

RESOLUTION NO. 22-01

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

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

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

- 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 Saude and seconded by Commissioner Haveman.

AYES: Harris, Haveman, Mercado, Saude, Previtali & Chair Samudzi

NOES: None

ABSENT: None

ABSTAIN: None

ATTEST:



 Leslie Mendez, Secretary



 Shingai Samudzi, Chair