into the Project, or required as a condition of Project approval, which mitigate or avoid the significant environmental impact listed above. The Planning Commission further finds that the change or alteration in the Project or the requirement to impose the mitigation as a condition of Project approval is within the jurisdiction of the City to require, and that this mitigation is appropriate and feasible. Therefore, with the identified mitigation, this impact will be less than significant.

D. IMPACT OVERVIEW

1) Growth-Inducing Impacts

Section 15126.2(e) of the CEQA Guidelines requires that an environmental impact report discuss:

[T]he ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a wastewater treatment plant might, for example, allow for more construction in service areas)... It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

The Project will not directly induce growth because it does not involve the development of new housing or job centers that will attract an additional population. Project construction will not extend roads or include other infrastructure that could indirectly

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induce growth. Given the relatively small size of the construction workforce (approximately 19 construction workers), construction of the Project will not be expected to induce demand for housing by attracting workers from outside the area, as workers are expected to be drawn from the local labor pool. Long-term operations and maintenance activities associated with the Project will be similar to existing activities, and will not increase the number of workers employed by the City of San Rafael.

As described in Chapter 2, Project Description, of the DEIR the goal of the Project is to enhance the ecological function of the Tiscornia Marsh property and increase flood protection for the Canal neighborhood, while maintaining the community value of the Albert J. Boro Community Center and Pickleweed Park. The Project will use existing water supplies and will not create or expand a water supply source that could remove water supply limitations as a potential obstacle to growth.

Based on the preceding and on the entirety of the record of proceedings, the Planning Commission consequently finds that no significant growth-inducing effects will result from implementation of the Project.

2) Significant Unavoidable Impacts

In accordance with CEQA Section 21100(b)(2)(A) and Sections 15126(b) and 15126.2(c) of the CEQA Guidelines, the purpose of this section is to identify environmental impacts of the Project that could not be eliminated or reduced to a less-than-significant level with implementation of the mitigation measures identified in Chapter 3, Environmental Setting, Impacts, and Mitigation Measures, or Appendix B, Topics Not Requiring Detailed Environmental Analysis, of the DEIR. No significant unavoidable impacts have been identified in this EIR.

Based on the preceding and on the entirety of the record of proceedings, the Planning Commission consequently finds that no significant unavoidable impacts will result from implementation of the Project.

3) Significant Irreversible Environmental Changes

CEQA Section 21100(b)(2)(B) and CEQA Guidelines Section 15126.2(d) require that an EIR identify significant irreversible environmental changes caused by implementation of a project. Construction of the Project will indirectly result in the commitment of nonrenewable natural resources used in the construction process. These may include gravel, soils, petroleum products, construction-related chemicals, steel, and other materials. The Project will also result in the commitment of slowly renewable materials, such as wood products. This will not, however, be considered a significant adverse irreversible environmental change, given the availability of these products and the Project's relatively small need for these products compared to their overall regional use.

Based on the preceding and on the entirety of the record of proceedings, the Planning Commission consequently finds that no significant irreversible effects will result from implementation of the Project.

E. REVIEW OF PROJECT ALTERNATIVES

CEQA requires that an EIR describe and evaluate a reasonable range of feasible alternatives to a project, or to the location of a project, that would attain most of the project

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objectives and avoid or substantially lessen significant project impacts. Section 15126.6(e) of the CEQA Guidelines requires that an EIR alternatives analysis must include the “No Project Alternative” as a point of comparison. The No Project Alternative includes existing conditions and reasonably foreseeable future conditions that would exist if the project were not approved (CEQA Guidelines Section 15126.6(e)(2)). Based on the “rule of reason” governance in the CEQA Guidelines, an EIR is required to “set forth only those alternatives necessary to permit a reasoned choice” and alternatives need to attain most of the project objectives in order to be considered feasible (CEQA Guidelines Section 15126.6(f)). The following discussion describes the three alternatives evaluated in detail in this EIR.

The Project Alternatives analyzed in the following sections include:

- Alternative 1: No Project Alternative
 - Alternative 2: Reduced Project – Reduce Tiscornia Marsh Restoration
 - Alternative 3: Reduced Project – Eliminate Diked Marsh Restoration
1. **Alternative 1: No Project Alternative:** (as required by CEQA). In the event that the City does not approve the Project, the restoration of Tiscornia Marsh and the City-owned diked marsh would not occur. The eroded area outboard of the existing Tiscornia Marsh would not be reconstructed, and the diked marsh would not be reconnected to tidal activity. The new levee north of the soccer field would not be constructed, and the levees to the west and south of Tiscornia Marsh would not be raised and/or widened. In addition, the coarse beach feature would not be constructed to prevent additional erosion of the marsh. The levee trails would not be resurfaced with asphalt.

Ability to Meet Project Objectives

The No Project Alternative would not meet any of the objectives of the Project.

Finding

The Planning Commission (1) rejects this Alternative 1: No Project Alternative on the basis that it fails to meet basic project objectives and (2) finds that each and any of these grounds separately and independently provide sufficient justification for rejection of this Alternative.

Facts in Support of Finding

The Alternative 1: No Project Alternative fails to meet any of the Project objectives, specifically:

- This alternative would not restore tidal marsh on the Project site to improve ecological function and habitat quantity, quality, and connectivity (including upland transition zones) for native marsh species and marsh-upland transition species, including special status species.
- This alternative would not protect Project site marsh lands from future marsh edge erosion; increase the level of flood protection for the Canal neighborhood and other nearby communities of central San Rafael.
- This alternative would not create sustainable benefits that consider future environmental changes such as sea level rise and sedimentation.

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- This alternative would not maintain and improve public access to passive recreational and outdoor education opportunities (e.g., hiking, jogging, bird watching).
- Tiscornia Marsh would continue to erode, and the low-lying Canal neighborhood adjacent to Tiscornia Marsh would be further at risk to coastal flooding.
- The existing levee trail would be retained, and passive recreation would continue; however, the trail surface would not be replaced and outdoor education opportunities would not be improved.

2. **Alternative 2: Reduced Project – Reduce Tiscornia Marsh Restoration:** Alternative 2 would include the same Project elements as the Project; however, the south side of the marsh would be reduced; therefore, reducing the total fill required and the overall amount of construction activities. Specifically, the portion of restored tidal marsh and constructed coarse beach would not be extended to the location of the tidal channel.

Ability to Meet Project Objectives

Alternative 2 would meet the objectives related to enhanced flood protection of the adjacent areas, because new/raised levees would be created and would protect the adjacent areas. The alternative would meet the objective of maintaining and improving public access, as it would include new trail surfacing along the levees, and other passive recreation components (same as under the Project). However, the amount of tidal marsh restoration would be reduced as compared to the Project, and without the extension of the marsh to the south to the tidal channel, a portion of the site would be subject to ongoing marsh erosion and would be vulnerable to the ongoing effects of sea level rise. Further, without the protection of the coarse beach at the southern portion of the Project site, ongoing erosion would extend from the southern portion of the site northward, and it is expected that the overall project efficacy and timeline would be reduced compared to the Project.

Finding

The Planning Commission (1) rejects this alternative on the basis that it fails to meet basic project objectives, and (2) finds that each and any of these grounds separately and independently provide sufficient justification for rejection of this Alternative.

Facts in Support of Finding

- This Alternative achieves some, but not all, of the Project objectives, including failing to achieve primary Project objectives, such as fully restoring tidal marsh on the Project site, and protecting Project site marshlands from future marsh edge erosion.
- The amount of tidal marsh restoration would be reduced as compared to the Project, and without the extension of the marsh to the south to the tidal channel, a portion of the site would be subject to ongoing marsh erosion and would be vulnerable to the ongoing effects of sea level rise.
- Without the protection of the coarse beach at the southern portion of the Project site, ongoing erosion would extend from the southern portion of the

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site northward, and it is expected that the overall Project efficacy and timeline would be reduced compared to the Project

- Alternative 2 would meet the objectives related to enhanced flood protection of the adjacent areas, because new/raised levees would be created and would protect the adjacent areas.
- The alternative would meet the objective of maintaining and improving public access, as it would include new trail surfacing along the levees, and other passive recreation components.

3. Alternative 3: Reduced Project – Eliminate Diked Marsh Restoration:

Alternative 3 would include most of the same Project elements on the eastern side of the site as the Project and would include the restoration of Tiscornia Marsh, construction of the coarse beach, raised southern and eastern levee, and constructed southern ecotone. However, the diked marsh would not be converted to tidal marsh; the new levee between the diked marsh and Pickleweed Park would not be constructed, and the new tidal channels at the north end of the site would not be constructed. Alternative 3 would require the least amount of construction, other than the No Project Alternative.

Ability to Meet Project Objectives

Alternative 3 would meet the objective related to maintaining and improving public access, as it would include new trail surfacing along the improved levees, and other passive recreation components (same as under the Proposed Project). However, the amount of tidal marsh restoration would be substantially reduced as compared to the Project, because the diked marsh would not be converted to tidal marsh. Further, without restoration, the diked marsh would continue to be isolated from bay sediments, which would help marshes accrete (or build up) to keep pace with sea level rise. Without the new levee and ecotone, and restoring tidal action to the diked marsh, the western portion of the site would be more vulnerable to extreme tidal flooding and sea level rise compared to the Project.

Finding

The Planning Commission (1) rejects this alternative on the basis that it fails to meet basic project objectives, and (2) finds that each and any of these grounds separately and independently provide sufficient justification for rejection of this Alternative.

Facts in Support of Finding

- This Alternative achieves some, but not all, of the Project objectives, including failing to achieve primary Project objectives, such as fully restoring tidal marsh on the Project site, and protecting Project site marshlands from future marsh edge erosion.
- The amount of tidal marsh restoration would be substantially reduced as compared to the Project, because the diked marsh would not be converted to tidal marsh.
- Without restoration, the diked marsh would continue to be isolated from bay sediments, which would help marshes accrete (or build up) to keep pace with sea level rise.

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- Without the new levee and ecotone, and restoring tidal action to the diked marsh, the western portion of the site would be more vulnerable to extreme tidal flooding and sea level rise.
- This alternative would meet the objective related to maintaining and improving public access, as it would include new trail surfacing along the improved levees, and other passive recreation components.

Environmental Superior Alternative

Consistent with CEQA Guidelines Section 15126.6(e), an environmentally superior alternative must be identified among the alternatives that were studied. The DEIR concludes (Chapter 5; pages 5-12 to 5-13) that the Environmentally Superior Alternative is Alternative 3: Reduced Project – Eliminate Diked Marsh Restoration project for the following reasons:

- Alternative 1 would eliminate the short-term construction effects relative to the Project. However, under Alternative 1, the restoration of Tiscornia Marsh and the City-owned diked marsh would not occur and the existing levees would not be raised and improved; thus, the adjacent areas would continue to be vulnerable to flooding. Alternative 1 would not meet any of the Project objectives.
- Alternative 2 would not avoid the significant effects of the Project; however, the impacts would be lessened with the reduced construction footprint. Alternative 2 would only partially meet Project objectives, by eliminating restoration of the southern portion of the marsh. Thus, Alternative 2 provides a reduced habitat benefit. Further, without improvement of the southern part of the Project, ongoing erosion would extend into the northern portion of the Project site, affecting the efficacy of the project, and somewhat reducing the expected lifetime of the improved levees from 2070 (as under the Project).
- Alternative 3 includes the least amount of construction activity, other than the No Project Alternative. While Alternative 3 would not avoid the significant effects of the Project, the impacts would be lessened with the reduced construction footprint. Thus, Alternative 3 is the environmentally preferred alternative. However, Alternative 3 would only partially meet Project objectives, by eliminating restoration of the diked marsh to tidal marsh and eliminating the new northern levee and ecotone.

Rejection of Environmentally Superior Alternative:

Alternative 3 is the environmentally superior alternative. Compared to the Project, Alternative 3 restoration would be significantly reduced, which would not meet the identified tidal marsh restoration, Project site marshlands protection, increased flood protection, and sustainable benefits as sea level rises objectives for the Project. By eliminating restoration of the diked marsh to tidal marsh and eliminating the new northern levee and ecotone, Alternative 3 provides the least habitat benefit and smallest flood protection benefit, other than the No Project Alternative. Further, without improvement of the diked marsh, the northwestern part of the Project area would be more vulnerable to extreme tidal flooding and sea level rise, and the expected lifetime of the improved levees would be less than 2070 (as under the

EXHIBIT A

Project). For these reasons, the Planning Commission rejects Alternative 3, the environmentally superior alternative.

F. ADOPTION OF MITIGATION MONITORING AND REPORTING PROGRAM

Pursuant to Public Resources Code section 21081.6, the Planning Commission hereby adopts the Mitigation Monitoring and Reporting Program attached to this Resolution as Exhibit A, to be made a condition of approval of the Project. In the event of any inconsistencies between the Mitigation Measures as set forth herein and the Mitigation Monitoring and Reporting Program, the Mitigation Monitoring and Reporting Program shall control.

G. STAFF DIRECTION

A Notice of Determination shall be filed with the County of Marin and the State Clearinghouse within five (5) working days of final Project approval.

The foregoing resolution was at the regular City of San Rafael Planning Commission meeting held on the 11th day of January 2022.

Moved by Commissioner _____ and seconded by Commissioner _____.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____
Leslie Mendez, Secretary

Shingi Samudzi, Chair

Exhibit A – Mitigation Monitoring and Reporting Program (MMRP)

EXHIBIT A: MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
AIR QUALITY, EIR SECTION 3.3						
<p>Mitigation Measure 3.3-1: BAAQMD Basic Construction Measures. The Project applicant and/or its construction contractors shall comply with the following applicable BAAQMD Basic Construction Mitigation Measures:</p> <p><i>BAAQMD Basic Construction Measures</i></p> <ol style="list-style-type: none"> 1. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day. 2. All haul trucks and railcars transporting soil, sand, or other loose material off-site shall be covered. 3. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. 4. All vehicle speeds on unpaved roads shall be limited to 15 mph. 5. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used. 6. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of the California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points. 7. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator. 	Marin Audubon Society and contractors	City	Prior to start of construction, during construction, and at time of contract specifications			

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
8. Post a publicly visible sign with the telephone number and person to contact at the City of San Rafael regarding dust complaints. This person shall respond and take corrective action within 48 hours. BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.						
Mitigation Measure 3.3-2: EPA Tier 4 Engines. The Project applicant and/or its construction contractors shall be required to use off-road diesel construction equipment compliant with EPA Tier 4 nonroad engine standards. Before construction activities begin, the construction contractor and/or the Project applicant shall prepare an equipment list that identifies each piece of off-road equipment to be operated at the Project site by its equipment identification number and demonstrates that each piece of equipment meets EPA Tier 4 nonroad engine standards. The list shall be made available at the construction site and shall be updated when new or replacement construction equipment is brought to the site.	Marin Audubon Society and contractors	City	Prior to start of construction, during construction, and at time of contract specifications			
BIOLOGICAL RESOURCES, EIR SECTION 3.4						
Mitigation Measure 3.4-1: General Construction-related Mitigation Measures	Marin Audubon Society and contractors	City	Prior to start of construction, during construction, and at time of contract specifications			
<ul style="list-style-type: none"> A qualified biologist (4-year college degree in biology or related field and demonstrated experience with the species of concern) shall provide Worker Environmental Awareness Training (WEAT) to field management and construction personnel. Communication efforts and training shall take place during pre-construction meetings so that construction personnel are aware of their responsibilities and the importance of compliance. WEAT shall identify the types of sensitive resources located in the study area and the measures required to avoid impacts on these resources. Materials covered in the training program shall include environmental rules and regulations for the specific Project and requirements for limiting 						

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
<p>activities to the construction right-of-way and avoiding demarcated sensitive resource areas.</p> <ul style="list-style-type: none"> If new construction personnel are added to the Project, the contractor shall ensure the new personnel receive WEAT before starting work. A sign-in sheet of those contractor individuals who have received the training shall be maintained by the Project proponent. A representative shall be appointed during the WEAT to be the contact for any employee or contractor who might inadvertently kill or injure a listed species or who finds a dead, injured, or entrapped individual. All vehicle operators shall limit speed to 15 miles per hour (mph) within the Project site. No erosion control materials shall contain any plastic or monofilament netting. <p>To avoid attracting predators, all food-related trash items shall be bagged and removed daily.</p>						
<p>Mitigation Measure 3.4-2: Avoid and Minimize Impacts on California Black Rail and California Ridgway’s Rail</p> <ul style="list-style-type: none"> To minimize or avoid the loss of individual California black rail and California Ridgway’s rail, construction activities, including vegetation management activities requiring heavy equipment, adjacent to the tidal marsh areas (within 500 feet [150 meters] or a distance determined in coordination with the USFWS or CDFW <u>based on site specific conditions</u>, shall be avoided during the breeding season from February 1 through August 31. If areas within or adjacent to rail habitat cannot be avoided during the breeding season, protocol-level surveys shall be conducted to determine rail nesting locations. The surveys shall focus on potential habitat that could be disturbed by construction activities during the breeding season to ensure that rails are not breeding in these locations. 	Marin Audubon Society and contractors	City		Prior to start of construction, during construction, at time of contract specifications, and at time of encounter of species (as applicable)		

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
<p>Survey methods for rails shall follow the <i>Site-Specific Protocol for Monitoring Marsh Birds</i>, which was developed for use by USFWS and partners to improve bay-wide monitoring accuracy by standardizing surveys and increasing the ability to share data (Wood et al. 2017). Surveys are concentrated during the approximate period of peak detectability, January 15 to March 25, and are structured to efficiently sample an area in three rounds of surveys by broadcasting calls of target species during specific periods of each survey round. Call broadcasts increase the probability of detection compared to passive surveys when no call broadcasting is employed. This protocol has since been adopted by the Invasive Spartina Project (ISP) and Point Blue Conservation Science to survey California Ridgway’s rails at sites throughout San Francisco Bay Estuary, <u>including at Tiscornia Marsh</u>. <u>The survey results and protocols from the ISP shall be used, or a survey protocol developed in coordination with CDFW and USFWS incorporating both species simultaneously and with the same level of effort as protocols currently in use by ISP shall be used.</u> The survey protocol for California Ridgway’s rail is summarized below.</p> <ul style="list-style-type: none"> – Previously used survey locations (points) should be used when available to maintain consistency with past survey results. Adjacent points should be at least 200 meters apart along transects in or adjacent to areas representative of the marsh. Points should be located to minimize disturbances to marsh vegetation. Up to eight points can be located on a transect. – At each transect, three surveys (rounds) are to be conducted, with the first round of surveys initiated between January 15 and February 6, the second round performed February 7 to February 28, and the third round March 1 to March 25. Surveys 						

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
<p>should be spaced at least 1 week apart, and the period between March 25 to April 15 can be used to complete surveys delayed by logistical or weather issues. A FESA Section 10(a)(1)(A) permit is required to conduct active surveys.</p> <ul style="list-style-type: none"> - Each point on a transect shall be surveyed for 10 minutes each round. A recording of calls available from the USFWS is broadcast at each point. The recording consists of 5 minutes of silence, followed by a 30-second recording of California Ridgway's rail vocalizations, followed by 30 seconds of silence, followed by a 30-second recording of California black rail, followed by 3.5 minutes of silence. <ul style="list-style-type: none"> • If no breeding California black rail or California Ridgway's rail are detected during surveys, or if their breeding territories can be avoided by 500 feet (150 meters), or a distance determined in coordination with the USFWS or CDFW <u>based on site specific conditions</u>, then Project activities may proceed at that location. • If protocol surveys determine that breeding California black rail and/or California Ridgway's rail are present in the Project area, the following measures would apply to Project activities conducted during their breeding season (February 1- August 31): <ul style="list-style-type: none"> - Construction activities would not occur within 500 feet of a detected Ridgway's rail or black rail call center. - A USFWS- and CDFW-approved biologist shall be on site during construction activities occurring within 50 feet 500 feet (150 meters) of any other suitable rail breeding habitat. - All other biologists that may need to access the tidal marsh outside of the active construction 						

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
<p>period or be on site during construction for activities beyond 500 feet from suitable rail breeding habitat and 500 feet from rail call centers, shall be trained in black rail and Ridgway's rail biology, identification, and vocalizations, and shall be familiar with both species of rail and their nests.</p> <p>– <u>The qualified biologist/biological monitor shall have the authority to stop all work if a Ridgway's rail or black rail enters or is discovered within 50 feet of the active work zone. All nearby work shall halt and not continue until the Ridgway's rail or black rail leaves the area on its own accord or until approving agencies have been consulted. The no work zone shall be large enough as determined by the qualified biologist/biological monitor in order to avoid impacts to all special-status species.</u> If a California black rail or California Ridgway's rail vocalizes or flushes-within 10 meters, it is possible that a nest or young are nearby. If an alarmed bird or nest is detected, work shall be stopped, and workers shall leave the immediate area carefully and quickly. An alternate route shall be selected that avoids this area, and the location of the sighting shall be recorded to inform future activities in the area.</p> <p>– All construction crews working in the marsh during rail breeding season shall be trained and supervised by a USFWS- and CDFW-approved rail biologist.</p> <p>– If any activities shall be conducted during the rail breeding season in California black rail or California Ridgway's rail-occupied marshes, biologists shall have maps or global positioning system (GPS) locations of the most current occurrences on the site.</p>						

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
<p>Mitigation Measure 3.4-3: Nesting Bird Protection Measures</p> <p>The City and/or its contractor(s) shall implement the following during construction of the Project:</p> <ul style="list-style-type: none"> • Removal of trees and scrub vegetation shall occur outside the bird nesting season (February 1 to August 31), to the extent feasible. • If removal of trees and vegetation cannot be fully accomplished outside of the nesting season, a qualified biologist shall conduct pre-construction nesting surveys within 7 days prior to the start of such activities or after any construction breaks of 10 days or more. Surveys shall be performed for the study area and suitable habitat within 250 feet of the Project site to locate any active raptor (birds of prey) nests or rookeries. • If active nests are located during the pre-construction bird nesting survey, the qualified biologist shall evaluate if the schedule of construction activities could affect the active nests and the following measures shall be implemented based on their determination: <ul style="list-style-type: none"> – If construction is not likely to affect the active nest, it may proceed without restriction; however, a biologist shall regularly monitor the nest to confirm there is no adverse effect and may revise their determination at any time during the nesting season. In this case, the following measure would apply. – If construction may affect the active nest, the biologist shall establish a no-disturbance buffer in coordination with CDFW. Typically, these buffer distances are 100 feet for passerines and 250 feet for raptors. These distances may be adjusted depending on the level of surrounding ambient activity (e.g., if the Project site is adjacent to a road or active trail) and if an obstruction, such as a 	Marin Audubon Society and contractors	City	Prior to start of construction, during construction, at time of contract specifications, and at time of encounter of species/active nests (as applicable)			

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
<p>building, is within line-of-sight between the nest and construction. For bird species that are federally and/or state-listed sensitive species (i.e., fully protected, endangered, threatened, species of special concern), a City representative or qualified biologist shall coordinate with the USFWS and/or CDFW regarding modifications to nest buffers, prohibiting construction within the buffer, modifying construction, or removing or relocating active nests that are found on the site.</p> <p>– Any birds that begin nesting within the Project area and survey buffers amid construction activities are assumed to be habituated to construction-related or similar noise and disturbance levels. A qualified biologist shall coordinate with the USFWS and/or CDFW and determine if no work exclusion zones shall be established around active nests in these cases.</p>						
<p>Mitigation Measure 3.4-4: Avoid and Minimize Impacts on Salt Marsh Harvest Mouse and Salt Marsh Wandering Shrew</p> <ul style="list-style-type: none"> Ground disturbance to suitable salt marsh harvest mouse habitat (including, but not limited to pickleweed, and emergent salt marsh vegetation) shall be avoided to the extent feasible. Where salt marsh harvest mouse habitat cannot be avoided (such as for channel excavation, access routes and grading, or anywhere else that vegetation could be trampled or crushed by work activities), vegetation shall be removed to ground level from the ground disturbance work area plus a 5-foot buffer around the area, as well as any access routes within salt marsh harvest mouse habitat, utilizing mechanized hand tools or by another method approved by the USFWS and CDFW. Vegetation height shall be maintained at or below 5 inches above ground. Vegetation removal in salt marsh harvest mouse habitat shall be 	Marin Audubon Society and contractors	City	Prior to start of construction, during construction, at time of contract specifications, and at time of encounter of species (as applicable)			

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
<p>conducted under the supervision of the USFWS- and CDFW-approved biologist(s). <u>The number of biologists needed to effectively inspect vegetational removal for the presence of mice and nests depends on the site characteristics and vegetation removal methods and may be determined in coordination with approving agencies.</u></p> <ul style="list-style-type: none"> To protect salt marsh harvest mouse from construction-related traffic, access roads, haul routes, and staging areas within 50 feet of salt marsh harvest mouse habitat shall be bordered by temporary exclusion fencing; or other wildlife exclusion fencing as specified in federal or state permits. The fence should be made of a material that does not allow salt marsh harvest mouse to climb or pass through, of a minimum above-ground height of 30 inches, and the bottom should be buried to a depth of at least 6 inches so that mice cannot crawl under the fence. Any supports for the salt marsh harvest mouse exclusion fencing (e.g., t-posts) shall be placed on the inside of the Project site. The last 5 feet of the fence shall be angled away from the road to direct wildlife away from the road. A USFWS- and CDFW-approved biologist with previous salt marsh harvest mouse experience shall be on site during fence installation and shall check the fence alignment prior to vegetation clearing and fence installation to ensure that no salt marsh harvest mice are present. Salt marsh harvest mouse marsh habitat that must be accessed by mini-excavators or other vehicles to complete Project construction (e.g., excavating smaller channels) shall be protected through use of low ground pressure (LGP) equipment, wooden or PVC marsh mats, or other method approved by the USFWS and CDFW following vegetation removal (see 2nd bullet, above). Construction activities related to restoration and infrastructure shall be scheduled to avoid extreme high tides when there is potential for salt marsh 						

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
<p>harvest mouse to move to higher, drier grounds, such as ruderal and grassland habitats. No Project activities shall be conducted within 50 feet of suitable tidal marsh or other salt marsh harvest mouse habitat within 2 hours before and after an extreme high tide event (6.5 feet or higher measured at the Golden Gate Bridge and adjusted to the timing of local high tides) or when the adjacent marsh is flooded unless wildlife exclusion fencing has been installed around the work area.</p> <ul style="list-style-type: none"> • All construction equipment and materials shall be staged on existing roadways and away from suitable salt marsh harvest mouse habitat when not in use. All construction equipment shall be visually inspected prior to work activities each day for signs of salt marsh harvest mouse or any other wildlife. • Vegetation shall be removed from all non-marsh areas of disturbance (driving roads, grading and stockpiling areas) to discourage the presence of salt marsh harvest mouse. • A USFWS- and CDFW-approved biologist with previous salt marsh harvest mouse monitoring and/or surveying experience shall be on site during construction activities occurring in suitable habitat. The USFWS- and CDFW-approved biologist has the authority to stop Project activities if any of the requirements associated with these measures are not being fulfilled. If a harvest mouse is observed in the work area, construction activities shall cease in the immediate vicinity of the potential salt marsh harvest mouse. The individual shall be allowed to leave the area before work is resumed. If the individual does not move on its own volition, the USFWS-approved biologist would contact USFWS (and CDFW if appropriate) for further guidance on how to proceed. • If the USFWS- and CDFW-approved biologist has requested work stoppage because of take of any of 						

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
the listed species, or if a dead or injured salt marsh harvest mouse is observed, the USFWS and CDFW shall be notified within 1 day by email or telephone.						
<p>Mitigation Measure 3.4-5: Special-Status Plant Protection</p> <ul style="list-style-type: none"> Prior to the start of construction, a qualified biologist shall conduct a properly timed special-status plant survey for Marin knotweed (<i>Polygonum marinense</i>), Suisun Marsh aster (<i>Symphotrichum lentum</i>), Congested-headed hayfield tarplant (<i>Hemizonia congesta</i> subsp. <i>congesta</i>), and Point Reyes bird's-beak (<i>Chloropyron maritimum</i> ssp. <i>palustre</i>) within the species' suitable habitat within the Project work limits. The survey shall follow the CDFW Protocols for Surveying and Evaluating Impacts on Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). If special-status plant species are identified within the Project work limits, then the biologist shall establish an appropriate buffer area for each plant population to exclude activities that directly remove or alter the habitat of, or result in indirect adverse impacts on, the special-status plant species. A qualified biologist shall oversee installation of a temporary, mesh-type construction fence (Tensor Polygrid or equivalent) at least 4 feet (1.2 meters) tall around any established buffer areas to prevent encroachment by construction vehicles and personnel. The qualified biologist shall determine the exact location of the fencing. The fencing shall be strung tightly on posts set at maximum intervals of 10 feet (3 meters) and shall be checked and maintained weekly until all construction is complete. The buffer zone established by the fencing shall be marked by a sign stating: <ul style="list-style-type: none"> – “This is habitat of [list rare plant(s)], and must not be disturbed. This species is protected by [the ESA of 1973, as amended/CESA/California Native Plant Protection Act].” 	Marin Audubon Society and contractors	City	Prior to start of construction, during construction, at time of contract specifications, and at time of encounter of species (as applicable)			

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
<ul style="list-style-type: none"> If direct impacts cannot be avoided, the City shall require the project sponsor to prepare a plan for minimizing the impacts by one or more of the following methods: (1) salvage and replant plants at the same location following construction; (2) salvage and relocate the plants to a suitable off-site location with long-term assurance of site protection; (3) collect seeds or other propagules for reintroduction at the site or elsewhere; or (4) payment of fees in lieu of preservation of individual plants, to be used for conservation efforts elsewhere. The City shall review and approve the plan. The success criterion for any seeded, planted, and/or relocated plants shall be full replacement at a 1:1 ratio after 5 years. Monitoring surveys of the seeded, planted, or transplanted individuals shall be conducted for a minimum of 5 years, to ensure that the success criterion can be achieved at year 5. If it appears the success criterion would not be met after 5 years, contingency measures may be applied. Such measures shall include, but not be limited to: additional seeding and planting, altering, or implementing weed management activities, or introducing or altering other management activities. Any special-status plant species observed during surveys shall be reported to the CDFW and submitted to the CNDDDB and reported to USFWS, if federally listed. 						
<p>Mitigation Measure 3.4-6: Fish and Marine Mammal Protection During Pile Driving</p> <p>Prior to the start of any in-water construction that would require pile driving, the Project sponsor shall prepare a NOAA and CDFW-approved sound attenuation monitoring plan to protect fish and marine mammals, and the approved plan shall be implemented during construction. This plan shall provide detail on the sound attenuation system, detail methods used to monitor and</p>	Marin Audubon Society and contractors	City	Prior to start of and during in-water construction, at time of contract specifications, and at time of exceedance of sound criteria or encounter of species (as applicable)			

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
<p>verify sound levels during pile driving activities (if required based on projected in-water noise levels), and describe methods to reduce impact pile-driving in the aquatic environment to an intensity level less than 120 dB (RMS) continuous noise level for marine mammals at a distance of 1,640 feet. The plan shall incorporate, but not be limited to, the following elements:</p> <ul style="list-style-type: none"> • All in-water construction shall be conducted within the established environmental work window between June 1 and November 30, designed to avoid potential impacts on fish species. • To the extent feasible, vibratory pile drivers shall be used for the installation of all support piles. Vibratory pile driving shall be conducted following the USACE "Proposed Procedures for Permitting Projects that will Not Adversely Affect Selected Listed Species in California." The USFWS and NMFS completed Section 7 consultation on this document, which establishes general procedures for minimizing impacts on natural resources associated with projects in or adjacent to jurisdictional waters. • If NOAA sound level criteria for marine mammals are exceeded during vibratory hammer pile installation, a NOAA-approved biological monitor shall be available to conduct surveys before and during pile driving to inspect the work zone and adjacent waters for marine mammals. The monitor shall be present as specified by NMFS during impact pile driving and ensure that: <ul style="list-style-type: none"> – The safety zones established in the sound monitoring plan for the protection of marine mammals are maintained. – Work activities are halted when a marine mammal enters a safety zone and resumed only after the animal has left the area or has not been observed for a minimum of 15 minutes. 						

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
Mitigation Measure 3.4-7: Tree Ordinance						
<ul style="list-style-type: none"> Any tree-related work (removal, planting, or pruning) shall adhere to the City of San Rafael Municipal Code Section 11.12. Specifically, written permit must be issued to cut, prune, break, injure, or remove any living tree in, upon, or along any public street, sidewalk, or walkway in the city or cut, disturb, or interfere in any way with the roots of any tree in, upon, or along any street, sidewalk, or walkway, or spray with any chemical or insecticide any tree in, upon, or along any public street, sidewalk, or walkway, or place any sign, poster, or other fixture on any tree or tree guard, or injure, misuse, or remove any device placed to protect any tree in, upon, or along any public street, sidewalk, or walkway in the city. <p>Whenever any <i>tree</i> shall be cut down or removed in or from any sidewalk area, its butt and roots shall be dug up and removed, or cut level with the ground, as directed by the public works department.</p> <ul style="list-style-type: none"> In the erection or repair of any building or structure, guards shall be placed around all nearby trees in, upon, or along the public streets, sidewalks, and walkways within the city as shall prevent injury to them. 	Marin Audubon Society and contractors	City of San Rafael Public Works Department	Prior to start of construction, during construction, and at time of contract specifications			
CULTURAL RESOURCES, APPENDIX B. INITIAL STUDY SECTION B.3						
<p>Mitigation Measure CUL-1: Cultural Resources Awareness Training and Inadvertent Discovery of Archaeological Resources or Tribal Cultural Resources</p> <p>Prior to authorization to proceed, a qualified archaeologist, defined as an archaeologist meeting the U.S. Secretary of the Interior’s Professional Qualification Standards for Archeology, shall conduct a training program for all construction and field workers involved in site disturbance. On-site personnel shall attend a mandatory pre-Project training that shall outline the</p>	Marin Audubon Society and contractors	City	Prior to authorization to proceed, at time of contract specifications, and at time of resource encounter, as applicable			

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
<p>general archaeological sensitivity of the area and the procedures to follow in the event an archaeological resource and/or human remains are inadvertently discovered.</p> <p>If pre-contact or historic-era archaeological resources are encountered during Project implementation, all construction activities within 100 feet shall halt, and a qualified archaeologist shall inspect the find within 24 hours of discovery and notify the City of the initial assessment. Pre-contact archaeological materials might include obsidian and chert flaked-stone tools (e.g., projectile points, knives, scrapers) or toolmaking debris; culturally darkened soil (“midden”) containing heat-affected rocks, artifacts, or shellfish remains; stone milling equipment (e.g., mortars, pestles, handstones, or milling slabs); and battered stone tools, such as hammerstones and pitted stones. Historic-era materials might include building or structure footings and walls, and deposits of metal, glass, and/or ceramic refuse.</p> <p>If the City determines, based on recommendations from a qualified archaeologist and a Native American representative (if the resource is pre-contact indigenous related), that the resource may qualify as a historical resource or unique archaeological resource (as defined in CEQA Guidelines Section 15064.5) or a tribal cultural resource (as defined in Public Resources Code [PRC] Section 21080.3), the resource shall be avoided if feasible. Consistent with Section 15126.4(b)(3), this may be accomplished through planning construction to avoid the resource, incorporating the resource within open space, capping and covering the resource, or deeding the site into a permanent conservation easement.</p> <p>If avoidance is not feasible, the City shall consult with appropriate Native American tribes (if the resource is pre-contact indigenous related), and other appropriate interested parties to determine treatment measures to avoid, minimize, or mitigate any potential impacts to the resource pursuant to PRC Section 21083.2, and CEQA</p>						

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
<p>Guidelines Section 15126.4. This shall include documentation of the resource and may include data recovery (according to PRC Section 21083.2), if deemed appropriate, or other actions such as treating the resource with culturally appropriate dignity and protecting the cultural character and integrity of the resource (according to PRC Section 21084.3).</p>						
<p>Mitigation Measure CUL-2: Inadvertent Discovery of Human Remains</p> <p>If potential human remains are encountered, all work shall halt within 100 feet of the find and the City shall be contacted by on-site construction crews. The City shall contact the Marin County coroner in accordance with PRC Section 5097.98 and Health and Safety Code Section 7050.5. If the coroner determines that the remains are Native American, the coroner shall contact the NAHC. As provided in PRC Section 5097.98, the NAHC shall identify the person or persons believed to be the Most Likely Descendant (MLD). The MLD shall make recommendations for the means of treating, with appropriate dignity, the human remains and any associated grave goods, as provided in PRC Section 5097.98.</p>	Marin Audubon Society and contractors	City	At time of contract specifications and at time of remains discovery, as applicable			
TRANSPORTATION AND TRAFFIC, APPENDIX B. INITIAL STUDY SECTION B.13						
<p>Mitigation Measure TRAN-1: Construction Traffic Control Plan</p> <p>Prior to the issuance of construction permits, the construction contractor shall prepare and submit a Construction Traffic Control Plan to the City of San Rafael Public Works Department for approval. The Construction Traffic Control Plan must be prepared in accordance with both the California Department of Transportation Manual on Uniform Traffic Control Devices and Work Area Traffic Control Handbook and must address, at a minimum, the following issues:</p>	Marin Audubon Society and contractors	City of San Rafael Public Works Department	Prior to issuance of construction permits, during construction, and at time of contract specifications			

EXHIBIT A

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
<ul style="list-style-type: none">• Defining truck haul routes to/from the Project that avoid residential streets, to the extent feasible.• Placing temporary signing, lighting, and traffic control devices if required, including, but not limited to, appropriate signage along access routes to indicate the presence of heavy vehicles and construction traffic.• Provision of construction personnel at driveway on Spinnaker Point Drive leading to construction staging area to direct traffic, pedestrians, and bicyclists while trucks are turning into and out of the driveway.• Notification of all construction activities with San Rafael City Schools at least two months in advance, so that it may make proper accommodations for any possible limitations to access at Bahia Vista Elementary School. San Rafael City Schools shall be notified of the timing, location, and duration of construction activities. The construction contractor shall be required to ensure that construction of the Proposed Project does not inhibit vehicle, bicycle, pedestrian, and/or school bus service through inclusion of such provisions in the construction contract.						

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RESOLUTION NO.

**RESOLUTION OF THE SAN RAFAEL PLANNING COMMISSION CONDITIONALLY
APPROVING A USE PERMIT (UP21-001) AND AN ENVIRONMENTAL AND DESIGN
REVIEW PERMIT (ED21-002) FOR THE DEVELOPMENT OF THE TISCORNIA MARSH
RESTORATION PROJECT, EAST CANAL STREET
(CASE NOS. UP21-001, ED21-002)**

WHEREAS, the Tiscornia Marsh covers 23 acres of tidal marsh and Baylands, as well as over 2,000 lineal feet of shoreline levee that are bay ward of Albert J Boro Community Center and Pickleweed Park. The Tiscornia Marsh is owned by Marin Audubon Society; and

WHEREAS, over the past decades, the Tiscornia Marsh property has experienced considerable erosion along its bay ward edge, which is attributed to the wave action from the San Francisco Bay. As a result, approximately three acres of valuable tidal marsh has been lost due to erosion; and

WHEREAS, in June 2016, the Bay Area counties approved Measure AA, a parcel tax measure which places a \$12.00 per year tax on every parcel in the Bay Area. The purpose of the Measure AA tax is to generate funds for marsh restoration projects around the San Francisco and San Pablo Bays. The goal is to improve water quality, restore wildlife habitat, and to protect communities from increased flooding and sea level rise; and

WHEREAS, in 2018, Marin Audubon Society applied for and successfully secured a Measure AA grant to fund the design, permitting, and CEQA/environmental review for a restoration of the Tiscornia Marsh. The Measure AA application was endorsed by the San Rafael City Council on October 1, 2018 (adoption of City Council Resolution 14592). As part of the Measure AA application process, the restoration project was expanded to incorporate/include the City-owned, five-acre, diked marsh located north of the Pickleweed Park playfields; and

WHEREAS, on January 3, 2021, Marin Audubon Society applied for planning applications (Use Permit, UP21-001 and Environmental and Design Review Permit ED21-002) to seek City approval of the Tiscornia Marsh Restoration Project. Per the SRMC Title 14 (Zoning), these applications are required as the project is located within the PD (Planning Development) and WO- (Wetland Overlay) Districts; and

WHEREAS, pursuant to the provisions of the California Environmental Quality Act (CEQA) Guidelines, the Tiscornia Marsh Restoration Project is subject to environmental review. It was determined that the project has the potential to result in potentially significant environmental effects, and the preparation of an Environmental Impact Report was recommended. Following the provisions of the CEQA Guidelines, and Environmental Impact Report was prepared to assess the impacts of the restoration project (Tiscornia Marsh Restoration Project Final Environmental Impact Report [FEIR]). The Planning Commission has: a) reviewed the FEIR finding it to be adequate and complete; and b) certified the FEIR by separate resolution; and

WHEREAS, prior to taking action to approve the planning applications for the project, the CEQA Guidelines require that the findings and recommendations of the FEIR be considered, and that all FEIR mitigation measures be incorporated into this action. To comply with this requirement, by separate resolution, the Planning Commission has adopted CEQA Findings of Fact and adopting a Mitigation Monitoring and Reporting Program (MMRP) to support action on the planning applications; and

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WHEREAS, on January 11, 2022, the Planning Commission held a duly noticed public hearing on the planning applications filed for this project (UP21-001 and ED21-002), accepting all public testimony and the written report of the Community Development Department staff; and

WHEREAS, the custodian of documents which constitute the record of proceedings upon which this decision is based, is the Community Development Department.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission hereby conditionally approves Use Permit UP21-001 and Environmental and Design Review Permit ED21-002 for the Tiscornia Marsh Restoration Project based upon the following findings required by San Rafael Municipal Code (SRMC) Title 14 - Zoning:

Findings for Use Permit (UP21-001)

1. The proposed Tiscornia Marsh Restoration Project is in accord with the San Rafael General Plan 2040 (General Plan), the objectives of the Zoning Ordinance and the purposes of the PD-WO (Planned Development- Wetland Overlay), P/OS-WO (Parks/Open Space – Wetland Overlay), and P/OS (Parks/Open Space – Canalfront Review Overlay) zoning Districts in which the project site is located in that:
 - a. The proposed restoration project would not dramatically change the use of the property, which is undeveloped tidelands, tidal/seasonal marsh, and upland levee which are permitted uses in and consistent with the Water, Conservation, and Park, Recreation and Open Space General Plan land uses designations that are adopted for and applicable to the project site.
 - b. As outlined below, under the findings for approval of Environmental and Design Review Permit ED21-002, the restoration project would maintain and enhance the current undeveloped tidelands, tidal marsh, and upland levee uses, which would be consistent with and permitted by the PD-WO, P/OS-WO, and P/OS-C Districts.
 - c. The proposed restoration project would involve grading, including filling and dredging within the tidelands and tidal marsh areas, which is required to convert an existing diked marsh to a tidal marsh, and to raise the shoreline levee. This activity is necessary to achieve goal of the project, which is to enhance and expand a natural resource and to improve flood protection. The provisions of the SRMC Title 14 – Wetland Overlay (-WO) District require the approval of a Use Permit for this activity with required findings that this activity: 1) will be consistent with the policies of the General Plan; 2) would minimize and mitigate impacts to wetlands; and 3) would be supported by and following consultation with the appropriate regulatory agencies. As noted above, the activity would enhance and expand a natural resource, which would be consistent with the General Plan and the provisions of the -WO Overlay District. In addition, the Tiscornia Marsh Restoration Project FEIR has determined that environmental impacts from this activity can be mitigated to less-than-significant levels. Lastly, the appropriate regulatory agencies (California Department of Fish & Wildlife and US Fish & Wildlife Service) have been consulted and are supportive of the restoration project, subject to required permitting and specific conditions, which are incorporated herein.
2. As proposed and as conditioned, the tidelands, tidal marsh, seasonal marsh and raised levee that would result from the restoration project will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity. Rather, the project will enhance and improve the existing condition of the project site, resulting in improved native habitats and reduced flooding risk to the general area. Further, the project would

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promote and facilitate the enhancement and expansion of existing natural resources and would raise and re-align the existing shoreline levee for greater flood protection and adaptation to projected sea level rise, which is critical to the protection of public safety and health to the community at large.

3. As proposed and conditioned, the enhanced and expanded tidelands, tidal marsh, seasonal marsh, and raised and re-aligned shoreline levee uses comply with each of the applicable provisions of the Zoning Ordinance (SRMC Title 14) in that:
 - a. SRMC Chapter 14.07 of the Zoning Ordinance sets forth requirements for uses and development within the PD (Planned Development) District. The provisions set forth in SRMC Section 14.07.020 state that no use other than an existing use or a temporary use shall be approved without a development plan that is adopted by ordinance of the City Council. As the proposed project will not dramatically change but would enhance the existing land use, no development plan is required. However, as provided in Section 14.07.020, approval of a Use Permit is required; Use Permit UP21-001 complies with this requirement.
 - b. SRMC Chapter 14.10 of the Zoning Ordinance sets forth general site and use regulations that are applicable to the P/OS (Parks/Open Space) District. The City-owned diked marsh portion of the project area is within the P/OS District. The proposal to convert this diked marsh to tidal marsh would be defined as a “wildlife preserve or sanctuary,” which is consistent with and a permitted use within the P/OS District.
 - c. SRMC Chapter 14.13 of the Zoning Ordinance sets forth general site and use regulations that are applicable to the -WO (Wetland Overlay) District. The project would be consistent with the purposes of the -WO District (SRMC Section 14.13.010) in that it would: 1) preserve and enhance wetlands; 2) contribute to improve water quality for the general area; 3) enhance wildlife habitat, particularly for rare and endangered species; and 4) expand public recreational activities (shoreline levee path) that would be compatible with the wetland habitat. Further, the project is consistent with the provisions and requirements of SRMC Section 14.13.050 as the planning applications being considered includes the subject Use Permit and a wetland restoration plan. Lastly, as conditioned, the project will be subject to a wetland management plan.
 - d. SRMC Chapter 14.15 of the Zoning Ordinance sets forth general site and use regulations that are applicable to the -C (Canalfront Review Overlay) District. The project would be consistent with the purposes of the -C District (Section 14.15.010) in that it would: 1) improve and enhance public views to the canal front; 2) protect the unique physical and social characteristics of the canal front area; and 3) would not impair or block the navigable channel of the San Rafael Canal.

Findings for Environmental and Design Review Permit (ED21-002)

1. As proposed and as conditioned, the Tiscornia Marsh Restoration Project, which includes the restoration and enhancement of tidelands and tidal marsh, the conversion of a dike marsh to tidal marsh and the raising and re-alignment of an existing shoreline levee, is in accord with the San Rafael General Plan 2040 (General Plan) in that:
 - a. The Land Use Map of the Land Use Element designates the project site area in three land use categories, Conservation, Water, and Park, Recreation and Open Space. These General Plan land use designations permit wetland preserves and sanctuaries, as well public access for recreational uses (shoreline path along levee). As proposed and conditioned, the project would be consistent with these land use designations.

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- b. As proposed, the project would be consistent with and promote applicable goals and policies set forth in the Conservation and Climate Change Element. Specifically, the project would be consistent with Policies C-1.2 (Wetland and Sea Level Rise), C-1.3 (Wetland Protection and Mitigation), C-1.4 (Wetland Creation), C-1.12 (Native or Sensitive Habitats), and C-1.13 (Special Status Species) in that as designed it: 1) incorporates an “ecotone” marsh design and a raised and rea-aligned shoreline levee which are elements for combatting and adapting to projected sea level rise; 2) provides for not only wetland protection, but an enhancement and enlargement of wetlands; 3) expands the wildlife corridor; and 4) enhances habitat for wildlife, particularly habitat for rare and endangered species. Lastly, the project would be Policy PROS-1.17 (Public/Private Partnerships) in that it would combine contiguous like-sites owned by Marin Audubon Society and the City of San Rafael in achieving a cohesive and comprehensive restoration plan that would optimize opportunities for expanded wetland habitat and flood control protection.
 - c. As proposed, the project would be consistent with and promote applicable goals and policies set forth in the Neighborhoods Element. Specifically, the project would be consistent with Policies NH-3.2 (Canal Maintenance), NH-3.6 (Public Access), and NH-3.8 (Flood Control Improvements) in that as designed, it would: 1) not impair or block the access channel along the San Rafael Canal for continued navigation and maintenance; 2) serve as a potential receiver site for dredge spoils generated by canal channel maintenance; 3) continue to provide and would enhance public shoreline access along a raised and re-aligned levee; and 4) include elements that would improve flood control for the general area.
 - d. As proposed and conditioned, the project would be consistent with the applicable goals and policies set forth in the Noise Element. As determined by the Tiscornia Marsh Restoration Project FEIR, project construction will result in temporary noise and vibration impacts. The FEIR recommends mitigation measures to reduce these impacts to a less-than-significant level. Implementation of the mitigation measures ensures consistency with Noise Element policies N-1.6 (Traffic Noise) and N-1.11 (Vibration), as well as the provisions and regulations of the City’s noise ordinance (SRMC Chapter 8.13).
 - e. As proposed and as conditioned, the project would be consistent with the applicable goals and policies of the Safety and Resilience Element. Specifically, the project would be consistent with, among others, Policies S-3.4 (Mitigating Flooding and Sea Level Rise) and S-3.7 (Shoreline Levees) in that it includes project features such as the raising and re-alignment of the shoreline levee and the creation of an ecotone (horizontal levee) that are effective in combatting increased flooding and risk from projected sea level rise.
 - f. As proposed, the project would be consistent with the applicable goals and policies of the Community Design and Preservation Element. Specifically, as determined by the findings of the Tiscornia Marsh Restoration Project FEIR, the project would be consistent with Policies CPD-1.2 (Natural Features) and CDP-1.5 (Views) in that it would: 1) not result in any major visual changes to the natural features in the area; 2) not block views of the bay and other scenic vistas.
2. As proposed and as conditioned, the proposed project is consistent with the objectives and the provisions of the San Rafael Zoning Ordinance (SRMC Chapter 14). Specifically, the proposed wetland restoration project is consistent with the processes and site development regulations in the PD-WO (Planned Development- Wetland Overlay), P/OS-WO (Parks/Open Space – Wetland Overlay), and P/OS (Parks/Open Space – Canalfront Review Overlay) zoning Districts, in which the project site is located.

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3. As proposed and as conditioned, the project design is consistent with all applicable site, architecture and landscaping design criteria and guidelines set forth in SRMC Chapter 14.25 (Environmental and Design Review Permits) for the site in that:
 - a. As proposed, the site plan is acceptable for the site and intended use is generally harmonious with the other neighboring natural resources, as well as the variety of urban uses and improvements surrounding the project site. The project site plan has been designed to minimize impacts to adjacent properties, while maximizing opportunities for habitat enhancement, flood control and sea level rise protection, and public shoreline access.
 - b. As proposed and as conditioned, the project presents a competent design which has been prepared by environmental professionals (hydrologists and biologists) skilled in designing wetland restoration projects. The competency of the project design has been confirmed by the findings presented in the Tiscornia Marsh Restoration Project FEIR.
 - c. To address temporary impacts associated with project construction, as proposed and conditioned, the project proposes site access and circulation that promotes safe access for construction vehicles and apparatus without impairing street circulation.
4. As determined by the Tiscornia Marsh Restoration Project FEIR and as conditioned herein, the project design and improvements would not result in adverse environmental impacts in that:
 - a. Technical supportive studies prepared by qualified technical experts were prepared in environmental topic areas of, among others, biological resources, hydrology and water quality, historic resources, archaeological resources, geology/soils, hazards and hazardous materials, traffic/circulation, to assess the potential environmental impacts of the project.
 - d. Consistent with the California Environmental Quality Act (CEQA) Guidelines, the supportive technical studies were used in the preparation of an Tiscornia Marsh Restoration Project FEIR. This FEIR has concluded that all potentially significant environmental impacts of the project can be mitigated to a less-than-significant level.
 - e. Mitigation measures recommended in the FEIR, and supportive Mitigation Monitoring and Reporting Program (MMRP) have been incorporated as conditions of approval in this Environmental and Design Review Permit.
5. As proposed and as conditioned, the restoration project will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity. Rather, the project will enhance and improve the existing condition of the project site, resulting in improved native habitats and reduced flooding risk to the general area. Further, the project would promote and facilitate the enhancement and expansion of existing natural resources and would raise and re-align the existing shoreline levee for greater flood protection and adaptation to projected sea level rise, which is critical to the protection of public safety and health to the community at large.

BE IT FURTHER RESOLVED that the Planning Commission hereby approves Use Permit UP21-001 and Environmental and Design Review Permit ED21-002 subject to the following conditions:

Conditions for Use Permit UP21-001

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1. This Use Permit (UP21-001) approves the Tiscornia Marsh Restoration Project for the 28-acre project site, which includes the following properties, uses, and activities:
 - a. The 23 acres of submerged tidelands, tidal marsh and levee owned by the Marin Audubon Society, located within the PD-WO (Planned Development – Wetland Overlay) District.
 - b. The five (5) acres of diked marsh owned by the City of San Rafael (Pickelweed Park marsh), located within the P/OS (Parks/Open Space) District. The area is approved to be restored to tidal action for a tidal marsh, and a new shoreline raised levee is approved for construction along the inland edges of the to be restored approved tidal marsh.
 - c. The approval of fill, dredging and general grading of submerged tidelands, tidal marsh, and diked marsh areas, which are defined as wetlands designated by US Army Corps of Engineers jurisdiction. This activity authorized through approval of this Use Permit pursuant to SRMC Section 14.13.050 (-WO Overlay District).
 - d. A new shoreline levee extending along the bay front. For the shoreline levee, this Use Permit approves public access for recreation use and maintenance. As required by Environmental and Design Review Permit ED21-002 conditions of approval, a public access easement over the privately-owned portion of the new shoreline levee shall be offered for dedication to the City of San Rafael.
2. This Use Permit (UP21-001) shall be valid for two (2) years from the date of Planning Commission approval or January 11, 2024 and shall become null and void unless a grading permit is issued, or a time extension has been granted.
3. The Zoning Administrator may review and approve minor amendments to the Use Permit.
4. The approved use and wetland restoration is subject to the provisions of SRMC Chapter 14.13, the Wetland Overlay (-WO) zoning district. SRMC Section 14.13.090 requires that a wetland management plan be prepared and implemented for all wetland creation and restoration. This requirement is addressed in Environmental and Design Review Permit ED21-002, condition 10, below. Following completion of the project, the created wetland may be subject to periodic review and monitoring by the City to ensure that it successfully achieves the goals and objectives outlined in the approved wetland management plan.

Conditions for Environmental and Design Review Permit ED21-002

General Conditions

1. This Environmental and Design Review Permit ED21-002 shall be valid for two (2) years from the date of Planning Commission approval or January 11, 2024 and shall become null and void unless a grading permit is issued, or a time extension has been granted.
2. The construction of the Tiscornia Marsh Restoration project shall be in substantial conformance with the preliminary plans prepared by Environmental Science Associates, Inc, (date stamped approved January 11, 2022) approved with Design Review Permit ED21-002. Plan modifications deemed not to be minor by the Community Development Director may require review by the Planning Commission.
3. Formal approval and authorization to incorporate the City-owned Pickleweed Park diked marsh into the Tiscornia Marsh Restoration project shall be granted by the City Council. This authorization shall be in a form acceptable to the City Attorney.

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4. All activity is subject to a City Grading Permit filed with and issued by the Department of Public Works. A Tidelands Permit may be required, as determined by the City Engineer. Any and all above ground improvements or structures proposed in the final construction plans may be subject to the approval and issuance of a Building Permit, as determined by the Chief Building Official.
5. Unless addressed as a separate condition of approval, the project sponsor shall be responsible for implementing all mitigation measures presented in the Tiscornia Marsh Restoration Project Final Environmental Impact Report (FEIR, 2021) and the approved Mitigation Monitoring and Reporting Program (MMRP), on file with the Department of Community Development. Consistent with the City-adopted development fees, the project sponsor is required to pay a Mitigation Monitoring Fee, which shall be charged and collected through implementation of the MMRP.

Prior to the Issuance of a Grading Permit and/or Tidelands Permit

Community Development Department

6. Plans submitted for a grading permit shall include a plan sheet, which incorporates the list of these ED21-002 conditions of approval.
7. The project sponsor shall secure all required approvals and/or permits from other regulatory agencies including, but not limited to the Bay Conservation and Development Commission (BCDC), US Army Corps of Engineers, Regional Water Quality Control Board (RWQCB), US Fish and Wildlife Service. Proof of permit issuance of approval shall be submitted to the City.
8. A final landscape and irrigation plan shall be submitted to Community Development Department for review and approval. This final plan shall be prepared to demonstrate:
 - a. Compliance with the Marin Water (MMWD) water conservation ordinance (MMWD Ordinance 430). The final plan shall be reviewed and approved by Marin Water staff prior to submittal to the City. Marin Water approval can be in the form of a letter and/or plan approval stamp.
 - b. Compliance with the San Rafael Shoreline Park Master Plan, October 1989 and Shoreline Enhancement Plan, August 1991. Consistent with the recommendations of these Plans, the final plans shall include and incorporate the following:
 - 1) Wildlife interpretive signs informing the public and visitors as to the purpose of the marsh restoration.
 - 2) Wayfinding signage guiding public access and use.
 - 3) Installation of viewing benches and trash receptacles with the number and location determined by the Public Works and Library and Parks Departments; and
 - 4) Installation of a four-foot-high vinyl clad chain link fence installed on the outboard slope of the new shoreline levee (placed above the mean high tide line). The purpose of this fence is to prohibit access to the marsh by dogs, similar animals, and humans.
 - 5) Installation of an all-weather asphalt path along the top of the new shoreline levee. The asphalt surface shall be ten feet (10') in width. A one-foot (1') wide strip of decomposed granite shall be installed on both sides of the asphalt path.
 - 6) Use of Blue-rock rip rap for the new shoreline levee for the outboard slope banks. Use of broken, recycled concrete with exposed rebar is not permitted for slope bank reinforcement.

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9. Per SRMC Section 14.13.090, preparation of a final wetland management plan is required. A wetland management plan shall be prepared by a wetland specialist and submitted to the Community Development Department for approval. The wetland management plan shall include the required components outlined in SRMC Section 14.13.090 such as but not limited to: goals and objectives; restoration techniques and standards; planting plan; site preparation specifications; and a monitoring plan. Some of these components are required by other conditions included herein.

Department of Public Works

10. A survey of the project site shall be prepared by a licensed surveyor. The survey shall accurately determine and plot the boundary lines and elevations of all parcels comprising the project site area.
11. A detailed grading and drainage plan shall be prepared and submitted with the application for a grading permit. The plan shall be prepared by a registered civil engineer or hydrology engineer. The final grading and drainage plan shall be subject to review and approval by the City Engineer.
12. An engineered site plan shall be prepared by a licensed civil engineer based on the property survey required above. This engineered site plan shall include the following details and information:
 - a. The new and re-aligned shoreline levee designed with a minimum crest elevation of 13 feet based on the NAVD88 datum.
 - b. The future levee trail between the Pickleweed Park playfields and the current diked marsh area (to be breached for new tidal marsh) shall allow for a 20-foot-wide buffer from the edge of the playfield (soccer field) and the inboard toe of the levee slope.
13. No mass grading shall occur between October 15 and April 15, unless approved by the City Engineer.
14. A public access easement is required to be offered for dedication along the private portions of the new shoreline levee. The public access easement for shoreline levee shall be prepared and recorded with the County of Marin in a form acceptable to the City Attorney and City Engineer.
15. A detailed geotechnical investigation shall be submitted with the grading permit application. The final plans prepared for issuance of a grading permit shall comply with and address the recommendations presented in the detailed geotechnical investigation.
16. The construction staging area site shall be approved by the Department of Public Works and the Library and Parks Department. A site plan of the approved construction staging area shall be prepared and submitted to the Department of Public Works for approval. The plan shall include perimeter security fencing and a single-access gate.
17. A construction management plan shall be prepared to demonstrate that the project will comply with the following measures:
 - a. Compliance with the authorized construction hours per SRMC Chapter 8.13 (Noise). Authorized construction hours are specified below in a separate condition.
 - b. An approved construction staging area A construction staging plan is required (see condition 17, above)
 - c. Construction noise attenuation measures.

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- d. Areas of material storage and stockpiling.
 - e. Signs to be posted at the entrance to the staging and construction areas providing information about construction, the names and contact information of the contractor and the City of San Rafael staff.
 - f. A construction vehicle route, traffic management plan, and construction logistics approved by the City Engineer.
18. The project sponsor shall prepare and submit a construction management plan to implement the following dust control measures during project construction:
- a. Water all active construction areas as necessary.
 - b. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
 - c. Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites.
 - d. Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.
 - e. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
 - f. Replant vegetation in disturbed areas as quickly as possible
 - g. Install wheel washers for all exiting trucks or wash off the tires or tracks of all trucks and equipment leaving the site.
 - h. Install wind breaks, or plant trees/vegetative wind breaks at windward side(s) of construction areas.
19. The project proposes over 5,000 square feet of impervious surface coverage. A storm water control/erosion control plan shall be prepared in compliance with the MCSTOPPP requirements. The plan shall be submitted with the application for a grading permit and shall include written documentation and standard specifications that are provided by the County of Marin. The standard specifications can be accessed at the County of Marin website: [Http://www.marincounty.org/depts/pw/divisions/mcstoppp/development/new-and-redevelopment-project](http://www.marincounty.org/depts/pw/divisions/mcstoppp/development/new-and-redevelopment-project)
20. Plans submitted to for a grading permit shall include a specification sheet addressing pollution prevention. A standard specification sheet entitled, "Pollution Prevention – It's Part of the Plan" is available for this purpose and can be accessed at www.cityofsanrafael.org.
21. The project includes work within the City of San Rafael public right-of-way. The plans submitted with the grading permit shall show the location and type of utilities within the right-of-way and the "tie-in" locations for utility service to the site. Prior to any work within the City right-of-way, an encroachment permit shall be secured from the Public Works Department.
22. The construction contractor shall prepare and submit a Construction Traffic Control Plan to the Public Works Department for approval. The Construction Traffic Control Plan must be prepared in accordance with both the California Department of Transportation Manual on Uniform Traffic Control Devices and Work Area Traffic Control Handbook and must address, at a minimum, the following issues:
- a. Placing temporary signing, lighting, and traffic control devices if required, including, but not limited to, appropriate signage along access routes to indicate the presence of heavy vehicles and construction traffic.

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- b. Provision of construction personnel at driveway on Spinnaker Point Drive leading to construction staging area to direct traffic, pedestrians, and bicyclists while trucks are turning into and out of the driveway.
- c. Notification of all construction activities with San Rafael City Schools at least two months in advance, so that it may make proper accommodations for any possible limitations to access at Bahia Vista Elementary School. San Rafael City Schools shall be notified of the timing, location, and duration of construction activities. The construction contractor shall be required to ensure that construction of the Proposed Project does not inhibit vehicle, bicycle, pedestrian, and/or school bus service through inclusion of such provisions in the construction contract.

(FEIR Mitigation Measure TRAN-1)

- 23. A copy of the executed construction contract shall be submitted to the City Engineer. The contract shall include a written list of instructions to be carried out by the construction manager specifying measures to minimize emissions generated by heavy construction equipment.

Prior to Commencement of Construction

- 24. To ensure protection of special status plant species, prior to commencement of construction, the following measures shall be completed and implemented:
 - a. A qualified biologist shall conduct a properly timed specialstatus plant survey for Marin knotweed (*Polygonum marinense*), Suisun Marsh aster (*Symphotrichum lentum*), Congested-headed hayfield tarplant (*Hemizonia congesta* subsp. *congesta*), and Point Reyes bird's-beak (*Chloropyron maritimum* ssp. *palustre*) within the species' suitable habitat within the Project work limits. The survey shall follow the CDFW Protocols for Surveying and Evaluating Impacts on Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). If special-status plant species are identified within the Project work limits, then the biologist shall establish an appropriate buffer area for each plant population to exclude activities that directly remove or alter the habitat of, or result in indirect adverse impacts on, the special-status plant species. A qualified biologist shall oversee installation of a temporary, mesh-type construction fence (Tensor Polygrid or equivalent) at least 4 feet (1.2 meters) tall around any established buffer areas to prevent encroachment by construction vehicles and personnel. The qualified biologist shall determine the exact location of the fencing. The fencing shall be strung tightly on posts set at maximum intervals of 10 feet (3 meters) and shall be checked and maintained weekly until all construction is complete. The buffer zone established by the fencing shall be marked by a sign stating: *"This is habitat of [list rare plant(s)] and must not be disturbed. This species is protected by [the ESA of 1973, as amended/CESA/California Native Plant Protection Act]."*
 - b. If direct impacts cannot be avoided, the City shall require the project sponsor to prepare a plan for minimizing the impacts by one or more of the following methods: (1) salvage and replant plants at the same location following construction; (2) salvage and relocate the plants to a suitable off-site location with long-term assurance of site protection; (3) collect seeds or other propagules for reintroduction at the site or elsewhere; or (4) payment of fees in lieu of preservation of individual plants, to be used for conservation efforts elsewhere. The City shall review and approve the plan.
 - c. The success criterion for any seeded, planted, and/or relocated plants shall be full replacement at a 1:1 ratio after 5 years. Monitoring surveys of the seeded, planted, or transplanted individuals shall be conducted for a minimum of 5 years, to ensure that the success criterion can be achieved at year 5. If it appears the success criterion would not

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be met after 5 years, contingency measures may be applied. Such measures shall include, but not be limited to additional seeding and planting, altering, or implementing weed management activities, or introducing or altering other management activities.

- d. Any special-status plant species observed during surveys shall be reported to the CDFW and submitted to the CNDDDB and reported to USFWS, if federally listed.

(FEIR Mitigation Measures 3.4-5)

25. To ensure protection of fish and marine mammals during pile driving phases of construction, prior to the commencement of pile driving, the Project sponsor shall prepare a NOAA- and CDFW-approved sound attenuation monitoring plan to protect fish and marine mammals, and the approved plan shall be implemented during construction. This plan shall provide detail on the sound attenuation system, detail methods used to monitor and verify sound levels during pile driving activities (if required based on projected in-water noise levels) and describe methods to reduce impact pile-driving in the aquatic environment to an intensity level less than 120 dB (RMS) continuous noise level for marine mammals at a distance of 1,640 feet. The plan shall incorporate, but not be limited to, the following elements:

- a. All in-water construction shall be conducted within the established environmental work window between June 1 and November 30, designed to avoid potential impacts on fish species.
- b. To the extent feasible, vibratory pile drivers shall be used for the installation of all support piles. Vibratory pile driving shall be conducted following the USACE "Proposed Procedures for Permitting Projects that will Not Adversely Affect Selected Listed Species in California." The USFWS and NMFS completed Section 7 consultation on this document, which establishes general procedures for minimizing impacts on natural resources associated with projects in or adjacent to jurisdictional waters.
- c. If NOAA sound level criteria for marine mammals are exceeded during vibratory hammer pile installation, a NOAA-approved biological monitor shall be available to conduct surveys before and during pile driving to inspect the work zone and adjacent waters for marine mammals. The monitor shall be present as specified by NMFS during impact pile driving and ensure that:
 - 1) The safety zones established in the sound monitoring plan for the protection of marine mammals are maintained.
 - 2) Work activities are halted when a marine mammal enters a safety zone and resumed only after the animal has left the area or has not been observed for a minimum of 15 minutes.

(FEIR Mitigation Measure 3.4-6)

26. A qualified archaeologist, defined as an archaeologist meeting the U.S. Secretary of the Interior's Professional Qualification Standards for Archeology, shall conduct a training program for all construction and field workers involved in site disturbance. On-site personnel shall attend a mandatory pre-Project training that shall outline the general archaeological sensitivity of the area and the procedures to follow in the event an archaeological resource and/or human remains are inadvertently discovered.

(FEIR Mitigation Measure CUL-1)

During Construction

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27. Contractor Contact Information Posting: Prior to the commencement of construction, the project site shall be posted with the name and contact number of the lead contractor in a location visible from the public street.
28. Construction Hours: Construction hours shall be limited as specified by Municipal Code Section 8.13.050.A which are 7:00 a.m. to 6:00 p.m., Monday through Friday and Saturday from 9:00 a.m. to 6:00 p.m. Construction shall not be permitted on Sundays or City-observed holidays. Construction activities shall include delivery of materials, arrival of construction workers, start-up of construction equipment engines, playing of radios and other noises caused by equipment and/or construction workers arriving at or on the site.
29. To mitigate potential impacts to pre-contact or historic-era archaeological resources encountered during project construction, the following measures shall be implemented:
- All construction activities within 100 feet shall halt, and a qualified archaeologist shall inspect the find within 24 hours of discovery and notify the City of the initial assessment. Precontact archaeological materials might include obsidian and chert flaked-stone tools (e.g., projectile points, knives, scrapers) or toolmaking debris; culturally darkened soil ("midden") containing heataffected rocks, artifacts, or shellfish remains; stone milling equipment (e.g., mortars, pestles, handstones, or milling slabs); and battered stone tools, such as hammerstones and pitted stones. Historic-era materials might include building or structure footings and walls, and deposits of metal, glass, and/or ceramic refuse.
 - If the City determines, based on recommendations from a qualified archaeologist and a Native American representative (if the resource is pre-contact indigenous related), that the resource may qualify as a historical resource or unique archaeological resource (as defined in CEQA Guidelines Section 15064.5) or a tribal cultural resource (as defined in Public Resources Code [PRC] Section 21080.3), the resource shall be avoided if feasible. Consistent with Section 15126.4(b)(3), this may be accomplished through planning construction to avoid the resource, incorporating the resource within open space, capping, and covering the resource, or deeding the site into a permanent conservation easement.
 - If avoidance is not feasible, the City shall consult with appropriate Native American tribes (if the resource is pre-contact indigenous related), and other appropriate interested parties to determine treatment measures to avoid, minimize, or mitigate any potential impacts to the resource pursuant to PRC Section 21083.2, and CEQA Guidelines Section 15126.4. This shall include documentation of the resource and may include data recovery (according to PRC Section 21083.2), if deemed appropriate, or other actions such as treating the resource with culturally appropriate dignity and protecting the cultural character and integrity of the resource (according to PRC Section 21084.3).
(FEIR Mitigation Measure CUL-1)
30. If potential human remains are encountered during construction, all work shall halt within 100 feet of the find and the City shall be contacted by on-site construction crews. The City shall contact the Marin County coroner in accordance with PRC Section 5097.98 and Health and Safety Code Section 7050.5. If the coroner determines that the remains are Native American, the coroner shall contact the NAHC. As provided in PRC Section 5097.98, the NAHC shall identify the person or persons believed to be the Most Likely Descendant (MLD). The MLD shall make recommendations for the means of treating, with appropriate dignity, the human remains and any associated grave goods, as provided in PRC Section 5097.98.
(FEIR Mitigation Measures CUL-2)

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31. The following measures are required to ensure grading and site disturbance complies with the SRMC Chapter 11.12 (Trees), which addresses tree removal and protection:
- a. Any tree-related work (removal, planting, or pruning) shall adhere to the City of San Rafael Municipal Code Section 11.12. Specifically, written permit must be issued to cut, prune, break, injure, or remove any living tree in, upon, or along any public street, sidewalk, or walkway in the city or cut, disturb, or interfere in any way with the roots of any tree in, upon, or along any street, sidewalk, or walkway, or spray with any chemical or insecticide any tree in, upon, or along any public street, sidewalk, or walkway, or place any sign, poster, or other fixture on any tree or tree guard, or injure, misuse, or remove any device placed to protect any tree in, upon, or along any public street, sidewalk, or walkway in the city. Whenever any tree shall be cut down or removed in or from any sidewalk area, its butt and roots shall be dug up and removed, or cut level with the ground, as directed by the public works department.
 - b. In the erection or repair of any building or structure, guards shall be placed around all nearby trees in, upon, or along the public streets, sidewalks, and walkways within the city as shall prevent injury to them.

(FEIR Mitigation Measure 2.4-7)

32. The Project applicant and/or its construction contractors shall comply with the following applicable BAAQMD Basic Construction Mitigation Measures: BAAQMD Basic Construction Measures:
- a. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - b. All haul trucks and railcars transporting soil, sand, or other loose material off-site shall be covered.
 - c. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - d. All vehicle speeds on unpaved roads shall be limited to 15 mph.
 - e. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
 - f. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of the California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
 - g. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
 - h. Post a publicly visible sign with the telephone number and person to contact at the City of San Rafael regarding dust complaints. This person shall respond and take corrective action within 48 hours. BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.

(FEIR Mitigation Measure 3.3-1)

33. The Project applicant and/or its construction contractors shall be required to use off-road diesel construction equipment compliant with EPA Tier 4 nonroad engine standards. Before construction activities begin, the construction contractor and/or the Project applicant shall prepare an equipment list that identifies each piece of off-road equipment to be operated at the Project site by its equipment identification number and demonstrates that each piece of

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equipment meets EPA Tier 4 nonroad engine standards. The list shall be made available at the construction site and shall be updated when new or replacement construction equipment is brought to the site.

(FEIR Mitigation Measure 3.3-2)

34. During construction, the following measures shall be implemented:

- a. A qualified biologist (4-year college degree in biology or related field and demonstrated experience with the species of concern) shall provide Worker Environmental Awareness Training (WEAT) to field management and construction personnel. Communication efforts and training shall take place during pre-construction meetings so that construction personnel are aware of their responsibilities and the importance of compliance. WEAT shall identify the types of sensitive resources located in the study area and the measures required to avoid impacts on these resources. Materials covered in the training program shall include environmental rules and regulations for the specific Project and requirements for limiting activities to the construction right-of-way and avoiding demarcated sensitive resource areas.
- b. If new construction personnel are added to the Project, the contractor shall ensure the new personnel receive WEAT before starting work. A sign-in sheet of those contractor individuals who have received the training shall be maintained by the Project proponent. A representative shall be appointed during the WEAT to be the contact for any employee or contractor who might inadvertently kill or injure a listed species or who finds a dead, injured, or entrapped individual.
- c. All vehicle operators shall limit speed to 15 miles per hour (mph) within the Project site.
- d. No erosion control materials shall contain any plastic or monofilament netting.
- e. To avoid attracting predators, all food-related trash items shall be bagged and removed daily.

(FEIR Mitigation Measure 3.4-1)

35. During construction, the following measures are required to minimize and/or avoid impacts to California Black Rail and California Ridgway's Rail:

- a. To minimize or avoid the loss of individual California black rail and California Ridgway's rail, construction activities, including vegetation management activities requiring heavy equipment, adjacent to the tidal marsh areas (within 500 feet [150 meters] or a distance determined in coordination with the USFWS or CDFW based on site specific conditions, shall be avoided during the breeding season from February 1 through August 31.
- b. If areas within or adjacent to rail habitat cannot be avoided during the breeding season, protocol-level surveys shall be conducted to determine rail nesting locations. The surveys shall focus on potential habitat that could be disturbed by construction activities during the breeding season to ensure that rails are not breeding in these locations.
- c. Survey methods for rails shall follow the Site-Specific Protocol for Monitoring Marsh Birds, which was developed for use by USFWS and partners to improve bay-wide monitoring accuracy by standardizing surveys and increasing the ability to share data (Wood et al. 2017). Surveys are concentrated during the approximate period of peak detectability, January 15 to March 25, and are structured to efficiently sample an area in three rounds of surveys by broadcasting calls of target species during specific periods of each survey round. Call broadcasts increase the probability of detection compared to passive surveys when no call broadcasting is employed. This protocol has since been adopted by the Invasive Spartina Project (ISP) and Point Blue Conservation Science to survey California Ridgway's rails at sites throughout San Francisco Bay Estuary

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including at Tiscornia Marsh. The survey results and protocols from the ISP shall be used, or a survey protocol developed in coordination with CDFW and USFWS incorporating both species simultaneously and with the same level of effort as protocols currently in use by ISP shall be used. The survey protocol for California Ridgway's rail is summarized as follows:

- 1) Previously used survey locations (points) should be used when available to maintain consistency with past survey results. Adjacent points should be at least 200 meters apart along transects in or adjacent to areas representative of the marsh. Points should be located to minimize disturbances to marsh vegetation. Up to eight points can be located on a transect.
 - 2) At each transect, three surveys (rounds) are to be conducted, with the first round of surveys initiated between January 15 and February 6, the second round performed February 7 to February 28, and the third round March 1 to March 25. Surveys should be spaced at least 1 week apart, and the period between March 25 to April 15 can be used to complete surveys delayed by logistical or weather issues. A FESA Section 10(a)(1)(A) permit is required to conduct active surveys.
 - 3) Each point on a transect shall be surveyed for 10 minutes each round. A recording of calls available from the USFWS is broadcast at each point. The recording consists of 5 minutes of silence, followed by a 30-second recording of California Ridgway's rail vocalizations, followed by 30 seconds of silence, followed by a 30-second recording of California black rail, followed by 3.5 minutes of silence
- d. If no breeding California black rail or California Ridgway's rail are detected during surveys, or if their breeding territories can be avoided by 500 feet (150 meters) or a distance determined in coordination with the USFWS and CDFW based on site specific conditions, then Project activities may proceed at that location.
- e. If protocol surveys determine that breeding California black rail and/or California Ridgway's rail are present in the project area, the following measures would apply to Project activities conducted during their breeding season (February 1- August 31):
- 1) Construction activities would not occur within 500 feet of a detected Ridgway's rail or black rail call center.
 - 2) A USFWS- and CDFW-approved biologist shall be on site during construction activities occurring within 50 feet of any other suitable rail breeding habitat.
 - 3) All other biologists that may need to access the tidal marsh outside of the active construction period or be on site during construction for activities beyond 500 feet from suitable rail breeding habitat, shall be trained in black rail and Ridgway's rail biology, identification, and vocalizations, and shall be familiar with both species of rail and their nests.
 - 4) The qualified biologist/biological monitor shall have the authority to stop all work if a Ridgway's rail or black rail enters or is discovered within 50 feet of the active work zone. All nearby work shall halt and not continue until the Ridgway's rail or black rail leaves the area on its own accord or until approving agencies have been consulted. The no work zone shall be large enough as determined by the qualified biologist/biological monitor in order to avoid impacts to all special-status species. If a California black rail or California Ridgway's rail vocalizes or flushes, it is possible that a nest or young are nearby. If an alarmed bird or nest is detected, work shall be stopped, and workers shall leave the immediate area carefully and quickly. An alternate route shall be selected that avoids this area, and the location of the sighting shall be recorded to inform future activities in the area.
 - 5) All construction crews working in the marsh during rail breeding season shall be trained and supervised by a USFWS- and CDFW-approved rail biologist

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- 6) If any activities shall be conducted during the rail breeding season in California black rail or California Ridgway's rail-occupied marshes, biologists shall have maps or global positioning system (GPS) locations of the most current occurrences on the site.

(FEIR Mitigation Measure 3.4-2)

36. To avoid and minimize impacts to nesting birds, during construction, the following measures shall be followed and implemented:
 - a. Removal of trees and scrub vegetation shall occur outside the bird nesting season (February 1 to August 31), to the extent feasible.
 - b. If removal of trees and vegetation cannot be fully accomplished outside of the nesting season, a qualified biologist shall conduct pre-construction nesting surveys within 7 days prior to the start of such activities or after any construction breaks of 10 days or more. Surveys shall be performed for the study area and suitable habitat within 250 feet of the Project site to locate any active raptor (birds of prey) nests or rookeries.
 - c. If active nests are located during the pre-construction bird nesting survey, the qualified biologist shall evaluate if the schedule of construction activities could affect the active nests and the following measures shall be implemented based on their determination:
 - 1) If construction is not likely to affect the active nest, it may proceed without restriction; however, a biologist shall regularly monitor the nest to confirm there is no adverse effect and may revise their determination at any time during the nesting season. In this case, the following measure would apply.
 - 2) If construction may affect the active nest, the biologist shall establish a no-disturbance buffer in coordination with CDFW. Typically, these buffer distances are 100 feet for passerines and 250 feet for raptors. These distances may be adjusted depending on the level of surrounding ambient activity (e.g., if the Project site is adjacent to a road or active trail) and if an obstruction, such as a building, is within line-of-sight between the nest and construction. For bird species that are federally and/or state-listed sensitive species (i.e., fully protected, endangered, threatened, species of special concern), a City representative or qualified biologist shall coordinate with the USFWS and/or CDFW regarding modifications to nest buffers, prohibiting construction within the buffer, modifying construction, or removing or relocating active nests that are found on the site.
 - 3) Any birds that begin nesting within the Project area and survey buffers amid construction activities are assumed to be habituated to construction-related or similar noise and disturbance levels. A qualified biologist shall coordinate with the USFWS and/or CDFW and determine if no work exclusion zones shall be established around active nests in these cases.

(FEIR Mitigation Measure 3.4-3)

37. To avoid and minimize impacts to the Salt Marsh Harvest Mouse and the Salt Marsh Wandering Shrew, during construction, the following measures shall be followed and implemented:
 - a. Ground disturbance to suitable salt marsh harvest mouse habitat (including, but not limited to pickleweed, and emergent salt marsh vegetation) shall be avoided to the extent feasible. Where salt marsh harvest mouse habitat cannot be avoided (such as for channel excavation, access routes and grading, or anywhere else that vegetation could be trampled or crushed by work activities), vegetation shall be removed to ground level from the ground disturbance work area plus a 5-foot buffer around the area, as well as

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any access routes within salt marsh harvest mouse habitat, utilizing mechanized hand tools or by another method approved by the USFWS and CDFW. Vegetation height shall be maintained at or below 5 inches above ground. Vegetation removal in salt marsh harvest mouse habitat shall be conducted under the supervision of the USFWS- and CDFW-approved biologist. The number of biologists needed to effectively inspect vegetational removal for the presence of mice and nests depends on the site characteristics and vegetation removal methods and may be determined in coordination with approving agencies.

- b. To protect salt marsh harvest mouse from construction-related traffic, access roads, haul routes, and staging areas within 50 feet of salt marsh harvest mouse habitat shall be bordered by temporary exclusion fencing; or other wildlife exclusion fencing as specified in federal or state permits. The fence should be made of a material that does not allow salt marsh harvest mouse to climb or pass through, of a minimum above-ground height of 30 inches, and the bottom should be buried to a depth of at least 6 inches so that mice cannot crawl under the fence. Any supports for the salt marsh harvest mouse exclusion fencing (e.g., t-posts) shall be placed on the inside of the Project site. The last 5 feet of the fence shall be angled away from the road to direct wildlife away from the road. A USFWS- and CDFW-approved biologist with previous salt marsh harvest mouse experience shall be on site during fence installation and shall check the fence alignment prior to vegetation clearing and fence installation to ensure that no salt marsh harvest mice are present.
- c. Salt marsh harvest mouse marsh habitat that must be accessed by mini-excavators or other vehicles to complete Project construction (e.g., excavating smaller channels) shall be protected through use of low ground pressure (LGP) equipment, wooden or PVC marsh mats, or other method approved by the USFWS and CDFW following vegetation removal (see 2nd bullet, above).
- d. Construction activities related to restoration and infrastructure shall be scheduled to avoid extreme high tides when there is potential for salt marsh harvest mouse to move to higher, drier grounds, such as ruderal and grassland habitats. No Project activities shall be conducted within 50 feet of suitable tidal marsh or other salt marsh harvest mouse habitat within 2 hours before and after an extreme high tide event (6.5 feet or higher measured at the Golden Gate Bridge and adjusted to the timing of local high tides) or when the adjacent marsh is flooded unless wildlife exclusion fencing has been installed around the work area.
- e. All construction equipment and materials shall be staged on existing roadways and away from suitable salt marsh harvest mouse habitat when not in use. All construction equipment shall be visually inspected prior to work activities each day for signs of salt marsh harvest mouse or any other wildlife.
- f. Vegetation shall be removed from all non-marsh areas of disturbance (driving roads, grading, and stockpiling areas) to discourage the presence of salt marsh harvest mouse.
- g. A USFWS- and CDFW-approved biologist with previous salt marsh harvest mouse monitoring and/or surveying experience shall be on site during construction activities occurring in suitable habitat. The USFWS- and CDFW-approved biologist has the authority to stop Project activities if any of the requirements associated with these measures are not being fulfilled. If a harvest mouse is observed in the work area, construction activities shall cease in the immediate vicinity of the potential salt marsh harvest mouse. The individual shall be allowed to leave the area before work is resumed. If the individual does not move on its own volition, the USFWS-approved biologist would contact USFWS (and CDFW if appropriate) for further guidance on how to proceed.

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- h. If the USFWS- and CDFW-approved biologist has requested work stoppage because of take of any of the listed species, or if a dead or injured salt marsh harvest mouse is observed, the USFWS and CDFW shall be notified within 1 day by email or telephone.
(FEIR Mitigation Measure 3.4-4)

38. During construction, the construction contractor shall be required to implement the following:
- a. The security fence shall be maintained around the construction staging area to screen views of the equipment, materials/stockpiles, vehicles, and debris. The security fence shall be removed when construction is completed.
 - b. Dumpsters shall be emptied regularly.
 - c. The construction staging area shall be keep clear or trash, weeds, and construction debris.
 - a. Hydro-seed or apply non-toxic soil stabilizers to inactive construction areas.
 - b. Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
 - c. Limit vehicle traffic speeds on unpaved roads to 15 mph.
 - d. Replant vegetation in disturbed areas as quickly as possible.
 - e. Install sandbags or other erosion control measures to prevent silt runoff from public roadways.
- Compliance with this condition is subject to periodic inspections by City staff.

Prior to Completion of Final Restoration Construction

39. All landscaping and irrigation must be approved by MMWD prior to City approval. Verification of MMWD approval shall be submitted to the City.

Post Construction Monitoring

40. See Use Permit UP21-001 condition wetland management plan condition #4 for periodic post construction monitoring.

The foregoing resolution was at the regular City of San Rafael Planning Commission meeting held on the 11th day of January 2022.

Moved by Commissioner _____ and seconded by Commissioner _____.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Leslie Mendez, Secretary

Shingi Samudzi, Chair

EXHIBIT 5
TISCORNIA MARSH RESTORATION PROJECT – EAST CANAL STREET
ANALYSIS OF PROJECT CONSISTENCY WITH SAN RAFAEL GENERAL PLAN 2040

LAND USE ELEMENT	
<p>Land Use Classifications.</p> <p><u>Conservation.</u> This designation denotes land which is to remain undeveloped due to high environmental sensitivity, exceptional visual resource value, or hazards such as wildfire, slope instability, and flooding, including inundation related to sea level rise. Areas with this designation include a combination of privately owned properties and areas owned by utilities and conservation groups. On private properties, this designation is generally applied to the portion of the site that has been determined to be undevelopable due to the factors listed above. The primary objectives in Conservation areas are to manage and restore natural resources, protect plant and animal habitat, and minimize environmental hazards and associated threats to life and property. Where appropriate, compatible activities such as agriculture and recreation may be considered.</p> <p><u>Water.</u> This designation applies to the navigable waters of San Francisco and San Pablo Bays, the San Rafael Canal, and associated marinas along the San Rafael shoreline. The designation provides an opportunity for a limited number of water dependent uses which require water access as a central element of their function and which contribute to the maritime character of the area. Liveaboards and other types of floating homes are allowed in this category, subject to permitting and water quality requirements</p>	<p><i>Consistent.</i> The western portion of the Tiscornia Marsh property is designated for Conservation use. The restoration project would retain and improve its current wetland use, which would be consistent with this designation.</p> <p><i>Consistent.</i> The eastern portion of the Tiscornia Marsh property is designated for Water use. This area contains submerged tidelands. A portion of the submerged tidelands would be converted to marshland. The marsh use would be consistent with this designation.</p>

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<p>Parks, Recreation and Open Space. This designation denotes land dedicated as parks, recreation, and open space (PROS), including City parks, County and State Parks, common open space within private development, cemeteries, and areas acquired for resource conservation, hazard reduction, and passive recreation such as hiking. Permitted uses include athletic fields, sports facilities, civic buildings with a primarily recreational or social function, and leisure-oriented uses such as picnic areas, boat slips, and tot lots. Land with this designation is further classified in the PROS Element of the General Plan as “improved” or “natural.” Park, Recreation, and Open Space areas provide important habitat for plant and animal life and should be managed to reduce the potential for conflicts between people and wildlife.</p>	<p><i>Consistent.</i> The portion of the project area that is owned by the City of San Rafael is designated for Park, Recreation and Open Space use. This area contains diked marshland. The restoration plan proposes to return this diked marshland to tidal action creating new seasonal marsh. The proposed seasonal marsh use would be consistent with this designation.</p>
<p>LU-1.15. Planned Development Zoning. Encourage the use of Planned Development (PD) zoning for development on parcels greater than five acres when the application of traditional zoning standards would make it more difficult to achieve General Plan goals. The PD zoning designation allows flexible design standards that are more responsive to site conditions as well as the transfer of allowable General Plan and zoning density between contiguous sites under common ownership.</p>	<p><i>Consistent.</i> The Tiscornia Marsh portion of the project area that is owned by Marin Audubon Society is within the Planned Development (PD) District. The PD District requires the approval of a development plan. Essentially, the marsh restoration proposal is development plan for this property. As the project proposes no changes in the approved land use (marsh, submerged tidelands, and upland levee/path), and ordinance action is not required to establish the land uses. Per SRMC Title 14 (Zoning) a Use Permit may be required to establish use regulations. A Use Permit application has been filed and is included in the planning applications for action by the City.</p>
<p>LU-2.1. Land Use Map and Categories. Use the General Plan Map as the framework for future land use decisions (see Figure 3-1). The Map displays the distribution of different land use categories in the San Rafael Planning Area. Each category is associated with a particular set of uses and densities/ intensity standards. All proposed projects must meet these standards, as well as other applicable standards established by the City’s zoning</p>	<p><i>Consistent.</i> As noted above, the wetland restoration project and use are consistent with the three land use categories that are adopted for the project area. While the proposed use is permitted, a Use Permit application is required to comply with the PD District and the Wetland Overlay (WO-) District set forth in SRMC Title 14 (Zoning).</p>

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<p>regulations. Some uses in each category are “conditional,” meaning they are allowed only in limited areas or may be subject to specific conditions.</p>	
NEIGHBORHOODS ELEMENT	
<p>NH-3.2. Canal Maintenance. Ensure the long-term maintenance of the Canal as a navigable waterway, including regular dredging. Encourage the maintenance of docks, along with litter removal and water quality improvements.</p>	<p><i>Consistent.</i> The proposed project is adjacent to and outside the navigable channel of the San Rafael Creek (Canal). The project would have no direct impact from any future dredging activity along the creek. Should the planned timing of future dredging be in sync with the timing of the marsh restoration construction, the proposed project would benefit from the use of the local spoils for creation of the marsh area.</p>
<p>NH-3.5: Waterfront Design. Require new buildings along the Canal waterfront to provide public views of the water and accommodate public access to the shoreline. Design factors important in reviewing specific development proposals include pedestrian access, waterfront setbacks, view protection and enhancement, habitat protection, architectural design quality, and landscaping.</p>	<p><i>Consistent.</i> The project includes the raising and realignment of the shoreline levee that is within the project area. The levee is proposed to be raised to a higher finished elevation to address projected sea level rise. As determined by the Tiscornia Marsh Restoration Project EIR (2021), the raising of the levee would no impair public views along the waterfront.</p>
<p>NH-3.6. Public Access. Increase and improve public access to the Canal through the creation of waterfront promenades, a potential new pedestrian bridge east of Grand Avenue, additional access points within new development, and waterside access for boats.</p>	<p><i>Consistent.</i> The project includes the raising and realignment of the shoreline levee that is within the project area. The new levee top with be developed with a new pedestrian/bicycle path, which will be accessible to the public. The path would improve public access.</p>
<p>NH-3.8. Flood Control Improvements. Coordinate development and redevelopment of uses along the Canal with a comprehensive strategy to reduce flood hazards, adapt to sea level rise and create a more resilient shoreline. This should include improvements to levees and sea walls, pump</p>	<p><i>Consistent.</i> The project includes the raising and realignment of the shoreline levee that is within the project area, along with the creation of new marshland in areas that are currently submerged tidelands and diked marshland. As determined by the Tiscornia Marsh EIR, these improvements will improve flood control for an area that is prone to flood risk.</p>

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stations, and storm drainage infrastructure.	
COMMUNITY DESIGN & PRESERVATION ELEMENT	
<p>CDP-1.2. Natural Features. Recognize and protect the key natural features that shape San Rafael's identity, including the Bay, local hills and ridgelines, creeks and wetlands, tree cover, and views of Mt. Tamalpais and other natural landmarks. Height limits and other building standards should respect San Rafael's natural topography and reinforce its sense of place, including the character and boundaries of individual neighborhoods.</p>	<p><i>Consistent.</i> The project will not result in any major changes to the natural features of the area. Rather, the restoration project will improve the natural features by returning portions of the site that were diked and filled to its original marshland condition.</p>
<p>CDP-1.4: Waterfront Identity. Strengthen San Rafael's identity as a waterfront city, providing improved visual and physical access to San Pablo Bay, San Rafael Bay, and the San Rafael Canal.</p>	<p><i>Consistent.</i> As noted above, the project includes the raising and realignment of the shoreline levee that is within the project area. The new levee top will be developed with a new pedestrian/bicycle path, which will be accessible to the public. The path would improve public access.</p>
<p>CDP-1.5. Views. Respect and enhance to the greatest extent possible, views to the Bay and its islands; wetlands, marinas, and canal waterfront; hillsides and ridgelines; Mt. Tamalpais; Marin Civic Center; and St. Raphael's bell tower; as seen from streets, parks, and public pathways.</p>	<p><i>Consistent.</i> As noted above, the project includes the raising and realignment of the shoreline levee that is within the project area. The levee is proposed to be raised to a higher finished elevation to address projected sea level rise. As determined by the Tiscornia Marsh EIR, the raising of the levee would not impair public views along the waterfront.</p>
CONSERVATION AND CLIMATE CHANGE ELEMENT	
<p>C-1.1. Wetland Preservation. Require appropriate public and private wetlands preservation, restoration and/or rehabilitation through the regulatory process. Support and promote</p>	<p><i>Consistent.</i> The project would result in enhanced and preserved wetlands. The current diked marshland and portions of the submerged tidelands are conditions that have developed on the site over time through natural and manmade actions. The project would restore this area to its natural</p>

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acquisition of fee title and/or easements from willing property owners.	condition.
C-1.2. Wetlands and Sea Level Rise. Optimize the role of wetlands in buffering the San Rafael shoreline against the future impacts of sea level rise.	<i>Consistent.</i> As a whole, the project is designed to enhance and restore wetlands to their natural condition. The project features include raising the shoreline levee and creating an “ecotone” (outboard, horizontal levee), which are key to combating and adapting to sea level rise.
C-1.3. Wetland Protection and Mitigation. In order to protect and preserve valued wetlands, loss of wetlands due to filling shall be avoided. Compensatory mitigation for the loss of wetlands shall be required in the event that preservation is not possible or practical due to conditions such as the location, configuration, and size of the wetland.	<i>Consistent.</i> The project would not result in the loss of wetlands but would enhance wetlands that are currently protected. Although the development of an “ecotone” in an area of submerged tidelands and diked marsh will require some filling of the bay, this filling would be offset by the removal of fill in the diked marsh area.
C-1.4. Wetland Creation. Require that any wetlands created to mitigate losses as described in Policy C-1.3 are similar in habitat type and at least equal in functional quality to the wetlands being filled.	<i>Consistent.</i> As noted above, the project would not result in the loss of wetlands but would enhance wetlands that are currently protected. Although the development of an “ecotone” in an area of submerged tidelands and diked marsh will require some filling of the bay, this filling would be offset by the removal of fill in the diked marsh area.
C-1.11. Wildlife Corridors. Preserve and protect areas that function as wildlife corridors, particularly those areas that provide connections permitting wildlife movement between larger natural areas.	<i>Consistent.</i> As determined by the Tiscornia Marsh Restoration Project EIR (2021), as a whole, the project would result in new and enhanced wetlands that would improve habitat for wildlife use and movement.
C-1.12: Native or Sensitive Habitats. Protect habitats that are sensitive, rare, declining, unique, or represent a valuable biological resource. Potential impacts to such habitats should be minimized through compliance with applicable laws and regulations, including biological resource surveys, reduction of noise and light impacts, restricted use of toxic pesticides, pollution and trash control, and similar measures.	<i>Consistent with Mitigation and Conditions.</i> As determined by the Tiscornia Marsh Restoration Project EIR (2021), as a whole the built project would result in improved habitat for native and sensitive species. The EIR determined that project construction has the potential to disturb, impact or destroy native and sensitive habitats; however, mitigation measures are recommended to reduce these construction-related impacts to a less-than-significant level. To preclude (or minimize) access into the habitat area by dogs and humans, the project should be conditioned to require the installation of a 4-foot-high vinyl clad link fence on the bayside slope bank of the raised levee.
C-1.13. Special Status Species.	<i>Consistent with Mitigation and Conditions.</i>

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<p>Conserve and protect special status plants and animals, including those listed by State or federal agencies as threatened and/or endangered, those considered to be candidate species for listing by state and federal agencies, and other species that have been assigned special status by the California Native Plant Society and the California Fish and Game Code. Avoidance of impacts, accompanied by habitat restoration, is the preferred approach to conservation, but mitigation measures may be considered when avoidance is not possible.</p>	<p>As determined by the Tiscornia Marsh Restoration Project EIR (2021), as a whole the built project would result in improved habitat for known special status species. The EIR determined that project construction has the potential to disturb, impact or destroy special status species; however, mitigation measures are recommended to reduce these construction-related impacts to a less-than-significant level. To preclude (or minimize) access into the habitat area by dogs and humans, the project should be conditioned to require the installation of a 4-foot-high vinyl clad link fence on the bayside slope bank of the raised levee.</p>
<p>C-3.2. Reduce Pollution from Urban Runoff. Require Best Management Practices (BMPs) to reduce pollutants discharged to storm drains and waterways. Typical BMPs include reducing impervious surface coverage, requiring site plans that minimize grading and disturbance of creeks and natural drainage patterns, and using vegetation and bioswales to absorb and filter runoff.</p>	<p><i>Consistent with Mitigation.</i> As determined by the Tiscornia Marsh Restoration Project EIR (2021), as a whole the built project would result in new wetlands that would further filter urban runoff, and thus further reduce pollution. The EIR determined that project construction has the potential to introduce or increase pollutants; however, mitigation measures are recommended to reduce these construction-related impacts to a less-than-significant level.</p>
<p>C-5.2. Consider Climate Change Impacts. Ensure that decisions regarding future development, capital projects, and resource management are consistent with San Rafael's CCAP and other climate goals, including greenhouse gas reduction and adaptation.</p>	<p><i>Consistent.</i> As designed, the project would address anticipated increased flooding and projected sea level rise. The project included elements such as a raised levee and creation of an outboard "ecotone," which are key measures for combating projected sea level rise.</p>
<p>C-5.5: Carbon Sequestration. Enhance the ability of the city's natural and built environment to sequester (absorb and store) carbon emissions.</p>	<p><i>Consistent.</i> The project would result in the enhancement of and the creation of new wetlands that would promote aquatic plants, which are known for absorbing carbon emissions.</p>
<p>PARKS, RECREATION AND OPEN SPACE ELEMENT</p>	
<p>PROS-1.8. Linear Parks and Trails. Encourage linear parks and trails along the Bay</p>	<p><i>Consistent.</i> The project would result in an improved and increased linear park and trails system for the</p>

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<p>shoreline, the San Rafael Canal, local creeks, and transportation corridors such as the SMART right-of-way. Where feasible, spur trails should connect linear parks to nearby neighborhoods, parks, and open spaces.</p>	<p>Southeast San Rafael neighborhood. The proposal to raise and shift the alignment of the shoreline levee will not only mitigate increased flooding and combat projected sea level rise, but it would also provide for a more protected and improved public trail that is well used by the community.</p>
<p>PROS-1.9. Role of Open Space. Recognize San Rafael’s open space network as an essential component of the park system, including its potential to provide for hiking, picnicking, wildlife observation, environmental education, and enjoyment of nature. Passive recreational activities such as hiking, birdwatching, and picnicking, should be encouraged in these areas where consistent with habitat protection and hazard reduction goals.</p>	<p><i>Consistent with Conditions.</i> The project would result in an improved public shoreline path system, which would increase opportunities for wildlife observation, environmental education, and the enjoyment of nature. To further enhance this opportunity, project approvals should be conditioned to require that wildlife interpretive signs be installed at points along the shoreline path to educate visitors about the purpose, goal, and benefits about the project. To preclude (or minimize) access into the habitat area by dogs and humans, the project should be conditioned to require the installation of a 4-foot-high vinyl clad link fence on the bayside slope bank of the raised levee.</p>
<p>PROS-1.17. Public/Private Partnerships. Consider the use of public-private partnerships to rehabilitate, activate, and expand parks and community facility space. Where appropriate and consistent with the community’s vision, this could include more intensive and varied uses of parkland, provided that the integrity of the open space is retained.</p>	<p><i>Consistent.</i> The project is a partnership of Marin Audubon Society and the City of San Rafael.</p>
<p>PROS-3.1. Open Space Frame. Retain and protect San Rafael’s open space frame, including open space on the city’s perimeter and the network of open spaces that define and connect the city’s neighborhoods. Open space should be recognized as essential to wildlife, environmental and human health, psychological well-being, and as a natural means of separating communities, preventing sprawl, and providing visual relief.</p>	<p><i>Consistent.</i> As a whole, the project would enhance and further protect existing, secured open space along the shoreline.</p>
<p>PROS-3.2: Balancing the Uses of Open Space. Protect and preserve the natural resource value of open space while permitting compatible recreational</p>	<p><i>Consistent with Conditions.</i> The project would provide a balance of natural resource enhancement and protection with public access for recreational and educational uses.</p>

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<p>and educational uses. Open space areas should be maintained in a natural state and regarded as a resource for enjoyment by all residents of San Rafael. Recreational and educational uses, where permitted, should be limited to activities with minimal impacts on the environment and locations where such activities will not create hazards or have adverse effects on sensitive natural resources.</p>	
<p>PROS-3.3. Open Space Management. Maintain and manage City-owned open space lands to reduce natural hazards and wildfire risks, enhance recreational opportunities, maximize ecological value, support climate resilience, and preserve aesthetics. Work with other public open space owners to support similar objectives on their properties within the San Rafael Planning Area. It is recognized that these objectives may conflict as management decisions are made; solutions should strive for balance and reflect objective data, wildfire science, and community input.</p>	<p><i>Consistent.</i> The project area includes the City-owned diked marshland that is north of the Albert J. Boro Community Center and Pickleweed Park. As present, this diked marshland is not maintained and is vulnerable risks such as wildfire and flooding. As proposed, the restoration project would return this diked marshland to tidal action and restore it to its original wetland condition. Being part of the greater Tiscornia Marsh Restoration Project, this City-owned property would be better managed than under current conditions.</p>
<p>PROS-3.8. Trails. Encourage the development and maintenance of trails within and between open space areas. Trails should be designed and maintained in an environmentally sensitive manner and should provide safe and secure routes for a variety of users.</p>	<p><i>Consistent.</i> As noted above, the project would result in an improved and increased linear park and trails system for the Southeast San Rafael neighborhood. The proposal to raise and shift the alignment of the shoreline levee will not only mitigate increased flooding and combat projected sea level rise but would provide for a more protected and improved public trail that is well used by the community.</p>
<p>PROS-3.10. Public Education. Provide education programs to residents about the importance of open space to wildlife, wildfire prevention, watershed protection and water quality, climate resilience and carbon sequestration, habitat conservation, and human well-being.</p>	<p><i>Consistent with Conditions.</i> The project would result in an improved public shoreline path system, which would increase opportunities for wildlife observation, environmental education, and the enjoyment of nature. To further enhance this opportunity, project approvals should be conditioned to require that wildlife interpretive signs be installed at points along the shoreline path to educate visitors about the purpose, goal, and benefits about the project.</p>
<p>SAFETY AND RESILIENCE ELEMENT</p>	

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<p>S-3.4. Mitigating Flooding and Sea Level Rise. Consider and address increased flooding and sea level rise impacts in vulnerable areas (see Figure 8-3) in development and capital projects, including resiliency planning for transportation and infrastructure systems.</p>	<p><i>Consistent.</i> As noted above, the project features include raising the shoreline levee and creating an “ecotone” (outboard, horizontal levee), which are key to mitigating increased flooding, as well as combating and adapting to projected sea level rise.</p>
<p>S-3.6. Resilience to Tidal Flooding. Improve San Rafael’s resilience to coastal flooding and sea level rise through a combination of structural measures and adaptation strategies.</p>	<p><i>Consistent.</i> As noted above, the project features include raising the shoreline levee and creating an “ecotone” (outboard, horizontal levee), which are key to mitigating increased flooding, as well as combating and adapting to projected sea level rise.</p>
<p>S-3.7. Shoreline Levees. Improve and expand San Rafael’s shoreline levee system. When private properties are developed or redeveloped, require levee upgrading as appropriate, based on anticipated high tide and flood conditions.</p>	<p><i>Consistent.</i> As noted above, the project would raise and realign the existing shoreline levee, which would reduce flooding assist in adapting the area to projected sea level rise.</p>
<p>S-3.8. Storm Drainage Improvements. Require new development to mitigate potential increases in runoff through a combination of measures, including improvement of local storm drainage facilities. Other measures, such as the use of porous pavement, bioswales, and “green infrastructure” should be encouraged.</p>	<p><i>Consistent.</i> As noted above the project includes the raising and realignment of the shoreline levee that is within the project area, along with the creation of new marshland in areas that are currently submerged tidelands and diked marshland. As determined by the Tiscornia Marsh EIR, these improvements will improve flood control for an area that is prone to flood risk.</p>
NOISE ELEMENT	
<p>N-1.6. Traffic Noise. Minimize traffic noise through land use policies, law enforcement, street design and improvements, and site planning and landscaping.</p>	<p><i>Consistent with Mitigation.</i> As determined by the Tiscornia Marsh Restoration Project EIR (2021), project construction will result in a temporary increase in vehicle traffic in the adjacent neighborhood. Albeit a short-term impact, it is potentially significant. The EIR recommends mitigation measures to reduce this construction-related impact to less-than-significant levels.</p>
<p>N-1.11. Vibration. Ensure that the potential for vibration is addressed</p>	<p><i>Consistent with Mitigation.</i> As determined by the Tiscornia Marsh Restoration Project EIR (2021), project construction will</p>

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<p>when transportation, construction, and nonresidential projects are proposed, and that measures are taken to mitigate potential impacts.</p>	<p>result in a temporary increase in vibration that would be experienced in the adjacent neighborhood. Albeit a short-term impact, it is potentially significant. The EIR recommends mitigation measures to reduce this construction-related impact to less-than-significant levels.</p>
MOBILITY ELEMENT	
<p>M-2.5. Traffic Level of Service. Maintain traffic Level of Service (LOS) standards that ensure an efficient roadway network and provide a consistent basis for evaluating the transportation effects of proposed development projects on local roadways. These standards shall generally be based on the performance of signalized intersections during the AM and PM peak hours. Arterial LOS standards may be used in lieu of (or in addition to) intersection LOS standards in cases where intersection spacing, and road design characteristics make arterial LOS a more reliable and effective tool for predicting future impacts.</p>	<p><i>Consistent. With Mitigation.</i> As determined by the Tiscornia Marsh Restoration Project EIR (2021), project construction will result in a temporary increase in vehicle traffic in the adjacent neighborhood. Albeit a short-term impact, it is potentially significant. The EIR recommends mitigation measures to reduce this construction-related impact to less-than-significant levels.</p>
<p>M-6.3. Connectivity. Develop pedestrian and bicycle networks that connect residents and visitors to major activity and shopping centers, existing and planned transit, schools, and other neighborhoods. Work to close gaps between existing facilities. Funding and prioritization for projects should consider relative costs and benefits, including such factors as safety, number of potential users, and impacts on parking.</p>	<p><i>Consistent.</i> As noted above, the project would result in an improved and increased linear park and trails system for the Southeast San Rafael neighborhood. The proposal to raise and shift the alignment of the shoreline levee will not only mitigate increased flooding and combat projected sea level rise, but it would also provide for a more protected and improved public trail that is well used by the community.</p>
<p>M-6.4. Urban Trails Network. Identify, renovate, improve, and maintain an urban trails network to encourage walking and appreciation of historical and new pathways.</p>	<p><i>Consistent.</i> As noted above, the project would result in an improved and increased linear park and trails system for the Southeast San Rafael neighborhood. The proposal to raise and shift the alignment of the shoreline levee will not only mitigate increased flooding and combat projected sea level rise, but it would also provide for a more protected and improved public trail that is well used by the community.</p>

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COMMUNITY SERVICES AND INFRASTRUCTURE ELEMENT	
<p>CSI-4.6. Climate Change Impacts. Incorporate sea level rise and increased storm intensity forecasts in the planning and design of local infrastructure projects.</p>	<p><i>Consistent.</i> As noted above, the project features include raising the shoreline levee and creating an “ecotone” (outboard, horizontal levee), which are key to mitigating increased flooding, as well as combating and adapting to projected sea level rise.</p>
<p>CSI-4.10: Storm Drainage Facilities. Continue to monitor and pursue improvements to the storm drainage system, including programs to reduce flooding, improve water quality, remove trash, and respond to climate-related changes. Evaluate the potential for restoration of the natural hydrologic function of creeks and drainageways where possible.</p>	<p><i>Consistent.</i> As noted above the project includes the raising and realignment of the shoreline levee that is within the project area, along with the creation of new marshland in areas that are currently submerged tidelands and diked marshland. As determined by the Tiscornia Marsh EIR, these improvements will improve flood control for an area that is prone to flood risk.</p>
<p>CSI-4.11. Canal Dredging. Periodically dredge the San Rafael Canal to reduce flood risks, maintain environmental health, and keep the canal viable as a commercial and recreational waterway. Dredge spoils should be disposed in an environmentally sensitive manner.</p>	<p><i>Consistent.</i> The proposed project is adjacent to and outside the navigable channel of the San Rafael Creek (Canal). The project would have no direct impact from any future dredging activity along the creek. Should the planned timing of future dredging be in sync with the timing of the marsh restoration construction, the proposed project would benefit from the use of the local spoils for creation of the marsh area.</p>
EQUITY, DIVERSITY, AND INCLUSION ELEMENT	
<p>EDI-1.2. Broad-Based Involvement. Partner with community-based organizations to engage populations whose voices have been underrepresented in public processes because of language, mobility, age, citizenship, economic, and other barriers. Engagement should support self-determination and empowerment, as well as input on projects and plans.</p>	<p><i>Consistent.</i> The surrounding neighborhood and the community have been involved in the evolution of the Tiscornia Marsh Restoration Project through the various planning stages. Three community meetings were hosted by Marin Audubon Society over the past several years, which has resulted in input to and changes to the scope and design of the project.</p>
<p>EDI-2.1. Neighborhood Design for Active Living. Improve the design of San Rafael’s neighborhoods to promote physical activity for all residents, including</p>	<p><i>Consistent.</i> As noted above, the project would result in an improved and increased linear park and trails system for the Southeast San Rafael neighborhood. The proposal to raise and shift the alignment</p>

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<p>opportunities for safe walking and cycling, and walkable access to goods and services.</p>	<p>of the shoreline levee will not only mitigate increased flooding and combat projected sea level rise, but it would also provide for a more protected and improved public trail that is well used by the community.</p>
<p>EDI-2.2: Safe Space for Physical Activity. Provide safe physical spaces for children and families to play and be physically active in all neighborhoods, particularly in the Canal area and other neighborhoods where many homes lack outdoor living space.</p>	<p><i>Consistent.</i> As noted above, the project would result in an improved and increased linear park and trails system for the Southeast San Rafael neighborhood. The proposal to raise and shift the alignment of the shoreline levee will not only mitigate increased flooding and combat projected sea level rise, but it would also provide for a more protected and improved public trail that is well used by the community.</p>
<p>EDI-2.10. Resiliency Planning. Improve resiliency planning for climate change, public health emergencies, and other community stressors among non-English speaking and lower-income populations. Increase awareness of sea level rise and flooding risks in the Canal area and in other vulnerable areas, as well as the importance of adaptation measures.</p>	<p><i>Consistent.</i> As noted above, the surrounding neighborhood and the community have been involved in the evolution of the Tiscornia Marsh Restoration Project through the various planning stages. Three community meetings were hosted by Marin Audubon Society over the past several years, which has resulted in input to and changes to the scope and design of the project.</p>

January 5th, 2022



Protecting Marin Since 1934

City of San Rafael
Planning Commission
1400 Fifth Avenue
San Rafael, CA 94901

Via email: leslie.mendez@cityofsanrafael.org

Re: Tiscornia Marsh Habitat Restoration and Sea Level Rise Adaptation Project

Dear Planning Commissioners:

The Marin Conservation League has reviewed the Tiscornia Marsh proposal and urges you to approve the project. There are still many steps before the project is ready to begin construction, but the need is there now. This project will not only increase the protection of the area for near-term sea level rise, but also will be a demonstration project for other jurisdictions with similar issues.

The Final Environmental Impact Report (EIR) addresses the issues raised by California Department Fish and Wildlife. Most of the comments submitted were supportive of the project, not necessarily addressing the merits of the EIR document.

The project is well designed. MCL supports its construction.

Thank you for this opportunity to comment.

Yours truly,

A handwritten signature in blue ink that reads "Robert Miller".

Robert Miller
President

A handwritten signature in blue ink that reads "Susan Stompe".

Susan Stompe
Chair, Land Use, Water and
Transportation Committee



SAN RAFAEL
THE CITY WITH A MISSION

Community Development Department – Planning Division

Meeting Date: January 11, 2022
Agenda Item: 3
Case Numbers: ZC21-001, UP21-007, ED21-024, TS21-002, IS21-002 & DA21-001
Project Planner: Tricia Stevens
(916) 698-4592

REPORT TO PLANNING COMMISSION

SUBJECT: Northgate Mall Redevelopment Project (5800 Northgate Drive) – Scoping meeting for the Notice of Preparation of an Environmental Impact Report (EIR) for a Rezone to the Planned Development (PD) zone, a Use Permit, an Environmental and Design Review Permit, and a Tentative Map to allow the comprehensive redevelopment of the existing Mall into a new, phased mixed-use development with retail and approximately 1,443 residences on a 44.76-acre site. APNs: 175-060-12, -40, -59, -61, -66 & -67; General Commercial (GC) District; MeloneGeier Partners, owner/applicant; File Nos: ZC21-001, UP21-007, ED21-024, TS21-002, IS21-002 & DA21-001

EXECUTIVE SUMMARY

The proposed project, also known as the Northgate Town Square, would result in the redevelopment of the existing mall through demolition, renovation, and new construction with a mix of commercial and residential land uses. The proposed project would be developed in two phases, and at full buildout is currently proposed to include a total of approximately 225,100 square feet of commercial uses and up to 1,443 residential units, of which seven percent would be restricted to low-income households. The remainder of the ten percent affordable housing requirement will be provided off-site or with other options allowed by Zoning Ordinance Section 14.16.030. Project applications include the following:

- A Zoning Map and Zoning Text Amendment to the Planned Development (PD) Overlay Zone that outlines allowable land uses, development standards, and a development plan for the proposed project;
- A Development Agreement that sets forth the terms and requirements of the City and the public benefits provided by the developer;
- A Tentative Vesting Parcel Map that will subdivide the property into 11 parcels;
- A Master Use Permit as required by the PD Overlay Zone to address standards for specific uses; and
- An Environmental and Design Review Permit to address the site plan, architecture, landscaping, building design and other site improvements.

Consistent with the California Environmental Quality Act (CEQA), the issuance of a Notice of Preparation (NOP) is required when the lead agency has determined that an EIR will be prepared. An NOP was issued on December 9, 2021, and transmitted to the State Clearinghouse, responsible and trustee agencies and interested parties, to announce the initiation of the EIR process. The purpose of the scoping meeting is to afford the Planning Commission, other agencies, and the public an opportunity to provide oral comments on the Initial Study and the scope of issues and alternatives to be addressed in the EIR. Following the close of the 30-day NOP comment period, City staff will review comments received and consider revisions to the Initial Study and/or the scope of the Draft EIR, in accordance with CEQA Guidelines.

RECOMMENDATION

It is recommended that the Planning Commission take the following action:

1. Accept public comment on the Notice of Preparation and the scope of issues to be addressed in the EIR; and
2. Direct staff to prepare a Draft Environmental Impact Report (DEIR), taking into consideration verbal and written comments received during the scoping period.

BACKGROUND

The project sponsor, Merlone Geier Partners, LLC, submitted an application for the proposed project on March 10, 2021. The City of San Rafael Planning Commission (PC) and Design Review Board (DRB) held a joint study session on September 14, 2021. In addition to feedback and input from the PC and DRB, the public was given the opportunity to provide initial comments on the project at this meeting.

Site Description/Setting: The project site is located west of US Highway 101 (US 101), in the City of San Rafael, Marin County. The approximately 44.76-acre project site consists of the Northgate Mall, which is located within the San Rafael Town Center in the northern portion of the city. The project site is generally surrounded by a mix of uses, including commercial, residential, open space, and institutional. The project site is bordered by Las Gallinas Avenue to the north and east and Northgate Drive to the south and west.

The project site is designated as Community Commercial Mixed Use on the City's General Plan Land Use Map and is within the General Commercial zoning district. The mall, which originally opened in 1965, is generally oriented on a north-south axis, with the main building located in the center of the project site surrounded by surface parking and standalone buildings and structures. Current major tenants within the mall include Century Theatre, Macy's, Kohl's, Rite Aid, and HomeGoods. A total of 2,908 parking spaces are provided on the project site.

PROJECT DESCRIPTION

The proposed project would result in the redevelopment of the existing mall through demolition, renovation, and new construction with a mix of commercial and residential land uses. As shown in Table 1, the proposed project would be developed in two phases, and at full buildout is currently proposed to include a total of approximately 225,100 square feet of commercial uses and up to 1,443 residential units, of which seven percent would be restricted to a minimum of low-income households. The remainder of the ten percent affordable housing requirement will be provided off-site or with other options allowed by Zoning Ordinance Section 14.16.030.

It should be noted that proposed square footages, residential unit mix, and other elements of the project may be subject to continued refinement after publication of this NOP and prior to consideration of project approval. The analysis in the EIR will evaluate the maximum development potential for the proposed project.

Table 1: Proposed Project Buildout Summary

Phase	Existing Commercial (square feet)	Demolished Commercial (square feet)	Existing Commercial to Remain (square feet)	New Commercial (square feet)	Total Commercial (square feet)	Residential Units
Phase 1	766,507	305,446	461,061	44,100	505,161	1,013
Phase 2 ^a	505,161	339,861	165,300	59,800	225,100	1,443

Source: Merlone Geier Partners LLC (2021).

a: Phase 2 represents the proposed project at full buildout, and therefore includes development from Phase 1.

As shown on Figure 1, Phase I consists of the following main elements:

- I. Demolition of the Sears anchor, HomeGoods pad, and approximately 140,932 square feet of the Mall structure.
- II. New construction and renovation of retail and residential uses, corresponding to letters on Figure 1. Residential density is 20.5 units per acre and commercial floor area ration (FAR) is .27.
 - A. Remodel of the current multi-screen cinema with IMAX theatre (65,000 square feet), and the addition of small shops and restaurants in the front of the cinema.
 - B. Construction of new retail on the east end, targeting a specialty grocery (Major 3), with housing units above.
 - C. Renovation of a portion of the existing Mall structure west of Macys with a Major 2 store, and retention of the existing Macy's. The landscaping and parking in the north area (north of Macy's) would largely remain as is.
 - D. Retention of the existing Kohl's and adjacent small shops and restaurants.
 - E. Addition of a 26,000 square foot plaza in the vicinity of the Kohl's building, and preservation of a portion of the Mall pavilion as a focal point and new parking and landscaping in the central portion.
 - F. Addition of new restaurant pads on the north end of the site adjacent to Las Galinas Avenue.
 - G. Retention of the existing parking garage.
 - H. Phased construction of up to 1,013 housing units in six apartment-style buildings not exceeding five stories in height, located on the southern, eastern, and western perimeters of the Project property. Parking for the residential units would be both structured and surface parking.
 - I. Construction of Affordable housing on Parcel 1 consisting of 96 units

Figure 1: 2025 Phase I Plan



As shown on Figure 2, Phase II consists of the following main elements:

- I. Demolition of the remaining Macy's and Kohl's anchors and the demolition and reconstruction of the "Shops 1" structure adjacent to the Kohl's anchor.
- II. New retail and residential uses, corresponding to letters on Figure 2. Residential density is 29.5 dwelling units per acre and floor area ration (FAR) is .13.
 - A. Addition of a 35,000 square foot town square plaza in the central portion of the project.
 - B. Construction of new retail including Major 1, with housing above, to replace the Kohl's anchor and existing shops.
 - C. Construction of up to an additional 430 housing units.
 - D. Construction of additional standalone restaurant pads along Las Gallinas Avenue.
 - E. Construction new retail shops including Major 4, with housing above, to replace the Macy's building.

Figure 2: 2040 Phase II Plan



ENVIRONMENTAL ANALYSIS AND REVIEW

Notice of Preparation

A Notice of Preparation (NOP) was published on December 9, 2021, to announce the commencement of the EIR process and to solicit comments concerning the scope of issues to be addressed in the EIR. A 30-day public review period is underway and written public comments will be accepted until Friday, January 14, 2022. (Note: an extra week was provided to account for holiday closures). The purpose of the scoping meeting is to afford the Planning Commission, other agencies, and the public an opportunity to provide oral comments on the scope of issues and alternatives to be addressed in the EIR. Following the close of the NOP comment period, City staff will review comments received and consider revisions to the scope of the Draft EIR, in accordance with CEQA Guidelines.

Probable Environmental Effects

The EIR will address the proposed project's potential impacts to the following environmental topics as required by CEQA.

- Aesthetics
- Agricultural and Forestry Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Energy
- Geology and Soils
- Land Use and Planning
- Mineral Resources
- Noise
- Population and Housing
- Public Services
- Recreation
- Transportation

- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Tribal Cultural Resources
- Utilities and Service Systems
- Wildfire

Project Alternatives

The EIR will provide conclusions on the significance level of each impact. Based on this analysis, alternatives to the proposed project will be identified and analyzed to reduce identified impacts. Section 15126.6(e) of the CEQA Guidelines requires the evaluation of a No Project Alternative. Other alternatives may be considered during preparation of the EIR and will comply with the CEQA Guidelines, which call for a range of reasonable alternatives to the project, or the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project.

NEXT STEPS

EIR Process

Following the close of the NOP comment period, a draft EIR will be prepared that will consider all NOP comments. In accordance with CEQA Guidelines Section 15105(a), the draft EIR will be released for public review and comment for a required minimum 45-day review period. Following the close of the 45-day public review period, the City will prepare a final EIR, which will include responses to all substantive comments received on the draft EIR. The draft EIR and final EIR will be considered by the Planning Commission and City Council in making the decision to certify the EIR and approve or deny the project.

Project Revisions

The applicant has indicated that revisions to the project will be made in response to Planning Commission, Design Review Board, city staff, and general public comments. It is anticipated that such revisions will be consistent with the scope of the EIR and would not create greater impacts than those studied in the document. If such revisions do expand the scope of the EIR, then the scope of the EIR will be reassessed.

CORRESPONDENCE

As of the date and publication of this staff report, the City has received one comment letter on the NOP from the Native American Heritage Commission. Correspondence received before the Planning Commission meeting will be forwarded to Commission members under separate cover.

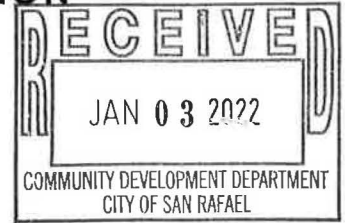
EXHIBITS

1. [NOP for the Northgate Project](#), December 2021 (online link).
2. NOP comment received from the Native American Heritage Commission

Plans/documents and provided on website: [Northgate Town Square - San Rafael \(cityofsanrafael.org\)](http://cityofsanrafael.org)



NATIVE AMERICAN HERITAGE COMMISSION



December 16, 2021

Tricia Stevens, Consulting Planner
City of San Rafael
1400 Fifth Street
San Rafael, CA 94901

CHAIRPERSON
Laura Miranda
Luiseño

VICE CHAIRPERSON
Reginald Pagaling
Chumash

PARLIAMENTARIAN
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COMMISSIONER
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Isaac Bojorquez
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Yokayo Pomo, Yuki,
Nomlaki

COMMISSIONER
Wayne Nelson
Luiseño

COMMISSIONER
Stanley Rodriguez
Kumeyaay

EXECUTIVE SECRETARY
Christina Snider
Pomo

NAHC HEADQUARTERS
1550 Harbor Boulevard
Suite 100
West Sacramento,
California 95691
(916) 373-3710
nahc@nahc.ca.gov
NAHC.ca.gov

Re: 2021120187, Northgate Mall Redevelopment Project, Marin County

Dear Ms. Stevens:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, §15064.5 (b) (CEQA Guidelines §15064.5 (b))). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1))). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

- 1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project:** Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:

 - a. A brief description of the project.
 - b. The lead agency contact information.
 - c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
 - d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).

- 2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report:** A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subs. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).

 - a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).

- 3. Mandatory Topics of Consultation If Requested by a Tribe:** The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

 - a. Alternatives to the project.
 - b. Recommended mitigation measures.
 - c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).

- 4. Discretionary Topics of Consultation:** The following topics are discretionary topics of consultation:

 - a. Type of environmental review necessary.
 - b. Significance of the tribal cultural resources.
 - c. Significance of the project's impacts on tribal cultural resources.
 - d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).

- 5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process:** With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).

- 6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document:** If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

 - a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
 - b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

- 7. Conclusion of Consultation:** Consultation with a tribe shall be considered concluded when either of the following occurs:
- a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
 - b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
- 8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document:** Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
- 9. Required Consideration of Feasible Mitigation:** If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
- 10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**
- a. Avoidance and preservation of the resources in place, including, but not limited to:
 - i. Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii. Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i. Protecting the cultural character and integrity of the resource.
 - ii. Protecting the traditional use of the resource.
 - iii. Protecting the confidentiality of the resource.
 - c. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - d. Protecting the resource. (Pub. Resource Code §21084.3 (b)).
 - e. Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
 - f. Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
- 11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource:** An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
- a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
 - b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
 - c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf.

Some of SB 18's provisions include:

1. **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation.** There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation:** Consultation should be concluded at the point in which:
 - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>.

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:
 - a. If part or all of the APE has been previously surveyed for cultural resources.
 - b. If any known cultural resources have already been recorded on or adjacent to the APE.
 - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
 - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
 - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
 - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.

4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
 - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, § 15064.5(f) (CEQA Guidelines § 15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
 - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
 - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code § 7050.5, Public Resources Code § 5097.98, and Cal. Code Regs., tit. 14, § 15064.5, subdivisions (d) and (e) (CEQA Guidelines § 15064.5, subs. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address:
Katy.Sanchez@nahc.ca.gov.

Sincerely,



Katy Sanchez
Associate Environmental Planner

cc: State Clearinghouse



REPORT TO PLANNING COMMISSION

SUBJECT: Annual Meeting of Planning Commission for 2022 to include: a) election of officers; and b) review of Planning Commission “Rules and Procedures”; and c) selection of liaisons to DRB meetings

EXECUTIVE SUMMARY

The Annual Meeting of the Planning Commission is required to elect the Chair and Vice Chair officers for the calendar year. The Annual Meeting also provides the Commission an opportunity to review and consider adoption of revisions to the Planning Commission’s “Rules and Procedures.” The Rules and Procedures were last amended by the Commission at the January 2021 annual meeting. This year, staff has no suggested edits to the Rules and Procedures, however, the Commissioners may have suggested edits.

RECOMMENDATION

It is recommended that the Planning Commission take the following action:

- a) Elect a new Chair and Vice Chair for 2022; and
- b) Consider and accept any proposed changes to the Planning Commission “Rules and Procedures;” and
- c) Select Planning Commission liaisons to the DRB for 2022

BACKGROUND AND ANALYSIS

Election of Officers:

Section II.E of the Planning Commission “Rules and Procedures” requires that the Planning Commission conduct an annual meeting to select officers (Chair and Vice Chair) for the calendar year. The Annual Meeting is defined as the “first meeting of the calendar year,” which for this year is January 11, 2021.

The office of the Chair and Vice Chair is rotational, with selection based on seniority or tenure of service. Per the Rules and Procedures, generally, a Commissioner shall not serve as a Chair more than once in seven consecutive years. See attached Exhibit 1, which lists the appointment dates and past service as chair by each of the Commission members.

Chair

Based on the rotation criteria, Commissioner Previtali is next-in-line to serve as Chair, as he served as Vice Chair for 2021.

Vice Chair

In order to determine the next Vice Chair, the same rules and procedures for Chair apply to Vice Chair. There are three Commissioners who have not served as Chair or Vice Chair in the past 7 years (Commissioners Saudi, Haveman, and Harris). Commissioner Saudi was appointed in July

2020; Commissioner Haveman was appointed in May 2021 and Commissioner Harris in June 2021. Therefore, Commissioner Saudi would be the next in line to serve as Vice Chair.

RECOMMENDATION: Based on the rules and procedures, it is recommended that Commissioner Previtali be elected to serve as Chair and Commissioner Saudi be elected to serve as Vice Chair.

Consideration of Revisions to Planning Commission “Rules and Procedures”:

The Rules and Procedures are reviewed by the Commission. Staff has no new recommended edits to the Rules and Regulations that were adopted by the Planning Commission last year to include provision for virtual public hearings. The Planning Commission is asked to review the currently adopted Rules and Procedures and submit any feedback or suggested changes.

Selection of Commissioners for DRB Liaison:

The annual meeting also provides an opportunity to select Commissioners to serve as a liaison at the Design Review Board meetings for the calendar year. Commissioners (with the exception of the new Chair) are requested to serve as liaison in two-month increments, which involves attendance at up to four, regular DRB meetings during the two selected months of service. However, since the Planning Commission is currently one member short, staff is looking to have DRB liaison assignments for the first half of the year and will bring the item back for the second half of year at a later date when the Commission is fully appointed. Staff is, therefore, requesting that with the exception of the new Chair, that either (1) half the Commissioners volunteer for a two month period for the first half of the year (the rest to volunteer for the second half); or (2) each Commissioner select one month (with one volunteering for two), with each Commissioner to volunteer for a second month the second half of the year (with the exception of the Commissioner already signed up for two months). A schedule of DRB for January through June 2022 is included as Exhibit 3.

2022 Planning Commission Meeting Dates:

Provided for your information is a list of scheduled Planning Commission meetings for 2022.

OPTIONS

Regarding the “Rules and Procedures,” the Planning Commission has the following options:

1. Modify the “Rules and Procedures” for review and direct staff to return with revised document for consideration at a future meeting;
2. Identify additional areas for further study and direct staff to return with recommended revisions to the “Rules and Procedures” for action at a future meeting;
3. Continue this upcoming year with the current “Rules and Procedures” as adopted on January 12, 2021.

EXHIBITS

1. Table Listing Planning Commissioners, Tenure and Chairpersonship, prepared February 4, 2022
2. Planning Commission “Rules and Procedures” revised January 12, 2021
3. Planning Commission liaison assignment to DRB meetings dates for first half of 2022
4. Planning Commission Meeting Schedule for 2022

EXHIBIT 1

San Rafael Planning Commission History of Tenure and Chairpersonship

Prepared January 4, 2022

Commissioner	First Appointed to Commission	Years Served as Chairperson	Years Served as Vice Chair
Aldo Mercado	07/2018	2020 partial	2020 partial
Shingai Samudzi	07/2019	2021	2020 partial
Jon Previtali	07/2020	None	2021
Samina Saude	07/2020	None	None
Jon Haveman	05/2021	None	None
Camille Harris	06/2021	None	None

Exhibit 2

PLANNING COMMISSION RULES AND PROCEDURES CITY OF SAN RAFAEL

I. Organization and Officers

A. Organization

1. The Planning Commission shall consist of seven regular members appointed by the Mayor with the approval of the City Council and shall be organized and exercise such powers as prescribed by the City Charter and by the San Rafael Municipal Code (City Code).
2. The term of the Commission members is four years with a staggered expiration schedule.
3. Vacancies on the Commission for other than expiration will be filled by appointment for the un-expired portion of the term.
4. If any Commissioner should have three consecutive, unexplained absences from regular meetings of the Planning Commission as shown in the roll call of the official minutes, the Chair may recommend to the City Council that the seat be relinquished.
5. If any Commissioner wishes to request a leave of absence for three to six consecutive meetings, the request shall be made to and approved by the Chair. A request for a leave of absence for more than six consecutive meetings shall be made to and approved by the City Council.

B. Officers

1. Selection
 - a. A Chair and Vice-Chair shall be elected from among the Commission's membership at the Annual Meeting held the first meeting of the calendar year, to serve for a one year period. It is intended that the Chair and Vice-Chair be rotated among the Commissioners based on tenure, as defined by total years of service. In the event the years of service are identical, tenure will be determined in alphabetical order. It is the general rule that a Commissioner shall not serve as Chair more than once in seven consecutive years. However, in the event that: 1) a position is vacated; 2) a Commissioner is not interested in serving as an officer; or 3) there is limited tenure among the other Commissioners, then a Commissioner can be appointed as an officer more than once in seven years.
 - b. The Vice-Chair shall serve as Chair in the following year.

- c. The Chair and Vice-Chair may not succeed themselves. However, in the event that the current Chair or Vice-Chair has served less than a year, the Commission may choose to re-elect her/him for an additional term.
- d. The Vice-Chair shall succeed the Chair if he/she vacates the office, and shall serve the un-expired term of the Chair. The Commission shall elect a new Vice-Chair to serve the un-expired term of that office. Selection shall be based on seniority.
- e. In the absence of the Chair and Vice-Chair, the member of the Commission with the longest tenure, as defined by total years of service, shall preside over the meeting. In the event that the years of service are identical, seniority will be determined by alphabetical order.

2. Responsibilities

The responsibilities and powers of the officers of the Planning Commission shall be as follows:

a. Chair

- Preside at all meetings of the Commission.
- Call special meetings of the Commission in accordance with legal requirements and the Rules of Procedure.
- Sign documents of the Commission.
- See that all actions of the Commission are properly taken.
- Assist staff in determining agenda items.
- The Chair shall be an ex officio member of all committees with voice but not vote.

b. Vice-Chair

During the absence, disability or disqualification of the Chair, the Vice-Chair shall exercise or perform all the duties and be subject to all the responsibilities of the Chair.

C. Duties and Powers

1. The Planning Commission shall have the power to recommend to the City Council, after conducting a public hearing, the adoption, the amendment or the repeal of a General Plan, a Neighborhood or Specific Plan, the Zoning Ordinance of the City Code, or a site-specific master plan for a Planned Development (PD) District, or any part thereof, for the physical development of the City.
2. The Planning Commission shall exercise such functions with respect to environmental review, land subdivisions, land use and planning, design

review, and zoning, as may be prescribed by City Code, City resolution, and State law.

3. The Commission shall advise the City Council on those matters falling within its charged responsibilities in a manner reflecting concern for the overall development and environment of the City as a setting for human activities.

D. Rules of Order

Except as otherwise provided in these Rules of Procedure, "Roberts Rules of Order, Newly Revised" shall be used as a guide to the conduct of the meetings of the Planning Commission, provided, however, that a failure of the Commission to conform to said rules of order shall not, in any instance, be deemed to invalidate the action taken.

II. **Meetings**

A. Public Meetings

All meetings shall be held in full compliance with the provisions of state law, ordinances of the City and these Rules of Procedure.

B. Regular Meetings

1. Regular meetings shall be held on the second and fourth Tuesdays following the first Monday in each month, at 7:00 p.m. in the Council Chambers of the City Hall, unless otherwise determined by the Commission. All regular meetings must be held in the following manner:
 - a. within the city limits of San Rafael.
 - b. using a remote virtual meeting format
2. Whenever a regular meeting falls on a public holiday, no regular meeting shall be held on that day. Such regular meeting may be rescheduled to another business day, or canceled by motion adopted by the Planning Commission. All meetings must be held within the city limits of San Rafael.
3. A meeting of the Commission may be canceled by the Chair for lack of a quorum, no pending business, or any other valid reason. Such cancellation may be made at any time prior to the scheduled meeting. All efforts shall be made by the Community Development Department staff to notify those involved at the earliest possible time. Prior to the scheduled meeting, the Community Development staff shall post a cancellation notice on the City of San Rafael public hearing board, the City website and at the prescribed location of the meeting.

C. Adjourned Meetings

In the event it is the wish of the Planning Commission to adjourn its meeting to a certain hour on another day, a specified date, time, and place must be set by a majority vote of the Commissioners present, prior to the regular motion to adjourn.

D. Special Meetings

Special meetings of the Planning Commission may be held at any time upon the call of the Chair or by a majority of the voting members of the Commission or upon request of the City Council following at least 24 hours notice to each member of the Commission and to the press. The time and place of the special meeting shall be determined by the convening authority. At least 24 hours prior to the scheduled special meeting, the Community Development staff shall post a notice of the meeting on the City of San Rafael public hearing board, the City website and at the prescribed location of the meeting.

E. Annual Meeting

The Annual Meeting of the Planning Commission will be held at the first meeting of the calendar year. The meeting will be devoted to the election of a Chair and Vice-Chair for the ensuing year and any other business scheduled by the Commission.

F. Study Sessions/Workshops/Informational Presentations

1. The Commission may be convened in the same manner as prescribed for the calling of a special meeting for the purpose of holding a study session, or for presentations of informational items, provided that no official action shall be taken.
2. Such meetings shall be open to the public.

G. Notification

Public Hearings and Discussion Items - Notice of the time, place/ items to be considered and action pending shall be given in accordance with the requirements of the City Code and State Law.

H. Agenda

1. An agenda for each meeting of the Commission shall be prepared by the Community Development Director or staff in consultation with the Chair.
2. A staff report shall be prepared for each item and distributed to the Planning Commission and made available to the public a minimum of 72 hours prior to a regular meeting.
3. A copy of the agenda shall be posted in City Hall 72 hours before a regular meeting.

4. Items not appearing on the agenda cannot be acted upon or discussed by the Commission. However, the Commission may take action under the following circumstances:
 - a. If the Commission finds, by majority vote, that an emergency situation must be addressed. An "emergency situation" is limited to work stoppages and crippling disasters;
 - b. If by a two-thirds vote (or a unanimous vote if two-thirds of the members are not present), there is a need to take immediate action and the need for action came to the attention of the Commission and staff after the agenda was posted.

Prior to discussing such items, the Commission shall publicly identify the item and shall provide the public an opportunity to provide comment on the item.
5. Members of the public may address the Commission on any agenda item, and may, at the beginning of the meeting, address the Commission on any issue that is not listed on the agenda, provided that the issue is within the jurisdiction and powers of the Planning Commission.

I. Order of Meetings

1. The Order of business shall be as follows:
 - a. The Chair shall take the chair at the hour appointed for the meeting and shall immediately call the meeting to order.
 - b. The Chair shall lead a pledge of allegiance, for in person meeting; the pledge of allegiance will not occur for virtual meetings
 - c. Members present and absent shall be recorded by roll call.
 - d. The order of the agenda shall be approved as submitted or revised by a majority vote of the Commissioners present.
 - e. The public shall be advised of the procedures to be followed in the meeting including the protocol and time frames for public comment. For virtual meetings, the public will be advised of the different ways to participate.f. Any member of the audience may comment on any matter which is not listed on the agenda.
 - g. The minutes of any preceding meeting shall be submitted for review and approval by a majority vote of the Commissioners present at that preceding meeting.
 - h. The Commission shall then hear and act upon those proposals scheduled for consideration or public hearing.
 - i. Director's Report.
 - j. Commission Communications.
 - k. Adjournment.

2. Presentation or Hearing of Proposals

The following shall be the order of procedure for hearings/discussion items concerning planning and zoning matters:

- a. The Chair shall announce the subject of the public hearing/discussion item, as noticed.
- b. If a request is made for continuance, a motion may be made and voted upon to continue the public hearing to a definite time and date (noticing not required) or a time and date to be determined (re-noticing required).
- c. Order of Speaking.

The order of speaking shall be as follows:

1. The Chair shall call for commissioners to make ex parte disclosures and potential conflict of interest disclosures with respect to the proposed project.
2. Staff provides a report on the project and summarizes its compliance with San Rafael's General Plan, compliance with State laws and the City Code, the status of environmental review, and the staff recommendation for action(s) by the Commission.
3. The public hearing is opened.
4. The applicant makes a presentation to the Commission.
5. The public speaks to the Commission.
6. The Commission may ask questions or obtain facts or clarification from staff, the applicant or the public after each segment of the agenda.
7. The public hearing is closed.
8. The matter is returned to the Commission for discussion and action.

d. Rules of Testimony

The rules of testimony shall be as follows:

1. Upon opening the public hearing, the Chair shall invite the public to speak by inviting each speaker (one-at-a-time) to approach the podium. For virtual meetings, the chair will ask staff to advise the public on the different options for participating. On large or controversial projects where many people wish to provide public testimony, the Chair may request that speaker cards be filled-out and submitted.
2. Persons presenting testimony to the Commission are requested to identify themselves by name and place of residence.

3. Persons presenting testimony to the Commission shall be limited to three (3) minutes for their presentation. An extension of this time limit may be granted at the Chair's discretion.
4. If there are numerous people in the audience who wish to participate on the issue and it is known that all represent the same opinion, a spokesperson should be selected to speak for the entire group. At the Chair's discretion, the spokesperson may be granted additional time beyond the three (3) minute limit for his or her presentation.
5. To avoid unnecessary repetitive evidence, the Chair may limit the number of speakers or the time on a particular issue.
6. Irrelevant, defamatory, or disruptive comments will be ruled out of order.
7. No person shall address the Commission without first securing the permission of the Chair.
8. All comments shall be addressed to the Commission. All questions shall be made or directed through the Chair.

e. Applicant Presentations

Applicant presentations shall comply with the guidelines developed by the Planning Commission. Applicants shall be limited to a maximum of ten (10) minutes for their presentation, inclusive of all members of the applicant's team (if applicable). An extension of this time limit may be granted at the Chair's discretion.

J. Motions

1. A motion to adjourn shall always be in order except during roll call.
2. The Chair of the Commission, or other presiding officer, may make and second motions and debate from the Chair subject only to such limitations of debate as are imposed on all members of the Commission.

K. Voting

1. Voting Requirements

- a. A quorum shall consist of four members.
- b. The affirmative vote of a majority of the quorum present is necessary for the Commission to take action on all matters other than those listed under Section c below.
- c. Certain votes of the Commission require a majority vote of the entire Commission (4 votes) to carry. These are:
 - Adoption or amendment of a General Plan or any part thereof.
 - Adoption or amendment to any Neighborhood or Specific Plan or any part thereof.

- Adoption or amendment to the Zoning Ordinance of the City Code or amendment thereto.
 - Adoption or amendment to a site-specific master plan for a Planned Development (PD) District.
 - Other actions as required under federal or state law. (These will be dealt with as they arise.)
- d. When a member of the Commission abstains from voting on any matter before it because of a potential conflict of interest, because the Commissioner does not believe he/she can be objective, or because the Commissioner was absent at any previous hearing on an item, said vote shall not constitute nor be considered as either a vote in favor of or opposition to the matter being considered. Abstentions shall not be allowed for any other reason.
- e. A tie vote shall be recorded as a failure of action to pass. A tie vote on a motion defeats the motion.

2. Roll Call Vote

Any Commissioner, the applicant or an appellant can request a roll call vote.

For virtual meetings a roll call vote shall be required.

3. Recording of Votes

The minutes of the Commission's proceedings shall show the vote of each member, including whether they were absent, abstained from voting, or failed to vote on a matter considered.

4. Disqualification from Voting

A member shall disqualify himself/herself from voting in accordance with the State Political Reform Act and other applicable state law. When a member is disqualified, he/she shall state, prior to the considerations of such matter by the Commission that the member is disqualifying himself/herself due to a possible conflict of interest and shall then leave the voting area.

III. Review and Amendments Procedure

- A. These Rules of Procedure shall be reviewed at the Annual Meeting of each year. On an ad hoc basis, the chair may appoint a subcommittee to review these rules prior to the meeting. The review subcommittee shall present their recommendations for amending or not amending these rules. Minor changes may be brought forward by staff for the Commission's consideration.
- B. In addition, these Rules of Procedure may be amended at any meeting of the Planning Commission by a majority of the membership of the Commission

provided that notice of the proposed amendment is received by each Commissioner not less than 5 days prior to said meeting.

(Approved May 9, 2000. Revised February 26, 2002, December 14, 2004, May 29, 2007, January 27, 2009, January 9, 2018, February 11, 2020, and January 12, 2021)

Exhibit 3

- DESIGN REVIEW BOARD MEETINGS – Planning Commission Liaison January – June 2022

Months	Commission Liaison
January-4 (cancelled) January 19 (Wednesday)	
February 8 February 23 (Wednesday)	
March 8 March 22	
April 5 April 19	
May 3 May 17	
June 7 June 21	

Notes:

- Chair does not serve as liaison
- All DRB meetings are the 1st and 3rd Tuesday of each month, starting with the first full week (a week includes a Monday).
- All dates above are Tuesday's except as noted. If there is a holiday on Monday, the DRB meeting gets pushed to Wednesday for that week.

Exhibit 4

PLANNING COMMISSION MEETINGS for 2022

January 11
January 25
February 15
March 15
March 29
April 12
April 26
May 10
May 24
June 14
June 28
July 12
July 26
August 9
August 23
September 13
September 27
October 11
October 25
November 15
November 29
December 13

Notes:

- All PC meetings are the 2nd and 4th Tuesday of each month, starting with the first full week (a week includes a Monday).
- All dates above are Tuesdays unless there is a holiday on Monday that week, then the PC meeting gets pushed to Wednesday for that week.