

MEMORANDUM OF UNDERSTANDING (MOU)

Between COUNTY OF MARIN and SAN RAFAEL AIRPORT, LLC

CRAIG TACKABERY – DPW
AUGUST 15, 2018



Photo Credit: Jeff Wong



The County is negotiating a Memorandum of Understanding (MOU) with the San Rafael Airport to address three issues:

- Resolution of conflicting boundary information
- Long-term maintenance for the levees that surround the Airport
- Planning for potential future restoration of the land east of the runway

The document also outlines an interim plan for maintaining portions of the levees and channel along Gallinas Creek.

A revised MOU has been developed based on the prior feedback and the County will be accepting public comments on this revised draft MOU. Comments and input are due by August 20, 2018 to dpwpubliccomments@marincounty.org

The Board of Supervisors are tentatively scheduled to consider the MOU September 11, 2018.



Process to Date

- Draft MOU released for public comment period from October 16 to December 11, 2017.
- A public meeting was held on November 15, 2017, to discuss the MOU
- Feedback from the public meeting and the written comments were considered during preparation of revisions to the Draft MOU
- San Rafael Airport has reviewed draft MOU and agrees to terms



Recent Activities in Flood Control Zone No. 7

- Advisory Board met July 24, 2018
- Project being discussed Timber-Reinforced Berm (TRB) Improvements which would cover the entire length of levee behind properties along Vendola Drive.
 - Federal Emergency Management Agency (FEMA) Hazard Mitigation Grant Program (HMGP) application submitted, up to 75% of eligible project costs, up to a maximum federal share of \$3,000,000
 - One-time contribution from County of Marin of \$840,000 based on the percentage of County owned property
 - Additional \$800,000 being considered as a special tax over a 5-year period of about \$189/parcel
- Draft MOU provides that San Rafael Airport will waive its rights, if any, to prohibit public or private activities taking place on AIRPORT parcels along the South Fork of Gallinas Creek
- <http://marinwatersheds.org/creeks-watersheds/gallinas-creek>



Recent Activities in County Service Area 6

- Advisory Board met April 4, 2018
- Work plan and budget includes development of preliminary designs for potential disposal sites at McInnis Park and Las Gallinas Valley Sanitary District property.
- At this time, no longer pursuing disposal at the San Rafael Airport for the upcoming dredge.
- Staff are working with County Parks Department on technical engineering studies for the McInnis Marsh Restoration project.
- Sediment sampling of dredge sediments complete.
 - 90% of the dredge sediments will be suitable for disposal at a wetlands beneficial reuse site like McInnis
 - 10% require covering with 4 feet of clean material if used at McInnis.
- We anticipate making a final recommendation on which dredge sediment disposal site to focus final design and permitting efforts on at an Advisory Board meeting to be held late this fall.
- <https://www.marincounty.org/depts/pw/divisions/public-services/county-service-areas>



Recent Activities at McInnis Marsh Restoration

- Topographic survey: completed
- Hydraulic modeling: in process
- Geotechnical testing: in process
- 30% designs: due at the end of September
- CEQA project description: due at the end of September
- <https://www.marincounty.org/depts/pk/our-work/parks-main-projects/mcinnis-marsh-restoration>



Issues raised by public during prior review of MOU

Issue	County comment
Why is County involved in levees near the airport	MOU 3 rd Whereas: County was granted state tidelands which have 4700 feet of levees constructed upon them
California Environmental Quality Act (CEQA) compliance	MOU 7 th Whereas and Clause 5: All projects and land transfers will have CEQA evaluation
Federal Aviation Administration (FAA) requirements related to potential changes to the levees	Aviation evaluation completed and posted to County web page
County Grading permit issued in 2017 to San Rafael Airport for levee work	Copy posted to County web page
Provide access to related maps	Posted and linked on County web page
Reuse of dredge material placed on airport property by County projects	MOU Clause 11: requires compliance with CEQA and securing any required City of County permits
Desire for County, Flood Control, and or private property owners to maintain or improve levee along south side of creek/Santa Venetia	MOU Clause 10: Airport will waive it rights, if any, to prohibit public or private activities
Desire to relocate the levee at the east end of the runway	MOU Clause 7: exchange parcel boundary will be based on a revised levee location built by County west of the existing levee
Existing public rights to creek not diminished by the MOU	MOU Clause 10: County asserts that the entire creek is subject to a public trust easement for purposes of commerce, navigation, and fisheries
Have a limit on County permit fee waivers	MOU Clause 2: requires amendment to MOU if permit fees waived exceed \$50,000
Under the proposed lease, what can the San Rafael Airport do on County lands	MOU Clause 9: repair and maintenance on existing levees

State Lands Commission Exchange Statute

Public Resources Code 6307.

(a) The commission may enter into an exchange, with any person or any private or public entity, of filled or reclaimed tide and submerged lands or beds of navigable waterways, or interests in these lands, that are subject to the public trust for commerce, navigation, and fisheries, for other lands or interests in lands, **if the commission finds that all of the following conditions are met:**

- (1) The exchange is for one or more of the purposes listed in subdivision (c).
- (2) The lands or interests in lands to be acquired in the exchange will provide a significant benefit to the public trust.
- (3) The exchange does not substantially interfere with public rights of navigation and fishing.
- (4) The monetary value of the lands or interests in lands received by the trust in exchange is equal to or greater than that of the lands or interests in lands given by the trust in exchange.**
- (5) The lands or interest in lands given in exchange have been cut off from water access and no longer are in fact tidelands or submerged lands or navigable waterways, by virtue of having been filled or reclaimed, and are relatively useless for public trust purposes.

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State Lands Commission Exchange Statute

CONTINUED

- (6) The exchange is in the best interests of the state.
- (b) Pursuant to an exchange agreement, the commission may free the lands or interest in lands given in exchange from the public trust and shall impose the public trust on the lands or interests in lands received in exchange.
- (c) An exchange made by the commission pursuant to subdivision (a) shall be for one or more of the following purposes, as determined by the commission:
 - (1) To improve navigation or waterways.
 - (2) To aid in reclamation or flood control.
 - (3) To enhance the physical configuration of the shoreline or trust land ownership.
 - (4) To enhance public access to or along the water.
 - (5) To enhance waterfront and nearshore development or redevelopment for public trust purposes.
 - (6) To preserve, enhance, or create wetlands, riparian or littoral habitat, or open space.
 - (7) To resolve boundary or title disputes.
- (d) The commission may release the mineral rights in the lands or interests in lands given in exchange if it obtains the mineral rights in the lands or interests in lands received in exchange.
- (e) The grantee of any lands or interests in lands given in exchange may bring a quiet title action under Chapter 7 (commencing with Section 6461) of Part 1 of Division 6 of this code or Chapter 4 (commencing with Section 760.010) of Title 10 of Part 2 of the Code of Civil Procedure.



State Lands Commission (SLC) exchange process

1. Detailed proposed exchange parcels - preparation of a preliminary map. This is prepared by County.
2. Refundable reimbursable agreement to cover SLC staff costs.
3. Preliminary title reports for the proposed exchange parcels. County obtains these for SLC review.
4. Appraisals of the proposed exchange parcels. County hires appraiser.
5. ALTA survey and legal descriptions of the proposed exchange parcels. County hires surveyor.
6. Environmental review of the proposed land exchange.
7. Execute agreement by all parties to effectuate the proposed land exchange that will terminate the public trust on certain lands and impose the public trust upon other lands.



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MEMORANDUM OF UNDERSTANDING
BETWEEN
COUNTY OF MARIN
AND
SAN RAFAEL AIRPORT, LLC

This Memorandum of Understanding (MOU), made and entered into this _____ day of _____, 2018, by and between the County of Marin, a political subdivision of the State of California (hereinafter referred to as "COUNTY"), and San Rafael Airport LLC (hereinafter referred to as "AIRPORT"), collectively the "PARTIES."

WHEREAS, the State of California, per Chapter 898 of the Statutes of 1975, granted the County of Marin right, title, and interest of the State of California, in and to the salt marsh and tide and submerged lands, filled or unfilled, of Las Gallinas Creek in San Rafael, California, known as "Gallinas Canal"; and



WHEREAS, AIRPORT owns property in San Rafael, California, developed with levees and airport facilities, known as APNs 155-230-10, 155-230-11, 155-230-12, and 155-230-13 in the City of San Rafael, and 155-230-14, 155-230-15, and 155-230-16 in unincorporated Marin County; and

WHEREAS, COUNTY was granted State Tidelands which have about 4700 lineal feet of levee constructed upon them (see Exhibit A: Levee Map); and

WHEREAS, the AIRPORT's deed boundary of APN 155-230-14 extends into the existing bed of Gallinas Canal between 101 – 407 Vendola Drive; and

WHEREAS, the COUNTY and AIRPORT levees are subject to erosion and settlement, and therefore require periodic repair and topping to maintain their height and structural integrity; and

WHEREAS, this MOU is intended to clarify property boundaries and remove clouds on title, but shall not change maintenance obligations of the existing levees on the south side of Gallinas Creek; and

WHEREAS, this MOU sets forth concepts that will be submitted to the County for complete review and analysis under the California Environmental Quality Act ("CEQA"), where applicable, and all other applicable laws, standards, and regulations; and



WHEREAS, it is in the PARTIES mutual best interest to continue to provide for maintenance of levees on COUNTY and AIRPORT properties and to provide for navigational operations and maintenance along Las Gallinas Creek.

THEREFORE, the PARTIES are entering into this mutually beneficial MEMORANDUM OF UNDERSTANDING.

It is mutually agreed and understood that:

1. AIRPORT shall prepare plans and conduct repair and maintenance work on existing levees in the unincorporated area; COUNTY shall review plans and process an excavation permit for work in the unincorporated area, including compliance with CEQA where applicable.
2. AIRPORT will apply to the COUNTY Department of Public Works Land Development Division for the excavation permit for the repair and maintenance work described above in accordance with Marin County Code 23.08; this permit, if approved, will be issued to AIRPORT. The COUNTY, as a property owner, will co-sign the applications. The work can be divided into more than one construction phase under the grading permit.



3. COUNTY will waive all COUNTY fees, up to, but not exceeding, \$50,000, for permits in the unincorporated area, including COUNTY Department of Public Works permit fees established in Marin County Code Chapter 3.48. (Excavation permit application fee, MCC3.48.020 (4), Plan review fee, MCC3.48.020 (14), and Field Inspection fee, MCC 3.48.020(15).) If permit fees in the unincorporated area exceed \$50,000, the PARTIES will amend this MOU to set forth the cost allocation of those permit fees in excess of \$50,000. AIRPORT will pay any required state or federal fees.

4. Except as expressly set forth herein, AIRPORT will pay any and all costs to repair and maintain existing levees on COUNTY property, as well as on AIRPORT property.



5. The PARTIES will cooperate with the State Lands Commission in accordance with state requirements to exchange COUNTY lands within the levees surrounding the airport (including the levees themselves) down to the point of mean lower low water (as defined by National Oceanographic and Atmospheric Administration) on the creek-side of the levees, with any interest the AIRPORT has in the bed and bank of the existing Gallinas Creek channel (South Fork) located below the line of mean lower low water and all those lands to the south and east of the creek centerline, including those above mean lower low water (see Exhibit B: Cross Lease Areas). This MOU sets forth the framework for a potential transfer of land and the potential location of a future levee. The AIRPORT acknowledges and agrees that, under this framework, (1) the County does not have any obligation to transfer land that is not conditioned on future CEQA compliance; and (2) that any potential new projects identified in this MOU will be subject to separate environmental analysis and the County does not in any way commit itself to said potential projects by virtue of this MOU.

6. The State Lands Commission land exchange documents referenced above will also provide an easement for navigational-related operations and maintenance activities to the County for the area above mean lower low water on the creek-side of the levees.



7. The State Land Commission exchange parcel boundary for the most easterly land at the end of the runway will be based on a revised levee location west of the existing levee (subject to state transportation and Federal Aviation Administration requirements) to permit removal of the existing levee and restoration of the area. The County will pursue outside grant funds for this potential project. When the funds have been raised and the project is complete, the land will be leased to AIRPORT under Item 9 below. The levee and land to the west will not be granted to AIRPORT until after the new levee is built. The revised levee location will establish the boundary of the State Lands Commission exchange.

8. COUNTY will pay for in-kind staff costs of COUNTY and State Lands Commission staff, as well as required contract costs associated with the land exchange. COUNTY will not reimburse the AIRPORT for any costs incurred during this process.



9. In the interim until the above land exchange is completed, subsequent to execution of this MOU, COUNTY will issue a short-term lease to AIRPORT for COUNTY lands within the levees surrounding AIRPORT (including the levees themselves), down to the point of mean lower low water on the creek-side of the levees that will provide for repair and maintenance on the existing levees by the AIRPORT. The lease will contain the following clause:

Hold Harmless. This lease is made on the express condition that COUNTY and County Service Area #6 shall be free from all liability or loss by reason of injury to any person or damage to any property connected with or arising out of the project improvements, including any liability for injury to the person or real or personal property of AIRPORT, their Lessees, contractors, successors, assigns, guests or invitees, or any other person or entity. AIRPORT hereby covenant, and agree to, and shall, indemnify and defend COUNTY and save COUNTY harmless from any and all liability, loss, costs, or obligations on account of, or arising out of, any such injury, damage or losses.

The short-term lease will be issued prior to commencement of any levee construction work on COUNTY property and any work contemplated by the lease will be subject to compliance with CEQA where applicable.



10. In the interim until the above land exchange is carried out, AIRPORT will waive its rights, if any, to prohibit public or private activities taking place on AIRPORT parcels along the South Fork of Gallinas Creek below the mean lower low water line and all those lands to the south and east of the creek centerline, including those above mean lower low water. It is anticipated that these activities will include, but not be limited to, dredging of the creek bed, and extension to reach the dredged channel or repair of private boat docks. This waiver will allow COUNTY to provide authorization under Marin County Code Chapter 11.24 – Gallinas Creek Encroachments for creek-side property owners to extend their private docks to access the deep parts of the creek. Authorizations issued by COUNTY will require that the existing docks and future dock extensions be maintained in accordance with Marin County Code Section 11.24.050 - Maintenance and Repair. This waiver will be in the form of an irrevocable grant of permission to the COUNTY and adjacent parcel owners of addresses 101 to 407 Vendola Drive. This waiver shall not impact or dilute the COUNTY's assertion that the entire creek is subject to a public trust easement for purposes of commerce, navigation, and fisheries.



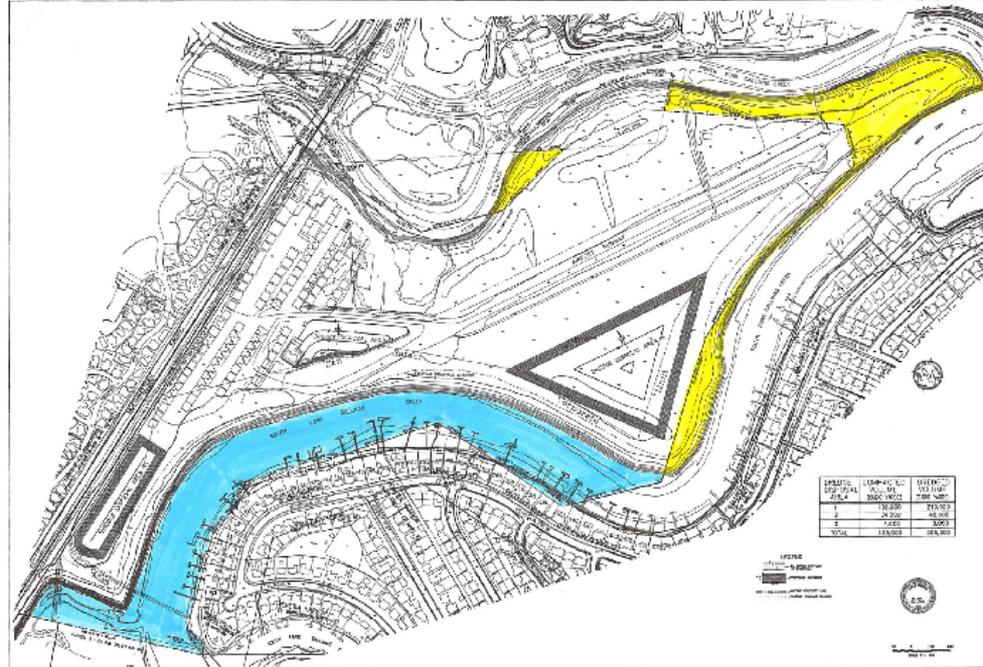
11. AIRPORT is willing to work with the COUNTY on permitting and conducting future navigational projects (separate from the project described in 1. above). The COUNTY is evaluating multiple sites, including the McInnis Marsh, for disposal of dredge sediments. The AIRPORT will accept Gallinas Creek dredge sediments onto AIRPORT property if that is the site selected by COUNTY, in locations to be mutually approved by AIRPORT and COUNTY. If the AIRPORT site is selected by the COUNTY, dredge sediments shall become the property of the AIRPORT and may be used for any legal purpose. Any reuse of spoils by AIRPORT requires compliance with CEQA and any required City of San Rafael or COUNTY permits. COUNTY shall pay all design, permitting, and construction costs related to this work, including typical environmental evaluation review of existing creekbed soil for hazardous materials, and evaluation of existing levees for potential substantial adverse effects.

DURATION AND TERM

The terms of this MOU shall remain in full force and effect for ten years from the date adopted and signed. This MOU may be renewed by the mutual consent of all PARTIES. Any party may terminate this MOU by notifying the other PARTIES in writing a minimum of 30 days in advance.



Exhibit B: Cross Lease Areas



Lands of San Rafael Airport LLC to be leased to County of Marin
Includes all lands in the bed of existing Gallinas Creek channel (south fork) below mean lower low water line, along with all those lands to the south and east of the creek centerline, including those above mean lower low water.



Lands of County of Marin to be leased to San Rafael Airport LLC
Includes all lands within the levees protecting San Rafael Airport property (including the levees themselves), down to the point of mean lower low water on the creek side of the levees.



Thank You



Photo Credit: Jeff Wong

