

**Comment Letter No. 10**

**DAVID HELM**  
**1000 Central Avenue**  
**Tracy, California 95376**

August 21, 2012

CITY OF TRACY PLANNING COMMISSION  
333 Civic Center Plaza  
Tracy, California 95376

**Re: Modified Ellis Development Project**

Dear Commissioners:

I am submitting this letter and the attached documents referenced therein in opposition to the Modified Ellis Development Project (hereinafter referred to as the "Project") currently pending before you.

As you will recall, one of the glaring deficiencies with the original Ellis Project that was subject of the lawsuit brought by Mr. Connolly known as *Tracy Region Alliance for a Quality Community v. City of Tracy, San Joaquin County Superior Court Case No. 39-2009-00201854-CU-WM-STK* was that out of the 321 acres which make up the Ellis Project, Surland only owned 23 acres. To quote Judge Holland in the Statement of Decision he issued in the TRAQC Lawsuit: "Further, Surland's interest in the ESP property is arguably not sufficient or substantial; it is just 23 of 321 acres (about 7%)." Statement of Decision, p. 12:13-14. A copy of that document, with the quoted language highlighted for your quick review, is attached to this letter as Attachment 1.

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The question we must ask ourselves then is this – who owns and/or controls the other 298 acres within the proposed Ellis Project?

In reviewing the public land records, the ownership of the remaining 298 acres within the proposed Ellis Project is as follows: Western Corral Investments, LLC owns approximately 129 acres, Tracy/Lammers Investments, LLC owns approximately 10 acres, and the remaining acreage of approximately 159 acres is owned by Tusso Farms, Inc. Tracy/Lammers has an option to purchase the property owned by Tusso. Attachment 2 is a copy of the recorded Grant Deed documenting the ownership interest Western Corral has in its land; Attachment 3 is a copy of the recorded Grant Deed documenting the ownership interest Tracy/Lammers has in its 10 acres; and finally, Attachment 4 contains a series of recorded documents showing that as a matter of public record, Tracy/Lammers holds an option on the Tusso property.

Based on the public record, it becomes quite obvious that two entities, i.e. Tracy/Lammers and Western Corral, own and/or control approximately 93% of the property within the proposed Ellis project.

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In light of the foregoing, we must now ask ourselves this question – who is Tracy/Lammers and Western Corral?

In reviewing public records obtained from the California Secretary of State's office, both of these entities seem to be controlled and/or owned by the same 3 men, men whose names are Samir F. Kawar, Earl F. Glock and David B. Noursi. Attachment 5 contains copies of various documents obtained from the public record substantiating the foregoing, showing the same business address and same agent for each of these entities – David B. Noursi. It is rather telling that neither Surland nor its principal, Leslie Serpa, Jr., appears as having any ownership and/or control over Western Corral nor Tracy/Lammers based on documents available in the public record, even though we have all been led to believe over the years that the Ellis Project is Surland's, imparting upon it a "local" flavor.

Now, the next question we must ask is the following: who are these gentlemen?

According to the public record, Mr. Kavar is a wealthy Jordanian businessman who appears to reside in Jordan. A copy of his bio, obtained from the Internet, appears in Attachment 6. It appears that Mr. Kavar was involved in a proposed development in southern Contra Costa County in the late 1990's which came to nothing. According to an article published by sfgate.com on May 20, 1998, Mr. Kavar sought to develop agricultural and grazing land in southern Contra Costa County near Dublin in the Tassajara Valley, and in pursuing his development plans for that property, sought to use locals in an attempt to maintain a low or non-existent profile. As the sfgate.com article notes, Mr. Kavar appeared to use a local gentleman by the name of Nolan Sharp to pursue the development of the land by making public appearances to tout the project in question with Kavar remaining invisible, staying in Jordan and using his brother for the day-to-day management of his assets. In this regard, I refer you to that article appearing in sfgate.com as Attachment 7.

According to the public record, Earl F. Glock appears to be an attorney with a Washington, D.C. law firm, O'Connell and Glock, with his areas of practice being listed as corporate law, international law, taxation and real estate. In this regard, I refer you to Attachment 8 which contains a copy of Mr. Glock's profile that I was able to obtain from the Internet. Mr. Glock and his firm also are referenced in the Memorandum of Option to Purchase on the Tuso property that I have highlighted which appears as the first document in Attachment 4.

It is very interesting that at the numerous hearings and public forums held with respect to the Ellis Project over the years, including the current version of the Project being proposed, and in the numerous newspaper articles written about the Ellis Project, that we have heard little (if anything) about Messrs. Kavar, Noursi and/or Glock. Ellis has always been represented as Surland's project.

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My last and final question (or series of questions) to you is this: given that one of the reasons the Ellis Project was ruled invalid by Judge Holland in October of 2011 because, among other things, Surland was found to have only a 7% interest in the land within the Project, why, as part of this new "modified" Project is this Project still being packaged as a Surland project? Given that the public record seems to indicate that the vast majority of the land in question is controlled by Mr. Kavar and his associates, and given that in trying to develop Tassajara Valley by using locals to push his project as the sfgate.com article seems to suggest, shouldn't we be concerned about the same modus operandi being used with respect to the Project before the City of Tracy? Given that Mr. Connolly has already beat the City and Surland once in having the Project invalidated in part because Surland's interest, to use Judge Holland's own words, "was not sufficiently significant or substantial", why would we want to repeat the same mistake all over again and hand Mr. Connolly another opportunity to sue the City once again, and quite possibly, prevail again? Why not have Mr. Kavar and his associates, who seem to control and/or own 93% of the land within the Ellis Project, step forward and openly become part of the development process?

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cont

In closing, I urge the Planning Commission and the City Council to look into this matter seriously and with great care. As Albert Einstein once said, insanity is doing the same thing over and over again expecting different results. In this case, repeating the same mistake again could result in another lawsuit, hundreds of thousands of dollars spent on attorney's fees, with Mr. Connolly probably prevailing once again.

Sincerely,



DAVID HELM

Attachments

**ATTACHMENT 1**

1 Mark V. Connolly SBN 105091  
 2 CONNOLLY LAW BUILDING  
 3 121 E. 11th Street  
 4 Tracy, CA 95376  
 Telephone: (209) 836-0725  
 Facsimile: (209) 832-3796

Filed **OCT 31 2011**  
 ROSA MONTEIRO CLERK  
 By *[Signature]*  
 DEPUTY

5 Attorney for TRAQC

6  
 7  
 8 **Superior Court of California, County of San Joaquin**  
 9 **Unlimited Jurisdiction**

10  
 11 TRACY REGION ALLIANCE FOR A  
 12 QUALITY COMMUNITY (TRAQC)

Case No. 39-2009-00201854-CU-WM-STK

13 Petitioner,

**[PROPOSED] STATEMENT OF  
 DECISION**

14 vs.

15 CITY OF TRACY, BY AND THROUGH THE  
 16 CITY COUNCIL; and DOES 1-20 inclusive,

**HEARING:**

**Dates:** October 15 & November 19, 2010

**Dept:** 13

**Time:** 10:00 a.m.

**Judge:** Honorable Lesley Holland

17 Respondents.

**LESLEY HOLLAND**

18  
 19 SURLAND COMMUNITIES, a California  
 20 Limited Liability Company; THE SURLAND  
 21 COMPANIES LLC, a California Limited Liability  
 22 Company; SURLAND DEVELOPMENT  
 COMPANY; and DOES 21-40 inclusive,

23 Real Parties in Interest.

24  
 25 The above-referenced petition came on regularly for hearing on October 15, 2010, and

26 November 19, 2011, before the Honorable Lesley D. Holland, Judge of the Superior Court.

27 Petitioner Tracy Region Alliance for a Quality Community ("TRAQC") was represented by its  
 28 attorney of record, Mark V. Connolly of the Law Offices of Mark V. Connolly; Respondent City

[PROPOSED] STATEMENT OF DECISION - Case No. 39-2009-00201854-CU-WM-STK

MAR 14 2011 P

1 of Tracy ("City") was represented by City Attorney Debra E. Corbett, and by Rick W. Jarvis of  
 2 Jarvis, Fay, Doport & Gibson, LLP; Real Parties in Interest Surland Communities, Surland  
 3 Development Company, and The Surland Companies (collectively "Surland") were represented  
 4 by their attorneys of record, George Speir and Arthur Coon of Miller Starr Regalia.  
 5

6 Briefly, TRAQC seeks issuance of a writ of mandate to enjoin by Respondent City of  
 7 Tracy ("City") from proceeding under a Development Agreement, and from proceeding with a  
 8 project known as the Ellis Specific Plan ("ESP", "Plan", or "Ellis Plan").  
 9

10 The matter was argued by counsel and stood submitted as of November 19, 2010. The  
 11 court has read and considered the written briefs submitted in support and opposition to the Petition  
 12 and has heard and considered the arguments of counsel.

13 **Issues Raised by the Petition**

14 First, Petitioner contends that a Development Agreement made by City and Surland  
 15 violates Government Code sections 65865(a) and 65865.2 and is, therefore, invalid.  
 16

17 Second, Petitioner contends is that the subject Project violates CEQA on the following  
 18 grounds:

- 19 1. The Project's description is inaccurate, inconsistent and unstable;
- 20 2. On-site Project alternatives were not properly considered;
- 21 3. Off-site Project alternatives were not considered at all;
- 22 4. The change in the Project as re-negotiated required a new analysis and re-circulation of  
 an appropriate EIR; and
- 23 5. The analysis and responses provided to the EIR comments were inadequate.

1 **Overview**

2 **A. The Project**

3 Briefly, the project involved in this litigation "consists of two distinct components: (1)  
4 development of Ellis Specific Plan area; and (2) a Development Agreement between the City and  
5 Surland in which, *inter alia*, the City agree[d] to allocate to Surland up to 2,250 Residential Growth  
6 Allotments ("RGAs") at a rate of no more than 225 RGAs per year." City's Opposition, page 4:19-  
7  
8 22.

9  
10 To obtain approval of residential construction in Tracy, a developer must meet certain  
11 requirements, make certain applications, and obtain certain approvals or permits, as follows:

- 12 1. Developer is required to obtain City water treatment and wastewater conveyance and  
13 treatment capacities. One ECU (equivalent consumer unit) is required for a single-family  
14 residence. This is done by application to the Capacity Allocation Review Board (CARB).  
15 CARB will only award ECUs when the necessary supplies/capacities are available.  
16 2. Next, the developer submits an application for a Residential Growth Allotment (RGA). The  
17 City's Growth Management Review Board considers the application and awards the  
18 allotments after specific findings are made that needed public facilities and services,  
19 including water and wastewater supplies/capacities, are available for the new housing.  
20 3. Lastly, a building permit is required before construction may begin. The City does not issue  
21 a residential building permit unless the necessary ECUs and RGAs are in place. In past  
22 litigation between TRAQC and City, the parties have agreed that the issuance of a permit is  
23 merely a ministerial act.

24 Thus, approval of a developer's application for Residential Growth Allotments (RGAs) is a  
25 crucial required step under Tracy's Growth Management Ordinance. Without an allotment of RGAs,  
26 a developer cannot obtain necessary building permits. Tracy's Growth Management Ordinance caps  
27 annual RGAs at 750, with a maximum annual average of 600, subject to certain exceptions. The  
28 Growth Management Ordinance also limits the number of RGAs that Tracy may allocate annually  
by development agreements to not more than 225.

1     **B. The Ellis Specific Plan**

2             The Ellis Specific Plan is a "specific plan" within the meaning of Government Code section  
 3 65450, et seq<sup>1</sup>. This Plan provides for the development of a residential village on approximately  
 4 321 acres to be annexed the City of Tracy. The Plan includes a maximum of 2,250 residences (with  
 5 a minimum of 1,200), plus 180,000 square feet of retail, office, and other commercial space, and  
 6 approximately 40 acres of neighborhood and community parks. The Plan is to be developed in three  
 7 phases over more than 10 years. The Ellis Plan is intended to serve as "a comprehensive planning  
 8 document that establishes the vision, goals, and objectives to serve as a blueprint to the future  
 9 growth and development within the project site." See AR 7:1640-1642.  
 10

11             The City's prior General Plan had designated the ESP area for development since 1993. AR  
 12 7:1637. The current General Plan (2006) also identifies the ESP area, and likewise designates it for  
 13 development over a 20 year horizon. AR 4:882; 7:1637-1638; 17:4367, 4387-4388; 39:10390,  
 14 10393.  
 15

16             Surland has been working with the City on development plans for the ESP area since 2003.  
 17 AR37:10022-10030.  
 18

19             Meanwhile, City has been planning for the development of a community/city swim center  
 20 for nearly a decade. AR 1:176.  
 21

22             In October and November of 2005, Surland approached City with proposal to develop such a  
 23 swim center as part of the Ellis Plan. AR 1:176; 36:9690-9691. By April 2006, Surland submitted  
 24 an application for approval of the development of the Ellis Plan which included Surland's offer to  
 25 dedicate 20 acres in the ESP area plus payment of \$20 million toward the design and development  
 26

27  
 28 <sup>1</sup> Govt. Code §65450 reads: "After the legislative body has adopted a general plan, the planning agency may, or if so directed by the legislative body, shall, prepare specific plans for the systematic implementation of the general plan for all or part of the area covered by the general plan.

1 of the swim center, in return for an allocation of RGA's. AR 30:8084-8088. In response, the City  
2 Council directed staff to negotiate a development agreement with Surland for the potential  
3 development of the swim center. AR 30:8065-8067,8094,8121.

4  
5 **C. The Development Agreement**

6 The Development Agreement ("DA") at issue in this litigation came into existence as part of  
7 the development of the ESP. Importantly, however, the specific DA in this case addresses and  
8 directly impacts development both within, and outside, the boundaries of the ESP area. Some of the  
9 major components of this DA include:

10  
11 Swim Center – the DA obligates Surland to pay \$10 million toward future development of a  
12 swim center and to make an offer of dedication to Tracy of 16 acres within the ESP area as a site for  
13 the swim center. The City would then have 2 years from the date the ESP area was annexed to  
14 decide whether to accept the offer of dedication. If not accepted, Surland would retain the a 16 acre  
15 parcel and could develop it for other uses consistent with the ESP. AR 1:177.

16  
17 Vested Development Rights – the DA gives Surland a vested right to develop the ESP area  
18 consistent with the ESP, the City's General Plan, and all other zoning laws which are in effect on  
19 December 1, 2008, without being subject to any newly adopted local laws unless later agreed to by  
20 all parties. AR 1:180-184.

21  
22 Allocation of Residential Growth Allotments – The DA provides that the City shall allocate  
23 to Surland up to 2,250 RGA's over a period of more than 11 years, with annual limits ranging from  
24 125 to 225 RGA's per year. AR 1:186-189. The DA mandates that the first 500 RGAs must be used  
25 in the ESP area. AR 1:189. All remaining RGAs may be used in the ESP area, assuming it builds  
26 out to the maximum permitted density of 2,250 homes. Alternately, the DA allows Surland to apply  
27 for RGAs to be used on other property owned by Surland if, and only if, Surland hereafter first  
28

1 meets numerous preconditions, including obtaining from of the City a specific plan or similar  
 2 legislative approval for development of such property. AR 1:186. In this regard, the DA reads, in  
 3 pertinent part:  
 4

5 "Again, if and only if certain specified prerequisites set forth in  
 6 this Agreement are first satisfied, then may Owner record this  
 7 Agreement against properties and become 'eligible' to apply for the  
 8 RGAs provided for in this Agreement. As to all property, as detailed  
 9 in this Agreement, Owner must have a legal or equitable interest in  
 10 such property before this Agreement can be recorded against such  
 11 property. Further, under this Agreement, only after an application for  
 12 development of such property by Owner is first properly and publicly  
 13 processed and reviewed in compliance with all controlling planning  
 14 and environmental (CEQA) laws, the CEQA compliance work is  
 15 certified and adopted by City, and then the development proposal and  
 16 its needed permits and entitlements are adopted and approved by City  
 17 (which City adoption and approval shall remain within the full and  
 18 exclusive discretion of City and which adoption and approval is not  
 19 mandated by the Agreement), will Owner be eligible to make  
 20 application for RGAs under this Agreement." AR 1:174-175.

21 The DA does expressly recognize that Surland might ultimately not be able to obtain the  
 22 maximum 2,250 RGAs potentially allocated if it does not obtain the required approvals. AR 1:187.

#### 23 CEQA Review by the City of Tracy

24 The City prepared the Initial Study for the ESP in August 2006. In April 2008, the City  
 25 published the Draft Environmental Impact Report (DEIR). The "Project" identified in the DEIR  
 26 consisted of: (1) a "Development Agreement Program (DAP)"<sup>2</sup> allocating up to 3,850 RGAs to  
 27 Surland, including "up to 2,250" units proposed by the ESP, and (2) development of the ESP itself.  
 28 See AR 1:187.

<sup>2</sup> Under Guideline, section 15168, program EIRs are used for a series of related actions that can be characterized as one large project. See *Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 C.A. 4th 511, 531.

1 Under the proposed DAP, Surland would have been entitled to allocations of up to 3,850  
2 RGAs in the future for use both within the ESP area (up to the 2,250 maximum units), as well as in  
3 other future projects developed by Surland if (and only if) the City later approved such projects.  
4 The DEIR analyzed the environmental impacts of the DAP at a program level and also at a more  
5 extensive and detailed project specific level. The City circulated the DEIR for public review in  
6 April and May 2008. The Planning Commission held three public hearings to receive comments.  
7 The Final EIR was published in December 2008.  
8

9 The Final EIR reproduced and responded to the nineteen comment letters received during  
10 the comment period, as well as the oral comments made at the hearings.  
11

12 Prior to the City's final public hearings on the Project, City Staff and Surland negotiated  
13 certain changes to the proposed Development Agreement, apparently to give the City more  
14 flexibility in deciding whether to locate the swim center within the ESP area or elsewhere.  
15

16 On December 3, 2008, the Planning Commission voted to recommend that the City Council  
17 certify the EIR and approve the Ellis Plan, but voted to recommend against approval of the  
18 Development Agreement. The Planning Commission expressed concerns about the City making a  
19 commitment to provide RGAs to Surland in excess of what could be used within the ESP area, as  
20 well as about the length of the proposed 30 – year term of the DA. AR 19:4941.  
21

22 In response to the Planning Commission's concerns, City negotiated with Surland a  
23 reduction in the number of RGAs (from 3,850 to 2,250); the new limit of 2,250 matched the number  
24 of RGAs that would be needed for maximum development of the ESP area. In return, Surland's  
25 commitment of money and acreage toward the swim center was reduced (from \$20 million/21 acres,  
26 to \$10 million/16 acres). Finally, the term of the Development Agreement was shortened from 30  
27 years to 25 years. AR 20:4935-4939.  
28

1 On December 16, 2008, the City Council considered the Project, including the DA as re-  
2 negotiated. The City Council voted to approve the Project and also took the following actions:

- 3 1. Certified the Final EIR and adopted the CEQA findings (including a statement of
- 4 overriding considerations and a mitigation monitoring program);
- 5 2. Approved a General Plan amendment;
- 6 3. Approved a petition to annex the ESP area;
- 7 4. Approved the ESP and related pre-zoning; and
- 8 5. Approved the DA.

#### 9 Standard of Review

10 The pertinent standard of review is whether there was a prejudicial abuse of discretion by  
11 City in approving the Development Agreement and/or certifying the EIR, and in issuing the related  
12 approvals to proceed with the Project. "Abuse of discretion is established if the agency has not  
13 proceeded in a manner required by law or if the determination or decision is not supported by  
14 substantial evidence." See *National Parks & Conservation Assn. v. County of Riverside* (1996) 42  
15 Cal.App.4th 1505, 1514.

#### 16 TRAQC'S First Challenge - Validity of the Development Agreement

17 TRAQC contends that the approved Development Agreement violates Government Code §  
18 65865 (a) cause Surland does not have legal or equitable title in the real property to be developed,  
19 and because the Development Agreement is not associated with any project, parcel, or real property.

20 TRAQC further argues that the Development Agreement violates Government Code  
21 § 65865.2 because it does not provide adequate detail concerning the project.

#### 22 A. Discussion — Development Agreements Generally

23 The decision in *Santa Margarita Area Residents Together (SMART) v. San Luis Obispo*  
24 *County Board Supervisors* (2000) 84 Cal.App.4th 221 includes a good overview and discussion of  
25 development agreements generally, and of the relevant Government Code provisions at issue in this  
26 writ proceeding. The *SMART* court explained:

27 "The development agreement statute permits a city or county to 'enter into a  
28 development agreement' with any property owner 'for the development of the  
property.' Section 65865(a). In essence, the statute allows a city or county to freeze  
zoning and other land use regulation applicable to specified property to guarantee  
that a developer will not be affected by changes in the standards for government

1 approval during the period of development. [Citations omitted.] In the words of the  
 2 statute, '[u]nless otherwise provided by the development agreement, rules,  
 3 regulations, and official policies governing permitted uses of the land, governing  
 4 density, and governing design, improvement, and construction standards and  
 5 specifications, applicable to development of the property subject to a development  
 6 agreement, shall be those rules, regulations, and official policies in force at the time  
 7 of execution of the agreement.'

8 ...A development agreement is a legislative act (section 65867.5). ... *A reviewing  
 9 court will not set aside a legislative act unless it is arbitrary, capricious, or  
 10 unlawful. On the other hand, courts, independently decide purely legal issues  
 11 such a statutory interpretation....*

12 ...[D]evelopment agreements are permitted before the issuance of building  
 13 permits, just not too much before....

14 ... *The statute is limited to actual projects*, but does not require deferral of  
 15 development agreements until construction is ready to begin or require any particular  
 16 stage of project approval as a prerequisite. In fact, by permitting conditional  
 17 development agreements property is subject to future annexation, section 65865,  
 18 subdivision (b) expressly permits local government to freeze zoning and other land  
 19 use regulation before a project is finalized.

20 This specific provision supports the general conclusion that the development  
 21 agreement statute permits local government to make commitments to developers at  
 22 the time the developer makes a substantial investment in a project."

23 --*Ibid.*, at 226-230 (emphasis added).

#### 24 **B. Adequacy of Surland's Interest in Subject Real Property**

25 Government Code section 65865(a) reads: "(a) [a]ny city, county, or city and county, may  
 26 enter into a development agreement with any person having *a legal or equitable interest in real  
 27 property for the development of the property* as provided in this article". (Emphasis added).

28 TRAQC maintains that this statutory language requires that the person with whom the city  
 enters into such an agreement have a legal or equitable interest in the real property *to be developed*.  
 According to TRAQC, the Development Agreement at issue here has no conditions precedent to its  
 effectiveness and, in particular, argues that the promises/obligations set forth in the Development  
 Agreement will be against Surland's *future* not-yet-identified development projects. Opening Brief,

1 page 3:1-13. It is lawful and appropriate that Surland be able to record the DA in connection with  
2 the 23 acres within the Ellis Plan area which it presently owns. However, the DA by its terms is not  
3 limited to these 23 acres. Rather, this Development Agreement could also be recorded against any  
4 of 28,260 acres within the City's Sphere of Influence, or against any of the 298 acres within the  
5 ESP, in which Surland has no interest whatsoever.

7       TRAQC cites to *National Parks and Conservation Assn. v. County of Riverside et al* (1996) 42  
8 CA.4th 1505 in support of its argument. In *National Parks*, the appellate court upheld the  
9 development agreement even though the developer did not own all of the property necessary for the  
10 project because: (1) the DA was written so that it was not effective until the developer acquired an  
11 interest in specifically identified adjacent property that would be used for the project, and (2) the  
12 developer already had a significant legal interest in the bulk of the adjacent property which would  
13 be developed.

15       In opposition, Surland and City point out that Surland owns 23 acres within the ESP area<sup>3</sup>.  
16 Surland and City then argue that Government Code § 65865 can be read to mean that "less than full  
17 ownership of the property can be sufficient to support a development agreement." Surland  
18 Opposition, page 21:18-22. Surland and City maintain that under the *National Parks* case, Surland  
19 has a substantial interest in the real property which composes the ESP. Further, Surland and City  
20 quote the language of the DA — "as to all property ... Owner must have a legal or equitable interest  
21 in such property before this Agreement can be recorded against the property." According to Surland  
22 and City, this is a condition precedent to the effectiveness of the DA and, so, following this  
23 reasoning, the statutory requirements are satisfied.

24  
25  
26  
27  
28 <sup>3</sup> The Ellis Specific Plan involves a total of 321 acres, of which Surland presently owns 23 acres.

1           Surland's and City's argument is not persuasive. First, Surland and City ignore the phrase  
2 "for the development of the property" included in Section 65865(a). The phrase cannot be  
3 disregarded. Cities may make development agreements, but only with "person[s] having a legal or  
4 equitable interest in real *property for the development of the property*". Government Code §  
5 65865(a). Second, *National Parks, supra*, supports TRAQC's contention. In *National Parks*, a  
6 conservation group challenged a development agreement entered to by County and developer  
7 because the developer had an insufficient legal or equitable interest in the real property where the  
8 landfill project was to be sited. Developer did not own all of the land needed for the project. Some  
9 of the land needed for the project was federally owned and managed by the US Bureau of Land  
10 Management (BLM). At the time of the challenge, however, there was a pending land exchange  
11 between the developer and BLM. To account for that pending exchange and in order to meet the  
12 statutory requirements of the development agreement statute, the DA provided that the agreement  
13 would not be effective until the developer acquired the fee interest in the real property currently  
14 owned by the federal government.  
15  
16  
17

18           In interpreting the development agreement in *National Parks* and deciding whether or not it  
19 satisfied requirements of Government Code § 65865(a), the trial court made findings that the  
20 developer already had significant legal interest in the bulk of the adjacent land to be developed and  
21 it was reasonably foreseeable the developer would also acquire an interest in the BLM land. The  
22 court thus ruled, "In order to effect the legislative intent, the court concludes under the particular  
23 circumstances of this case, the law should be liberally construed to allow this agreement to stand.  
24 To hold otherwise would unduly restrict public agencies from working with private entities to  
25 develop housing and other facilities needed to support growing populations." *Ibid @ 1521*.  
26  
27

28           In affirming the trial court, the appellate court explained:

1 "In general, substantial compliance is the governing test for determining whether  
2 statutory requirements have been met. Strict compliance is required only when the  
3 intent of the statute can only be served by such a test. Substantial compliance ...  
4 means actual compliance in respect to the substance essential to every reasonable  
5 objective of the statute. The reasonable objectives of the development agreement  
6 article are to promote an orderly planning process and encourage private  
7 participation in such planning, particularly for large projects subject to many types of  
8 regulation.

[Developer] has a sufficiently defined and adequate interest in the property to permit  
it to enter into the development agreement with the County upon the specified  
terms." *Ibid* @ 1522.

9 In contrast, the DA in this case is not tethered to any specifically identified property or  
10 project. Instead, as TRAQC says, the DA "allows the developer to apply the DA anywhere within  
11 the Sphere of Influence with no possibility that [Surland] would acquire an interest in all of it."  
12 Further, Surland's interest in the ESP property is arguably not sufficiently significant or substantial;  
13 it is just 23 of 321 acres (about 7%). Most significantly, to the extent of development outside of  
14 the ESP area and within Tracy's Sphere of Influence, Surland has not shown that it has any interest  
15 — legal or equitable—to support the DA. See also, *SMART, supra*, where the court wrote "the  
16 statute [Govt. Code § 65865(a)] is limited to actual projects." *Ibid* @230.

17 Also notable is the language of the DA itself. In pertinent part, it reads: "Again, if, and only  
18 if, certain specified prerequisites set forth in this Agreement are first satisfied, then may Owner  
19 record this Agreement against properties and become 'eligible' to apply for the RGAs provided for  
20 in this Agreement. As to all property, as detailed in this Agreement, Owner<sup>4</sup> must have a legal or  
21 equitable interest in such property before this Agreement can be recorded against such property."  
22 See AR 1:174, para. H of Development Agreement." Elsewhere, the DA specifies that its  
23 "effective" date is "thirty (30) days after the adoption of the Approving Ordinance ("Agreement  
24  
25  
26  
27

28 <sup>4</sup>The court notes that the DA describes Surland as "Owner" suggesting again that the parties to a development  
agreement must own the real property which is to be developed thereunder.

1 Effective Date"), and shall continue twenty-five (25) years plus one day Term") ...." See AR 1. 184,  
2 para. 1.06(a). Thus, the Agreement is *effective*. Plainly, the DA contemplates allocation of RGAs  
3 for future, not-yet-identified, residential developments. In so doing, the DA runs afoul of the  
4 Government Code.

6 This case is quite different from *National Parks, supra*. Whereas *National Parks* concerned  
7 an identified parcel and a developer's substantial investment in an identified project, the DA in this  
8 case is not similarly tied or tethered to particular projects or parcel(s). Tracy's sphere of influence is  
9 some 28,230 acres. Aside from 23 acres within the Ellis Plan area, Surland does not identify a  
10 project or parcel and, hence, cannot show substantial investment. Without the context of an actual  
11 project, "actual compliance in respect to the substance essential to every reasonable objective of the  
12 statute" cannot be determined. Similarly, whether the DA in this case "promote[s] an orderly  
13 planning process and encourage[s] private participation in such planning" is not knowable without  
14 some tie or tether to an actual project.

17 This Court cannot find substantial compliance with Government Code § 65865(a) - as the  
18 court did in *National Parks* - under the circumstances presented here. Rather, the Court finds that  
19 the Development Agreement in this case is a reservation of future development rights for Surland  
20 within Tracy's Sphere of Influence, contrary to the plain language and objectives of the Section  
21 65865(a).

23 **C. Adequacy of Project Detail Provided in the Development Agreement**

24 Government Code § 65865.2 specifies: "A development agreement shall specify the duration  
25 of the agreement, the permitted uses of the property, the density or intensity of use, the maximum  
26 height and size of the proposed buildings, and provisions for reservation or dedication of land for  
27 public purposes."  
28

1           TRAQC argues that given the broad nature of the Development Agreement, the required  
2 information is not provided in the DA and cannot be provided by reference to other plans,  
3 ordinances, or regulations. For example, reference to the General Plan is insufficient because there  
4 are too many variables, too many unknowns given the range of real property that could potentially  
5 be subject to the Development Agreement. Simply put, there is not enough specificity to satisfy the  
6 statute.  
7

8           TRAQC relies upon the *SMART* case, cited above, in support of its argument by comparison.  
9 In *SMART* there was a definite project, a definite commitment by the developer regarding specified  
10 property. In that context, the *SMART* court - like the *National Parks* court- invoked the liberal  
11 construction of the development agreement statute and found compliance with Section 65865.2  
12 because the specifics for the maximum height and size of proposed buildings within the project  
13 were limited by San Luis Obispo County Land Use Ordinances and the Salinas River Area Plan.  
14

15 *Ibid* @ 231. TRAQC urges that this case is nothing like the *SMART* case.  
16

17           In opposition, the City and Surland try to argue that TRAQC has made a concession that the  
18 DA complies with section 65865.2 as to the ESP property. See Opposition, page 25:16-17. TRAQC,  
19 in fact, wrote "If this DA applied ONLY to the ESP then the density of housing, permitted uses,  
20 intensity of use, maximum height and size of buildings would be known as they are specified in the  
21 ESP." Opening Brief, page 5: 5-7. From there, City and Surland urge that the DA does not become  
22 invalid because of its references to property outside the ESP because the DA cannot be recorded  
23 against and/or bind such property until Surland acquires it. According to the Opposition, "the DA  
24 by its own terms is currently inoperative as to and does not apply to such 'other property.'" Surland  
25 Opposition, page 25:19-20.  
26  
27  
28

1 City and Surland cite to *SMART* in support and further contend: "[T]his Court should  
 2 likewise defer to the City's sound judgment that the modest and heavily-conditioned *priority status*<sup>5</sup>  
 3 conferred on Surland merely to be eligible for a limited number of RGAs pursuant to the DA's terms  
 4 was a required and appropriate incentive for the substantial benefits City was to receive in return.  
 5 These benefits included Surland's engaging and funding the comprehensive planning and  
 6 environmental review for the 321-acre Ellis Specific Plan property, as well as the agreement to  
 7 dedicate 16 acres of land and \$10 million for the City to construct a much-needed and long-awaited  
 8 first-class swim center for its citizens and youth, should the City choose to do so." Surland  
 9  
 10  
 11 Opposition, page 27:15-22.

12 *SMART* is distinguishable from this case. It is the potential applicability of the DA to 28,260  
 13 acres within the Tracy's sphere of influence, for which there is no specified project, which makes it  
 14 distinguishable. Under such broad terms, there can be no reference to existing regulations or zoning  
 15 ordinances which can satisfy the requirements of Government Code § 65865.2.

#### 17 **Defenses and Objections Raised by City and Surland**

18 City and Surland raised certain procedural challenges to TRAQC's petition. Specifically,  
 19 City and Surland contend that Petitioner (1) failed to exhaust its administrative remedies, (2) failed  
 20 to join necessary and indispensable parties, and (3) failed to present an actual controversy ripe for  
 21 adjudication.

#### 22 **A. Exhaustion of Administrative Remedies**

23 Government Code § 65009(b) reads:

24  
 25 "(b)(1) In an action or proceeding to attack, review, set aside, void, or annul a  
 26 finding, determination, or decision of a public agency made pursuant to this title at a  
 27 properly noticed public hearing, the issues raised shall be limited to those raised in

28 <sup>5</sup> The use of the phrase "priority status" confirms the court's impression that the DA is a reservation of future development rights for Surland in exchange for what is really a promise to build/contribute toward a swim center somewhere in City.

1 the public hearing or in written correspondence delivered to the public agency prior  
2 to, or at, the public hearing, except where the court finds either of the following:

3 (A) The issue could not have been raised at the public hearing by persons  
4 exercising reasonable diligence.

5 (B) The body conducting the public hearing prevented the issue from being  
6 raised at the public hearing.

7 (2) If a public agency desires the provisions of this subdivision to apply to a matter,  
8 it shall include in any public notice issued pursuant to this title a notice substantially  
9 stating all of the following: "If you challenge the (nature of the proposed action) in  
10 court, you may be limited to raising only those issues you or someone else raised at  
11 the public hearing described in this notice, or in written correspondence delivered to  
12 the (public entity conducting the hearing) at, or prior to, the public hearing."

13 City and Surland contend that TRAQC failed to raise the issue —that the DA lacked  
14 adequate specificity — in hearings before the City Council. City and Surland point out that "(t)he  
15 purpose of the rule of exhaustion of administrative remedies is to provide an administrative agency  
16 with the opportunity to decide matters in its area of expertise prior to judicial review.' Exhaustion  
17 of administrative remedies is said to be a jurisdictional prerequisite to judicial action challenging a  
18 planning decision." Surland Opposition, page 8:18- a, quoting *Friends of Lagoon Valley v. City of*  
19 *Vacaville (2007) 154 Cal.App.4th 807, 831-832.* City and Surland argue that TRAQC did not raise  
20 the issue of the DA's alleged failure to comply with Government Code § 65865.2 specifically or  
21 even generally object to the DA's lack of specificity, either in writing or at any noticed hearing.

22 TRAQC relies to excerpts in the Administrative Record — most notably AR 35:9465 and  
23 AR 30:8126 in support of its contention that TRAQC representatives and other speakers raised the  
24 issue, and dismisses the notion that it needed to re-raise the issue after the DA was modified and  
25 key terms changed.

26 The Administrative Record confirms that on April 17, 2006, Keenan Land Company raised  
27 the issue of uncertainties in the DA and, more specifically, it cited to Government Code § 65865.2.  
28

1 See, AR 30:8126. Further, on July 28, 2008, TRAQC submitted a letter in which the perceived  
2 deficiencies of the DA were used including its lack of specificity as a statutory requirement. See,  
3 AR 35:9465.  
4

5 Accordingly, the Court finds that the issue of lack of specificity was adequately raised both  
6 by TRAQC and other interested parties in proceedings prior to this petition. The Court further finds  
7 that changes in the terms of the DA were of no moment; the DA was insufficiently specific before  
8 the modification the changes did not appreciably worsen the problem, and therefore TRAQC's  
9 original concerns were sufficient to reserve the issue.  
10

11 **B. Joinder of Necessary or Indispensable Parties**

12 As noted above, Surland owns just 23 acres within the Ellis Plan area. The remaining 298  
13 acres are owned by other persons who were not named as parties-defendants in the petition. City  
14 and Surland argue that these not-named owners are "recipients of the project approvals because  
15 such entitlements 'run with land.'" Surland Opposition 16:5-7. *Citing County of Imperial v. Superior*  
16 *Court* (2007) 152 Cal.Appg 13, 31, Surland submits that "Unnamed recipients of approvals  
17 automatically satisfy the "necessary" party test of Code of Civil Procedure §389(a)" and must be  
18 joined in this lawsuit. Surland Opposition 15:26-27.  
19

20 TRAQC maintains that the only parties to the Development Agreement are City and  
21 Surland. The unnamed owners of the other 298 acres within the ESP are not parties to the  
22 Development Agreement. TRAQC further contends that Surland's reliance on *County of Imperial v.*  
23 *Superior Court, supra* is misplaced because unlike the situation in *County of Imperial* where two  
24 water districts which were named as recipients of water were not named, "[e]very party entitled to  
25 receive any benefit from DA is named... The DA is not a land use applied tied to any particular  
26 parcel... [;] by its very language [it] is personal to [Surland]." Reply, page 11:6-10, 22-23.  
27  
28

1           TRAQC is correct. The issue presented here is validity of the Development Agreement. It  
 2 is undisputed that the only parties to the Development Agreement are City and Surland. AR 1:170-  
 3 211. True, the approvals conferred pursuant to the Development Agreement run with the land;  
 4 however, they run with the owned by *Surland*, and do not run with other property. AR 1:180, 198.  
 5 The other non-Surland owners of real property within the boundaries of the ESP are not  
 6 indispensable. See, Code of Civil Procedure §389.  
 7

8           **C. Actual Controversy/ Ripeness for Adjudication**

9           “The principle that courts will not entertain an action which is not founded on an actually  
 10 controversy is tenet of common law jurisprudence, the precise content of which is difficult to define  
 11 and hard to apply... A controversy is 'ripe' when it has reached, but has not passed, the point that  
 12 the facts have sufficiently congealed to permit an intelligent and useful decision to be made.”  
 13 (*California Water & Telephone Co. v County of Los Angeles* (1967) 253 Cal.App.2d 16, 22.) ... [I]ts  
 14 basic rationale is to prevent the courts, through avoidance of premature adjudication, from  
 15 entangling themselves in abstract disagreements over administrative policies, and also to protect the  
 16 agencies from judicial interference until an administrative decision has been formalized and its  
 17 effects felt in a concrete way by the challenging parties." *Pacific Legal Foundation v. California*  
 18 *Coastal Com.* (1982) 33 Ca1.3d 158, 170.  
 19

20           City and Surland argue that because the Development Agreement allows Surland to be  
 21 eligible for up 2,250 RGAs — that is, the maximum capacity of the ESP site — and because  
 22 TRAQC concedes that there is sufficient project detail in the Development Agreement as it relates  
 23 to the ESP property, that a possibility exists that the controversy at issue may never arise. Stated  
 24 differently, since it is mathematically possible that all RGAs afforded by the DA could be used  
 25 within the ESP area alone, thereby leaving no RGAs for other, not-yet-named or identified  
 26 developments, it is likewise possible that the problem identified by TRAQC — failure to tether the  
 27 DA to specific real estate in which Surland has a ownership or equitable interest as require  
 28

1 Government Code § 65865.2— might never arise. City and Surland argue that it is "sheer  
2 guesswork" as to whether any of the contingencies will occur in the future and, therefore, TRAQC's  
3 challenge is not ripe for adjudication.

4 TRAQC submits that Surland and City misconstrue its challenge; the challenge is not to the  
5 future recording of RGAs under the Development Agreement. The challenge is to the Development  
6 Agreement as it exists today. The challenge is that the Development Agreement - in its present form  
7 - fails to satisfy statutory requirements. Moreover, TRAQC argues that any challenge to a local  
8 decision to adopt or amend a development agreement must be made within 90-days from the date  
9 the decision is made. Government Code §65009(c). Thus, the challenge had to be filed now.  
10

11 The court agrees with TRAQC. The controversy is ripe. The DA plainly contemplates use of  
12 RGAs in development projects that are not now known. Hence, the DA as it exists today violates  
13 the requirements of the Government Code.  
14

15 **TRAQC'S Second Challenge - Compliance with CEQA**

16 As noted above, TRAQC contends that the Project violates CEQA (California  
17 Environmental Quality Act) in the following ways:

- 18 1. The Project's description is inaccurate, inconsistent and unstable;
- 19 2. On-site Project alternatives were not properly considered;
- 20 3. Off-site Project alternatives were not considered at all;
- 21 4. The change in the Project as re-negotiated required a new analysis and re-  
22 circulation of an appropriate EIR; and
- 23 5. The analysis and responses provided to the EIR comments were inadequate.

24 **A. Adequacy of Project Description**

25 The EIR must describe the project being reviewed. Guideline, section 15124. "An accurate,  
26 stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.  
27 *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185.  
28

1           TRAQC maintains that before, during and after the Draft EIR process, City represented that  
2 2,250 RGAs would go to ESP. In January 2006, Surland proposed to donate 10 acres and \$10  
3 million for an aquatics enter. AR 31:8150, 8156. Surland asked for RGAs to be used at the ESP area  
4 only. There was no mention of extra non-ESP RGAs. AR 31:8157. By April 2006, Surland  
5 proposed to design and construct an aquatic park and community park on 20 acres and Surland  
6 agreed to contribute up to \$20 million. AR 29:7589. On May 15, 2007, the proposal was described  
7 as \$20 million and 20 acres for 2,250 RGAs for Ellis and 2,450 RGAs for undefined, future  
8 projects. AR 29:7673, 7678. It was contemplated that the extra RGAs would only be issued after the  
9 2,250 Ellis RGAs were used on Ellis and Ellis was built-out. AR 29:7651.

12           On July 24, 2008, after the comment period on the DEIR had closed, the draft DA was  
13 released and with the exception of the first 500 RGAs, the 2,250 RGAs could be used anywhere.  
14 AR 24:6076. In other words "the proposal changed from a request for 2,250 RGAs for only the  
15 ESP to 1,750 RGAs to be used anywhere on 28,260 acres." Opening Brief, page 8:25-27.

17           TRAQC also complains that the project description significantly changed when the  
18 Development Agreement originally called for the aquatics center to be built in the ESP but later, in  
19 its revisions, allowed the aquatics center to be built anywhere and further included different  
20 conditions as to money paid, dedication and reversion rights. TRAQC submits that the Project  
21 description has not been accurate, consistent, stable or finite; instead, it changed over time. Opening  
22 Brief, page 8:3-4.

24           City and Surland argue that "there is no requirement that a project description remain  
25 exactly the same throughout the CEQA process. Citing *County of Inyo v. City of Los Angeles*  
26 (1977) 71 Cal.App.3d 185, City and Surland urge that "the CEQA reporting process is not designed  
27 to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen  
28 insights may emerge during investigation, evoking revision of the original proposal." *Ibid @ 200.*

1 City and Surland concede, as they must, that changes were made to the Development  
2 Agreement, but they claim TRAQC misrepresents what the Draft EIR advised the public. The  
3 Opposition stresses that the Draft EIR stated: "The Development Agreement Program (DAP) would  
4 provide eligibility for the Project applicant to obtain up to 3,850 RGAs at some time in the future,  
5 which would include up to 2,250 units proposed by the ESP." AR 7:1605 (emphasis added.)  
6

7 City and Surland also point to AR 7:1705: "Phase I of this program would be the  
8 development of up to 2,250 residential units within the Ellis Specific Plan The remaining RGAs  
9 would be developed within the City's Planning Area, Sphere of Influence, or City Limits in the  
10 future." (Emphasis added)  
11

12 Citing to these excerpts of the Draft EIR, City and Surland maintain that the Draft EIR  
13 clearly put the public on notice of the possibility that less than 2, 250 RGAs would be used within  
14 the ESP area (and thus more could be used elsewhere). City's Opposition, page 15:6-12.  
15

16 In an attempt to explain TRAQC's citations, City and Surland state that TRAQC is quoting  
17 portions of the record from 2006 and 2007, before the Draft EIR was published. To that, the  
18 Respondents claim that "the only legal question" ... is whether the Draft EIR published in 2008  
19 adequately and consistently described the project." City's Opposition, page 15:15-18.  
20

21 Finally, Respondents add that while changes were made regarding the RGAs, the changes  
22 reduced the number of RGAs available to Surland and so, the description is adequate.

23 In reply, TRAQC first argues that the Opposition mentions only the number of RGAs and  
24 re-iterates that there were other changes to the Project (via the Development Agreement); for  
25 example, where the swim center would be located. Moreover, TRAQC adds that the Opposition  
26 specifically acknowledged that there were "significant changes to the project" from April 2008 to its  
27 approval in December 2008. See Surland opposition, page 11:9-11 ["The language of the DA and  
28

1 development approvals under consideration had changed considerably in the several months before  
2 the hearing due to ongoing negotiations and revisions."]

3  
4 With attention to Respondents' emphasis on the words "up to" when referring to the number  
5 of RGAs, TRAQC states that the argument proves why the description is misleading. "Nothing in  
6 the phrase 'up to 2,250 tells the reader that it was planned that the entire 3,850 RGAs could be used  
7 anywhere in the 28,260 acre sphere of influence. The General Plan showed a minimum density of  
8 1,200 RGAs for the ESP. The description certainly implies that SOME of the 3,850 RGAs would be  
9 used in the ESP....". Reply Brief, page 21:15-18.

10 According to TRAQC, the history of the Project is relevant. The Project in 2006 provided  
11 that the RGAs were to be used at the ESP only. But, in December 2008, when the Project was  
12 approved, "the last links between the DA RGAs and the ESP were broken. The DA was amended so  
13 the swim center could be located anywhere and a new property description for only 23 acres was  
14 substituted for the ESP property description as a new Exhibit A. The ESP was a slight of hand used  
15 to give the illusion that RGAs were being issued to be used in the ESP." Reply Brief, page 21:18-  
16 24.

17  
18 TRAQC submits that in November 2007, the clear representation was made that 2,250  
19 RGAs would be applied to the ESP. In support of the argument, TRAQC notes that RGAs beyond  
20 the 2,250 were categorized as "Post-Ellis" or "Non-Ellis" RGAs. According to TRAQC, those sorts  
21 of representations/categorizations continued to be made in 2008. Citing to the Administrative  
22 Record, TRAQC points to representations made by Surland that perpetuated the impression that  
23 some of the RGAs would be used in the ESP. See AR 24:6129. Also, when the final number of  
24 RGAs was reduced, the Planning Commission and staff again spoke in terms of "Post-Ellis" or  
25 "Non-Ellis" RGAs. Moreover, the Planning Commission recommended rejection of the 1,600 Non-  
26 Ellis RGAs because "it is currently unknown where an additional 1,600 RGAs could be located."  
27  
28

1 AR 21:5393. That statement by the Planning Commission makes no sense if the Planning  
2 Commission always understood that the 2,250 RGAs could likewise be placed elsewhere.

3  
4 TRAQC maintains that the term "up to 2,250" meant a cap for the Ellis project. The phrase  
5 does not tell the reader that none of the RGAs need to be used at ESP and could be used anywhere,  
6 as the Opposition now urges.

7 Looking at the administrative record as a whole, the court concludes that the Project  
8 description is not clear; the description either changed or morphed, or it is not an accurate  
9 description. In any event, at a minimum, the description has created confusion about the Project and  
10 about the Development Agreement's provision of RGAs and how many are available and where. A  
11 legally sufficient EIR requires an accurate and stable project description. *County of Inyo v. City of*  
12 *Los Angeles*, (1977) 71 Cal.App.3d 185.

13  
14 **B. Project Changes Required Re-Circulation of EIR**

15  
16 In 1993, the California Supreme Court interpreted and clarified the grounds for re-  
17 circulation of an EIR. See *Laurel Heights Improvement Assn. v. Regents (Laurel Heights II)* (1993)  
18 6 Cal.4th 1112. The Court interpreted Public Resources Code, section 21092.1, to require re-  
19 circulation of an EIR in four different circumstances:

- 20  
21  
22  
23  
24
1. When new information discloses a new, substantial environmental impact of a project.
  2. When new information shows a substantial increase in the severity of an environmental impact (unless mitigation measures reduce that impact to insignificant).
  3. When new information discloses a feasible alternative or mitigation measure that has not been adopted and that clearly would lessen environmental impacts.
  4. When the draft EIR was so fundamentally flawed that public comment on the draft was effectively meaningless.

25 This standard was adopted and is now set forth as Guidelines, section 15088.4. Review of an  
26 agency's decision relating to re-circulation is subject to the substantial evidence standard of review.  
27  
28

1           TRAQC argues that substantial changes were made to the Project and such changes "require  
2 major revisions of the environmental impact report or new information ... which was not known and  
3 could not have not known at the time the environmental impact report was certified as complete."

4  
5 Opening Brief, page 30:10-14. Specifically, TRAQC points to these changes in the Development  
6 Agreement:

7           1. Reduction of parkland and money for the Project: The Development Agreement provided  
8 for 40 acres of parkland with a 20 acre aquatic park. AR 30:7846-7847; AR 19:4778. The Project  
9 further contemplated Surland spend \$20 million toward the swim center. AR 30:8112-8130; 8117-  
10 8118. The amendments reflect that only 20 acres of parkland would be dedicated. AR 19:4778. The  
11 amendments further reflect that \$10 million would be used toward the swim center. AR 20:4937.

12  
13           The Development Agreement originally provided that Surland would provide design  
14 assistance for the swim center. AR 22:5663. The amendments, however, require that Surland be  
15 reimbursed 100% for its design assistance. TRAQC calculates that cost to be \$324,000.00. AR  
16 1:218-219.

17           The amendments created an reversionary interest in Surland of the swim center site and  
18 further allowed Surland to build the swim center somewhere other than within the ESP. AR  
19 20:5108; AR 22:5625, 5665.

20  
21           The Development Agreement originally had a park built next to the aquatic center, but with  
22 the amendments to the DA, the park would not be constructed until Surland received funds from  
23 other projects. AR 20:4940.

24           2. Possible conversion of the 16-acre swim center to residential development. AR 20:4937:

25  
26           The General Plan Amendment (required for the Project) allows a residential development *or*  
27 a swim center at the site originally designated to be the swim center site. Thus, it differs from the  
28 original plan which was to only allow swim center at the site. AR 19:4775; 20:5108. The revision

1 apparently is meant to address the possibility of reversion of the swim center property to Surland  
2 and/or the development of the swim center outside of the ESP and at another site.

3 3. 1,750 RGAs to be held for Surland can be used outside of the Ellis Specific Plan area:

4  
5 The 2,250 RGAs represented to be available to Surland for development of Ellis (AR  
6 29:7673, 7678; AR 9:2155) was reduced to 500 and as a result, the balance of 1,600 RGAs  
7 represented to be available for outside development were increased to 1,750, even though the  
8 overall total number of RGAs allocated to Surland was reduced from 3,850 to 2,250. AR 19:4792;  
9 AR 1:189; AR 24:6076.

10  
11 4. The ESP, DAP and the aquatics center are effectively split: Simply, by reason of the  
12 immediately proceeding changes – enumerated 1-3 – the DAP and swim center have been  
13 effectively severed from development of the Ellis Plan area. The Project has morphed into three  
14 unrelated projects.

15  
16 Respondents argue that the above changes do not fall within the four categories outlined in  
17 Guidelines, section 15088.5, and no obligation arose to re-circulate. Respondents add that the most  
18 significant change was the reduction of RGAs to be available to Surland and such a reduction "will  
19 only reduce the potential impacts that were analyzed in the EIR."

20  
21 Notwithstanding the reduction in RGAs, the point is that the project did morph over time in  
22 a substantial way, with confusion as a consequence. Does the Project described in the EIR provide  
23 that up to 2, 250 RGAs are to be used in Ellis Plan area, with 1,600 other RGAs available for  
24 outside development — as TRAQC urges? Or, as Respondents contend, has the Project always  
25 provided that up to 2,250 RGAs could be used in the Ellis area but, if not used there, could be used  
26 outside the Ellis area? At a minimum, there is confusion about the Project, especially about the  
27  
28

1 Development Agreement's provision of RGAs. Such confusion undermines the EIR and the public  
2 comments thereto.

3 For the reasons stated, re-circulation of the ER was required<sup>6</sup>.

4  
5 **C. TRAOC's challenges to the City's approvals of the Ellis Specific Plan ("ESP"),**  
6 **pre-zoning, general plan amendment and annexation petition are not barred because**  
6 **Surland's being named as Real Parties in Interest was sufficient.**

7 Surland raised the issue of indispensable parties as to the Second Cause of Action relating to  
8 the DA only. See Real Parties Opposition page 14:19-20. The City's Opposition Brief did not  
9 argue the issue. At oral argument on October 15, 2010 the City and Surland stated they were  
10 making this argument as to the CEQA issues as well. The indispensable party issue as to the CEQA  
11 challenges had been previously raised by demurrer which demurrer was overruled.

12 The administrative record as a whole demonstrates Surland represented itself as  
13 representative of the property owners and the developer of the project including the ESP throughout  
14 the application, hearing and approval process. The City and Surland both strongly defended the  
15 ESP and other approvals in this legal challenge. The court finds the owners of property in the ESP  
16 were not necessary parties because, as a practical matter their interests were represented by the  
17 developer Surland. (*Citizens Association for Sensible Development of Bishop Areas v. County of*  
18 *Inyo* (1985) 172 Cal.App.3d 151, 161-162, citing *Hollister Co. v. Cal-L Exploration Corp.* (1972)  
19 *26 Ca.App.3d 713* and *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017) Any non-joined  
20 interested parties interests were adequately protected by the named parties to the action.  
21  
22 (*Deltakeeper vs. Oakdale Irrigation District* (2001) 94 Cal.App.4<sup>th</sup> 1092, 1107)

23  
24  
25  
26  
27  
28 <sup>6</sup> Parenthetically, re-circulation will also be required in light of the Court's decision, above, regarding the Development Agreement's lack of compliance with Government Code §65865(b) and 65865.2. The Court's decision effectively eliminated one of the two components of the Project. Such a change in Project compels re-circulation.

1 In consideration of the policy and purpose of CEQA and the harsh result a dismissal would  
2 cause, the court finds that the non-joined parties were not indispensable. (*Deltakeeper* id at 1109)

3  
4 **D. TRAOC fairly summarized the relevant information.**

5 The court finds that Petitioner's 40 page Opening Brief, 48 page Reply Brief, written  
6 Summary of Citations submitted at trial and oral presentation at trial set forth fully the facts relating  
7 to Respondent's decisions on the project and fairly summarized the relevant information in the  
8 FEIR.

9  
10 **E. The FEIR's analysis of alternatives was legally inadequate.**

11 TRAQC contends that off-site alternative locations should have been considered.

12 The purpose of alternatives analysis "...is to allow a decision maker to determine whether  
13 there is an environmentally superior alternative that will meet **most** of the project's objectives, the  
14 key to the selection of the range of alternatives is to identify alternatives that meet most of the  
15 project's objectives but have a reduced level of environmental impacts." (*Watsonville Pilots*  
16 *Association v. City of Watsonville* (March 15, 2010) 031510 CAAPP6, H033097) The lead agency  
17 **must** consider such alternatives "even if [they] would impede to some degree the attainment of the  
18 project objectives, or would be more costly." (Regs § 15126.6(b))

19  
20 The EIR's analysis of alternatives was legally inadequate due to the failure to consider off-  
21 site alternatives. An alternative location should be considered if it **could substantially reduce**  
22 **significant environmental impacts, attain most of the basic project objectives, is potentially**  
23 **feasible, reasonable and realistic.** (Regs §15126.6(c)) Potentially feasible alternative locations  
24 including the Keenan Saddlebrook Development/UR 17, Moitoso/Plan B and the Alvarez/UR1  
25 proposal were presented but were never considered as alternatives.  
26

27 Saddlebrook was represented as an alternative as early as 2006, included an aquatic center  
28 and was not in the airport flight path. AR 30:8125-8130; 30:7978

1 Plan B included an aquatic center and was not in the airport flight path. AR 28:7409;  
2 28:7411-7412.

3 Alvarez was 300 acres offering 50 acres for recreational facilities and was not in the airport  
4 flight path. AR 27:7057-7068 (Note the letter is in the record from last page to first), 2:498-502;

5 City and Surland argue that some alternatives were smaller parcels and would not  
6 accommodate all the RGAs of Ellis. However by final approval the swim center could be located  
7 off the ESP, the \$10 million could be used other than at the ESP, and most of the RGAs could be  
8 used at other than at the ESP which meant the reasons for not considering these other proposals –  
9 that they were not the entire project- had disappeared.  
10  
11

12 It was undisputed that airport noise was a significant unavoidable impact as the ESP within  
13 the 60 CNEL Airport noise contour. (AR 2:484; 7:1845) TRAQC argued because the airport  
14 related noise impact could be avoided or substantially lessened by an alternative location, those  
15 locations needed to be considered. AR 22:5785 The FEIR was legally inadequate due to the failure  
16 to consider alternative locations which could have avoided airport noise impacts. TRAQC is correct  
17 that the FEIR was inadequate due to the failure to consider alternative locations that were presented  
18 that potentially could have avoided airport noise impacts. 14 Cal Code Regs Section  
19 15126.6(f)(2)(A)  
20  
21

22 **F. Rejection of the reduced density alternative (Alternative #6) was not supported  
23 by substantial evidence.**

24 TRAQC argues the City improperly rejected the environmentally superior alternative  
25 without substantial evidence demonstrating infeasibility. An EIR must identify the environmentally  
26 superior alternative which in this case was Alternative 6. Regs §15126.6(e)(2); AR 8:2037  
27 Alternative 6 was a reduced density version of the ESP. AR 19:4823-4824. The FEIR determined  
28 Alternative 6 would meet all of the ESP's basic objectives including the building of a swim center

1 and community park. It reduced all impacts, and it was identified as the environmentally superior  
2 alternative. AR 8:2021-2027, 2037

3  
4 The City gave two reasons for rejecting Alternative 6: that the lower density would result in  
5 the overflow of the units to other areas resulting in adverse impacts and an insufficient amount of  
6 housing for UR10 (the ESP). These findings are not supported by substantial evidence and are  
7 inconsistent with other findings. The City rejected Alternative 6 finding that 1,026 non-Ellis RGAs  
8 would "convert undeveloped land to urban uses or create the potential for growth inducement" in  
9 either infill areas or the SOI. AR 1:55 This finding conflicted with the City's position that the  
10 1,750 non-Ellis RGAs of the DAP would not result in significant land use and planning impacts.  
11 AR 1:25

12  
13 The City's reasons for rejecting Alternative 6 also conflicted with the City's response to  
14 comments that 1,600 RGAs used outside the ESP but within the SOI would create land use,  
15 farmland conversion, and other impacts that should be analyzed. AR 2:55

16  
17 The City's finding that reducing the RGAs from 2,250 to 1,224 would result in insufficient  
18 number of units being built in UR 10 (ESP) is also not supported by substantial evidence. The  
19 allowed density range for the ESP is "1,200 to 2,250" RGAs. AR 1:172, 174; 27:7018; AR 21:5413  
20 The density of Alternative 6 was within the planned range for the ESP.

21  
22 The City could reject mitigation measures or project alternatives if it found them to be  
23 "infeasible." Public Resources Code §21081(a)(3); Regs §15091(c)(3) "Feasible" is defined as  
24 capable of being accomplished in a successful manner within a reasonable period of time, taking  
25 into account economic, environmental, social, technological, and legal factors. Public Resources  
26 Code §21061.1; Regs §15364) To be rejected Alternative 6 would have to be determined to be  
27 "truly infeasible." See *City of Marina v. Board of Trustees of California State University* (2006) 39  
28

1 Cal.4<sup>th</sup> 341, 369 The finding of infeasibility must be supported by substantial evidence in the record.  
 2 (Public Resources Code §21081.5; Regs §15091(b)) The City's findings rejecting the  
 3 environmentally superior alternative did not rise to the level of determining infeasibility and were  
 4 not supported by substantial evidence.  
 5

6 **G. The FEIR did not adequately respond to public comments regarding**  
 7 **alternatives.**

8 A FEIR must include written responses to comments on the DEIR raising significant  
 9 environmental issues. (Regs §15088) A specific detailed response is required when a comment  
 10 raises a specific question about a significant environmental issue. Regs §§15088(b),15204(a); See  
 11 *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348. A reasoned analysis of the issue and  
 12 references to supporting evidence may be required. *California Oak Foundation vs. City of Santa*  
 13 *Clarita* (2005) 133 Cal.App.4th 1219; *Santa Clarita Organization for Planning the Environment vs.*  
 14 *County of Los Angeles* (2003) 106 Cal.App.4th 715; *Vineyard Areas Citizens for Responsible*  
 15 *Growth, Inc. vs. City of Rancho Cordova* (2007) 40 Cal.4<sup>th</sup> 412, 449

16 Specific detailed responses supported by a reasoned analysis are particularly important when  
 17 the EIR's impact analysis is criticized by experts or other agencies with expertise in the area such as  
 18 the many comments about airport impacts. A FEIR must at least acknowledge the conflicting  
 19 opinions and explain why suggestions made in the comments have been rejected, supporting its  
 20 statements with relevant data. See *Berkeley Keep Jets Over the Bay Comm. Vs. Board of Port*  
 21 *Commissioners* (2001) 91 Cal.App.4th 1344, 1367, 1371  
 22  
 23  
 24

25 In comments TRAQC suggested specific alternative locations. AR 2:0490-0491 The City's  
 26 Response was conclusory and not responsive stating in part that the City was not required to  
 27 analyze potential alternative sites "...when alternative sites would not definitely alleviate potential  
 28 unavoidable significant impacts of the proposed Project or meet the basic principals of the proposed

1 Project.” AR 2:513 The response was not a reasoned analysis of the issue and provided no  
2 references to supporting evidence. The response ignored that specific suggested alternative  
3 locations outside airport noise contours could reduce the significant noise impact related to the  
4 airport identified in the DEIR.  
5

6 At subsequent hearings TRAQC again asked that alternative locations not in the airport  
7 flight path be considered as airport noise was identified as a significant unavoidable impact. AR  
8 22:5622 TRAQC argued and now contends that the City’s reasons for not considering  
9 alternative locations to avoid airport noise impacts was non-responsive and ignored alternative  
10 locations outside those same noise contours. (AR 22:5785) The response was conclusory and  
11 did not address whether any significant effects, such as airport related noise impacts, could be  
12 avoided or substantially lessened by an alternative location. Regs § 15126.6(f)(2)(A) The City  
13 should have either explained why further consideration of the alternative was rejected or  
14 provided an evaluation of the alternative. See *Marin Municipal Water District vs. KG Land*  
15 *Cal. Corp.* (1991) 235 Cal. App.3d 1652, 1666. The City’s reasons for excluding potential  
16 alternatives from the EIR on the grounds that they are infeasible or incapable of fulfilling project  
17 objectives should have included in responses to comments contained in the FEIR. See *City of*  
18 *Long Beach v Los Angeles Unified Sch. Dist.* (2009) 176 CA4th 889; 922  
19  
20 TRAQC also commented that the DEIR alternatives were just parts of the same project. AR  
21 2:490-491 Again the City’s response was conclusory and non-responsive saying just that ‘each of  
22 the alternatives was carefully selected to be compliant and consistent with the requirements...’ of  
23 the Guidelines. AR 2:513 This Response is devoid of any analysis, explanation or supporting  
24 evidence and is also legally inadequate.  
25  
26  
27  
28

1           **H. The FEIR did not adequately analyze or respond to comments regarding**  
2 **growth management, land use, and loss of farmland.**

3           1.    The FEIR did not adequately analyze or respond to comments regarding growth  
4 management. The City received comments that providing a single developer with RGAs, permits,  
5 water and sewage and allowing that developer chose any property on which to apply the RGAs  
6 would mean more contiguous developments or developments on non-agricultural land would have  
7 to stand down. AR 2:468-469, 2:471-472, 2:491-492. The City's responses were non-responsive and  
8 never addressed the effect of allowing a developer to deprive other locations of RGAs. AR 2: 473-  
9 474, 475-476

10           The responses were also inconsistent with the City's position and findings in rejecting 1,600  
11 non-Ellis RGAs in the original proposed DAP, rejecting Alternative 2 with 1,600 non-Ellis RGAs,  
12 and rejecting the environmentally superior Alternative 6 with its 1,026 non-Ellis RGAs. (AR 1:25,  
13 1:53, 1:55)

14           For these reasons the FEIR did not adequately analyze or respond to comments regarding  
15 growth management.

16           2.    The FEIR did not adequately analyze or respond to comments regarding land use:  
17 The concerns expressed in comments to the DEIR concerning land use had been made before the  
18 DEIR was circulated. The August 2006 Draft Initial Study identified as a potentially significant  
19 impact conflicts with land use plans. AR 30:7872 City Staff expressed concern that project  
20 approval might mean property ownership might require amendment of City policies. AR 29:7651

21           TRAQC and others commented that allocation of RGAs to Surland would create a priority  
22 system due to identified shortages of RGAs and that RGAs allocated to Surland could be used in the  
23 SOI on agriculturally designated property. (AR 24:6268-6269; 2:468-469) The shortage of RGAs  
24

1 was quantified. AR 27:6999-7006, 27:7018 Commentators stated that the RGA need was up to  
2 10,500. RGAs available over the 10 years to 2017 were only 3,542 and available over 20 years to  
3 2027 were only 9,542. AR 2:468-469 Commentator's argued that higher priority projects, some  
4 infill and many more contiguous than the Ellis project would be displaced. The City  
5 acknowledged the project would require rewriting the GMO and other projects to "stand down" and  
6 be deprived of RGAs. AR 21:5392 TRAQC and others commented that this commitment of RGAs  
7 was a prioritization as other projects with a higher priority in the GMO were deprived of RGAs.  
8 (AR 22:5622; 21:5310-5311; 21:5294) The City acknowledged approval would mean the GMO  
9 would have to be written to accommodate Surland and that other projects would have to "stand  
10 down". Surland would never have to "stand down" even if it used RGAs at locations outside  
11 priority areas like the downtown, infill or concentric growth projects. AR 20:4939

12  
13  
14 In written comments on this issue TRAQC made the above arguments. AR 2:0493-0494)

15  
16 The City response did not address the issue raised by TRAQC. The response indicated that since  
17 the RGAs allocated to Surland were within the total number planned there would be no impacts.  
18 The City went on to summarily respond, without analysis, that there would be no impact. AR 2:513.  
19 This response was deficient in failing to address the issue raised which was the prioritization of  
20 growth which would occur as a result of the approval of the project. It was conclusory, provided no  
21 reasoning or analytical support, and was not supported by substantial evidence in the record.

22  
23 The finding that "no significant impacts relative to land use would occur with  
24 implementation of the amended Development Program" is not supported by substantial evidence.  
25 AR 19:4794 As described above there was evidence that a prioritization of growth would occur as  
26 a result of project approval affecting land use growth patterns. The City's finding rejecting  
27 environmentally superior Alternative 6, that 1,026 RGAs if used in the SOI would have significant  
28

1 impacts, conflicts with this finding. See AR 1:55 The EIR failed to analyze the impact of this de  
2 facta reprioritization and allocation of development depriving other projects of RGAs, building  
3 permits, water and sewer capacity which could affect the pattern of growth. It is an abuse of  
4 discretion to make contradictory findings not supported by substantial evidence.

5  
6 The responses to comments and analysis in the FEIR on land use were deficient.

7 3. The FEIR did not adequately analyze or respond to comments regarding conversion  
8 of farmland: Supported by statistical analysis Attorney Nicolaou commented that “annexation of  
9 the Ellis Specific Plan area will result in the premature conversion of open space and agriculture  
10 land to developed uses when adequate land already exists within City limits.” He quantified an  
11 inventory of land already able to accommodate 10,050 units. (AR 2:468-469) Nicolaou’s comment  
12 potentially understated the impact because the DA actually created 1,750 RGAs non-Ellis.

13  
14 The response did not address the issue instead arguing that this was a policy issue not an  
15 environmental issue and the policy “will” be considered by Council decision makers. AR 2:475  
16 This response is not adequate. The response identifies no specific General Plan policy in support of  
17 its conclusion and no such policy of the General Plan was identified. The record does not contain  
18 any reference to a policy indicating the ESP should develop before other areas in the secondary  
19 growth areas and no such policy was identified by Surland or the City. The City cannot refuse to  
20 analyze and respond to comments concerning a potentially significant environmental impact based  
21 on an unidentified policy.  
22  
23

24 The City takes conflicting positions in the FEIR on this issue. The City takes the position  
25 that so long as the 1,750 RGAs are used in the SOI there is no additional impact on agricultural  
26 land, but then in rejects DAP Alternative 2 and the environmentally superior Alternative 6 because  
27  
28

1 “non-Ellis” RGAs because these alternatives would have similar impacts. The FEIR did not  
2 adequately analyze or respond to comments regarding conversion of farmland.

3  
4 **I. The FEIR did not adequately analyze or respond to comments regarding  
airport-related impacts.**

5 The 2007 Initial Study identified the location of the Airport relative to the ESP as a  
6 potentially significant hazard impact because the main runway approach and departure flight path  
7 was directly over the eastern portion of the ESP. AR 9:2180 The FEIR concluded these hazards  
8 were a less than significant impact and required no mitigation. AR 7:1629

9  
10 TRAQC contends the City relied on the outdated 1993 Airport Land Use Plan (ALUP) and  
11 1998 Airport Master Plan update which contracted the hazard zones. TRAQC contends the City  
12 should have considered and the FEIR should have used the more recent May 2008 studies which  
13 significantly expanded all airport impact zones, in particular the Inner and Outer  
14 Approach/Departure Zones that overlap the ESP. AR 22:5723-5724

15  
16 There was documentary and testimony evidence of the safety risks of locating the ESP,  
17 including the aquatics center, in the direct flight path of the Airport. AR 20:5111, 5190-5235,  
18 5297-5302, 5312-5346; 22:5617-5618, 5719-5722 TRAQC argued to the City that the “...EIR  
19 relies on outdated data even though more current data is available...” (AR20:5190) Exhibits  
20 including CTM1- Compatibility Factors and CTM-2 Compatibility Zones from the May 2008 which  
21 testimony indicated “will result in airport protection zones that are significantly larger than the  
22 outdated model” were submitted, (AR 20:5190-5200)

23  
24 The City’s contention was that the FEIR was prepared using the latest **approved** Airport  
25 Land Use Plan (“ALUP”). (AR19:4780) That response was non-responsive to the issue of failure  
26 to use currently available data. As in *Berkeley Keep Jets Over the Bay* (2001) 91 Cal.App 4<sup>th</sup> 1347  
27  
28

1 more current data, information and studies cannot be ignored. *Ibid at 1367*. The more current  
 2 information and studies should have been considered.

3 The City deferred studies and mitigation to the future and disregarded requests for the noise  
 4 studies to be completed with appropriate mitigation today. *Endangered Habitats League v. County*  
 5 *of Orange (2005) 131 Cal. App.4th 777, 794* rejected a mitigation measure requiring submission of  
 6 acoustical analysis and approval of mitigation measures recommended by analysis because no  
 7 mitigation criteria or potential mitigation measures were identified. The same failure occurred in  
 8 this case. The proposed mitigation measure, to conduct noise studies in the future and implement  
 9 unspecified mitigation measures which might or might not mitigate the impact, was not adequate.  
 10

11  
 12 **J. The FEIR did not adequately analyze or respond to comments regarding traffic.**

13 Adverse traffic impacts were significant and unavoidable. AR 7:1758-1762 Mitigation was  
 14 payment of project's proportionate fair share of roadway improvements. When this mitigation  
 15 would occur for intersections with unacceptable levels of service was unknown. AR 7:1761-1762  
 16 The record is devoid of any evidence that a program for collection of fees and development in the  
 17 area of the BSP will ever allow this mitigation to occur and no commitment or time frame to make  
 18 these roadway improvements is in place. *Gray vs. County of Madera (2008) 167 Cal.App.4th 1099,*  
 19 *1122, Anderson First Coalition v. City of Anderson (2005) 130 Cal.App.4th 1173, 1187* *San*  
 20 *Franciscans for Reasonable Growth v. City & County of San Francisco (1984) 151 Cal.App.61. 79*  
 21  
 22 As with airport noise impacts and mitigation measures, these traffic mitigation measures were  
 23 inadequate.  
 24

25 **K. The EIR did not adequately analyze or respond to comments regarding air**  
 26 **quality.**

27 The FEIR confirmed adverse ongoing cumulative air quality impacts primarily relating to  
 28 increased direct traffic and indirect electricity loads, identifying the impacts as significant and

1 unavoidable. Commentators noted that alternative locations more contiguous to the city core  
2 including for the aquatics facility that would have reduced vehicle miles driven were not evaluated.  
3 AR 2:559-560 The City's response did not address the alternative location issue relative to vehicle  
4 omissions and was therefore non-responsive and inadequate. AR 3:616-617

5  
6 **L. The EIR did not adequately analyze or respond to comments relating to gas and**  
7 **oil pipelines.**

8 Written comments were made during the comment period concerning the danger of large  
9 PG&E gas transmission pipelines and the need for a greater setback. (AR 526-619) Specific and  
10 detailed comments arguing a 100 foot setback was insufficient and the impact zone for a 36 inch  
11 pipeline was 660 feet to 1,000 feet. AR 2:565 This comment specifically referencing the 660 foot  
12 setback was contained in a three page comment on the PG&E pipelines. (2:564-566)

13  
14 The FEIR response was "Operation of the pipelines by PG&E and construction activities by  
15 Project contractors would be in accordance with State and Federal regulations regarding pipeline  
16 operations." AR 3:618 The response is conclusionary, contains no analysis, was non-responsive to  
17 the setback issue and did not address the setback issue or other issues raised in the comment.

18  
19 The City argues comments made at later hearings on this same issue are not relevant. The  
20 record shows commentators continued to urge the City to increase the setback and provided  
21 additional information at later hearings supporting the earlier comments. On December 16, 2011  
22 commentators again argued a 660 foot setback from gas lines was required. (AR 32:8644: 3-13)  
23 These efforts even at the final approval hearing were attempts to have the City provide a meaningful  
24 response and analysis to the issue of a 100 foot vs. a 660 foot setback and to provide the requested  
25 setback. Other Responses did not address the 660 foot setback but only acknowledged a 100 foot  
26 setback. (AR 2:410) The analysis and responses concerning the requested minimum 660 footset  
27 back were inadequate.  
28

1 The City argues that incidents discussed in the comments were at locations distant from the  
2 ESP, that the risks had been analyzed, that the pipelines had been inspected and that some project  
3 design modifications had been undertaken. (City Opposition 32:28-33:8) However none of these  
4 responses or analysis discussed why a 100 foot setback was sufficient and a 660 setback was  
5 unnecessary. The City cites to no part of the record where there is any response concerning  
6 comment that a 660 to 1,000 foot setback was needed for a 36 inch gas pipeline. There was no  
7 analytical response by the City or analysis contained in the FEIR as to why a 100 foot rather than a  
8 600 foot setback was sufficient. The EIR therefore did not adequately analyze or respond to  
9 comments relating to gas pipelines.  
10

11  
12 **J. The FEIR did not adequately analyze or respond to comments regarding water**  
13 **supply impacts.**

14 TRAQC challenged the sufficiency of the Water Supply Assessment (WSA) which was  
15 relied upon by the City to determine, based on the entire record, whether water supplies will be  
16 sufficient to satisfy the demands of the project, in addition to existing and planned future uses.  
17 (Water Code Section 10911(c)) The City could still approve a project with supplies are not  
18 sufficient, but would be required to make additional findings. (Water Code Section 10911) The  
19 City determined that the water supply was sufficient. This finding is not supported by substantial  
20 evidence for two reasons.  
21

22 Table 21 of the WSA indicates that in an extreme drought year demand is 24,989 acre feet  
23 per year with a supply of 24,308 acre feet per year for a shortage of 681 acre feet per year. The City  
24 reduces this demand by unspecified "mandatory conservation measures". (AR 24:6348, footnote  
25 (a)) TRAQC argues that this is not an adequate supply, but an unsupported assertion that demand  
26 will be less by simply providing less water and rationing. The City cannot avoid making a finding  
27 that the Water Supply would not be sufficient in an extreme drought year by referring to some  
28

1 unspecified reduction in demand due to unspecified conservation measures. The finding that water  
2 supply is adequate is not supported by substantial evidence.

3  
4 The record also indicates that not all projects were included in the WSA. A discussion  
5 between a council member and staff indicated that 206 RGAs were projected for the downtown and  
6 these were not included. AR 35:9399-9400 Neither the City or Surland responded to this issue in  
7 briefing or at trial.

8 The Respondent did not properly analyze water impacts by using a reduction of demand not  
9 supported by substantial evidence and because the study did not apparently include all the projects.

10  
11 **K. The administrative record relative to Notice to OPR and State Clearinghouse.**

12 The administrative record shows that in April 2008, the City sent a copy of the Draft EIR  
13 and a Notice of Completion to the Office of Planning and Research ("OPR") and State  
14 Clearinghouse, and OPR thereafter returned a stamped copy of the Notice of Completion to the City  
15 indicating it had received the Draft EIR and provided a copy to the San Joaquin Valley Air  
16 Pollution Control District ("SJ VAPCD").

17  
18 California Rule of Court requires a party requesting a request for a Statement of Decision  
19 must specify the principal controverted issues in the request. CRC 3.1590(d) The request that the  
20 court address "Any other issue of fact or law subsidiary to the above or otherwise necessary to the  
21 resolution of the proceeding (Request 4:1-2) does not comply with CRC 3.1590(d).

22  
23 Petitioner is the prevailing party.

24 **Conclusion**

25 The Court finds the subject Development Agreement does not comply with Government  
26 Code §65865(b) and 65865.2 and is therefore invalid.

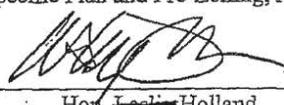
1 The Court also finds that the Project description was neither accurate nor stable, that the EIR  
 2 was inadequate as a consequence, and/or that the Project changed significantly such that re-  
 3 circulation of the EIR as required.

4 The Court also finds that the FEIR's analysis of alternatives was legally inadequate, the  
 5 rejection of the Environmentally Superior Reduced Density Alternative #6 was not supported by  
 6 substantial evidence, that the FEIR did not respond adequately to public comments regarding  
 7 alternatives, and that the FEIR did not adequately analyze or respond to comments regarding growth  
 8 management, land use and loss of farmland, airport-related impacts, traffic, air, gas and oil pipelines  
 9 and water supply impacts.

10 IT IS HEREBY ORDERED: The Petition is granted. A peremptory writ of mandate shall  
 11 issue by which Respondent shall be ordered and directed to:

- 12 1. Vacate and set aside the Development Agreement;
- 13 2. Vacate and set aside approvals of the Project including, but not limited:
  - 14 a. Certification of the Final Environmental Impact Report ("FEIR") Adopting  
 15 Findings of Fact, A Statement of Overriding Considerations and a Mitigation  
 16 Monitoring Program for the Surland Companies Applications No. 1-04-GPA,  
 17 1-04-A/P; 2-04-SPA;
  - 18 b. Adoption of an Ordinance of the City of Tracy Approving a Development  
 19 Agreement ("DA") with the Surland Companies, Application 2-06-DA;
  - 20 c. Approval of a Petition for Annexation, Application No. 1-04-GPA,
  - 21 d. Approval of a General Plan Amendment, Application No. 1-04-GPA; and
  - 22 e. Approval of the Ellis Specific Plan and Pre-Zoning, Application 2-04-SPA

25 *October 31*  
 26 Dated: ~~March~~, 2011  
 27 *LDH*

  
 28 Hon. Lesley Holland  
 Judge of the Superior Court

LESLEY HOLLAND

**ATTACHMENT 2**

79

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Western Corral Investments LLC  
c/o Earl F. Glock  
Ninth Floor  
1100 Connecticut Avenue, N.W.  
Washington, D.C. 20036

**DOC # 2002-234531**  
12/27/2002 08:39A Fee:33.00  
Page 1 of 3 Doc T Tax Paid  
Recorded in Official Records  
County of San Joaquin  
GARY W. FREEMAN  
Assessor-Recorder-County Clerk  
Paid by OLD REPUBLIC TITLE CO



SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:

The undersigned grantor(s) declare(s):

Western Corral Investments LLC  
c/o Earl F. Glock  
Ninth Floor  
1100 Connecticut Avenue, N.W.  
Washington, D.C. 20036

\$8,085.00  
DOCUMENTARY TRANSFER TAX  
Computed on the consideration or value  
of property conveyed; OR  
Computed on the consideration or value  
less liens or encumbrances remaining at  
time or sale

APN: 240-140-20, 240-140-13

**GRANT DEED**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

WESTERN CORRAL CORPORATION, a California corporation,

hereby GRANT(S) to

WESTERN CORRAL INVESTMENTS LLC, a California limited liability company, that certain  
real property located in San Joaquin County, State of California more particularly  
described in Exhibit "A" attached hereto and made a part hereof.

Dated: December 23<sup>rd</sup>, 2002

WESTERN CORRAL CORPORATION,  
a California corporation

By: David B. Noursi  
David B. Noursi  
Its: Vice President

Description: San Joaquin, CA Document-Year.DocID 2002.234531 Page: 1 of 3  
Order: steve Comment:

NOTARY ACKNOWLEDGMENT

STATE OF CALIFORNIA )  
 )  
 ) SS:  
COUNTY OF SAN MATEO )

On this 23<sup>rd</sup> day of December 2002, before me, VARUN BHALLA, a Notary Public in and for said jurisdiction, personally appeared David B. Noursi, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person, or entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



*Varun Bhalla*

Notary Public  
My Commission expires:



## EXHIBIT "A"

APNs: 240-140-20, 240-140-13

## DESCRIPTION

THAT CERTAIN REAL PROPERTY SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN, DESCRIBED AS FOLLOWS:

THE SOUTHEAST 1/4 OF SECTION 6, TOWNSHIP 3 SOUTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPT THEREFROM THAT PORTION THEREOF IN COUNTY ROAD ALONG THE EASTERLY BOUNDARY OF SAID QUARTER SECTION BY DEED RECORDED JULY 24, 1901 IN BOOK A OF DEEDS, VOL. 116, PAGE 170, SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPT THEREFROM THAT PORTION THEREOF CONVEYED TO THE WESTERN PACIFIC RAILWAY COMPANY, A RAILROAD CORPORATION BY DEED RECORDED JUNE 13, 1906 IN BOOK A OF DEEDS, VOL. 145, PAGE 528, SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION AS CONVEYED TO CAROL JOAN MARIDON ALSO KNOWN AS CAROL J. MARIDON BY GIFT DEED RECORDED JUNE 26, 1989, RECORDER'S INSTRUMENT NO. 89057861, SAN JOAQUIN COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE SOUTH 2 ACRES OF PARCEL SEVEN AS SHOWN ON THE COUNTY ASSESSOR'S TAX MAP 237-11 AND AS RECORDED IN BOOK 4213 AT PAGE 438 OF THE SAN JOAQUIN COUNTY RECORDER'S OFFICE SITUATED IN THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 6, TOWNSHIP 3 SOUTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN; SAID TRACT LYING WEST OF CORRAL HOLLOW ROAD AND NORTH OF THE UNION PACIFIC RAILROAD TRACKS NEAR TRACY, SAN JOAQUIN COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON ROD AT THE INTERSECTION OF THE WEST LINE OF A COUNTY ROAD [CORRAL HOLLOW ROAD] AND THE NORTH LINE OF THAT CERTAIN PARCEL OF REAL PROPERTY AS ORIGINALLY CONVEYED TO WESTERN PACIFIC RAILROAD COMPANY BY DEED RECORDED JUNE 13, 1906 IN BOOK A OF DEEDS, VOL. 145, PAGE 528, SAN JOAQUIN COUNTY RECORDS; SAID POINT OF BEGINNING BEING NORTH 0° 12' 00" EAST ALONG THE SECTION LINE 138.28 FEET AND NORTH 89° 44' 22" WEST 30 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 6, TOWNSHIP 3 SOUTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN; THENCE RUNNING NORTH 89° 44' 22" WEST ALONG SAID NORTH LINE PARALLEL WITH AND 50.0 FEET DISTANT FROM THE CENTER LINE OF THE EXISTING UNION PACIFIC RAILROAD TRACKS, 500.00 FEET TO AN IRON ROD; THENCE NORTH 0° 12' 00" EAST PARALLEL WITH CORRAL HOLLOW ROAD AND THE EAST LINE OF SAID SECTION 6, 174.00 FEET TO AN IRON ROD; THENCE SOUTH 89° 44' 22" EAST PARALLEL WITH SAID NORTH BOUNDARY CONVEYED TO WESTERN PACIFIC RAILROAD COMPANY 500.00 FEET TO AN IRON ROD ON THE WEST LINE OF CORRAL HOLLOW ROAD; THENCE SOUTH 0° 12' 00" WEST ALONG SAID WEST LINE, 174.00 FEET TO THE POINT OF BEGINNING.



2002-234531  
12/27/2002 09:39A  
3 of 3

Description: San Joaquin, CA Document-Year.DocID 2002.234531 Page: 3 of 3  
Order: steve Comment:

**ATTACHMENT 3**

RECORDING REQUESTED BY:

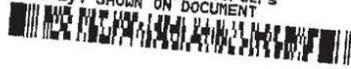
Tracy/Lammers Investments LLC

Order #:  
APN #: 240-140-23

WHEN RECORDED MAIL TO

Tracy/Lammers Investments LLC  
Earl Glock  
O'Connell & Glock, P.C.  
1100 Connecticut Ave., N.W., Ninth Floor  
Washington, DC 20036-4114

Doc #: 2011-048186  
04/21/2011 09:00:14 AM Tax: \$427.90  
Page: 1 of 2 Fee: \$17.00  
Kenneth W Blakemore  
San Joaquin County Recorders  
Paid By: SHOWN ON DOCUMENT



SPACE ABOVE THIS LINE FOR RECORDERS USE

### Grant Deed

The undersigned grantor(s) declare(s):  
Documentary transfer tax is 427.90  
 computed on full value of property conveyed, or  
 computed on full value less of liens and encumbrances remaining at time of sale.  
 Unincorporated area:  City of

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
Tami Redpath Sowle, a married woman, as her sole and separate property

hereby **GRANT(S)** to  
Tracy/Lammers Investments LLC

that property in San Joaquin County, State of California: See Exhibit A attached hereto and made a part hereof.

Mail Tax Statements to as per address above

Date April 15, 2011

*Tami Redpath Sowle*  
Tami Redpath Sowle, a married woman, as her sole and separate property.

State of California

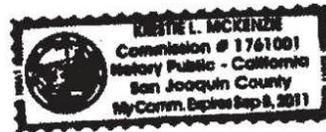
County of San Joaquin

On April 15, 2011 before me,  
Kirstie L. McKenzie, a Notary Public, personally appeared Tami Redpath Sowle, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: *Kirstie L. McKenzie*  
Name Kirstie L. McKenzie  
(typed or printed)



(Area reserved for official notarial seal)

**MAIL TAX STATEMENTS AS DIRECTED ABOVE**

Description: San Joaquin, CA Document-Year.DocID 2011.48186 Page: 1 of 2  
Order: steve Comment:

## **EXHIBIT A**

Real property in the unincorporated area of the County of SAN JOAQUIN,  
State of CALIFORNIA, described as follows:

PARCEL 1 AS SHOWN UPON PARCEL MAP RECORDED DECEMBER  
31, 1992 IN BOOK OF PARCEL MAPS, BOOK 18, PAGE 167, SAN  
JOAQUIN COUNTY RECORDS.

APN: 240-140-23

Grant Deed: April 15, 2011

Page 2 of 2

Description: San Joaquin, CA Document-Year.DocID 2011.48186 Page: 2 of 2  
Order: steve Comment:

**ATTACHMENT 4**



ORDER NO. 116140  
ESCROW NO. 758546

94085246

SAN JOAQUIN COUNTY  
RECORDER'S OFFICE  
JAMES M. JOHNSTONE

Recording Requested by:

94 JUL 20 PM 2:14

RECORDED AT REQUEST OF  
First American of Stockton

WHEN RECORDED MAIL TO:

O'Connell & Glock, P.C.  
815 Connecticut Ave., N.W. 8th Fl.  
Washington, D.C. 20006  
Attn: Earl Glock

FEE \_\_\_\_\_

24-1

MEMORANDUM OF OPTION TO PURCHASE

This Memorandum of Option to Purchase is made this 17th day of March, 1994,

between TUSO FARMS, INC., a California corporation and ("Optionor")  
MARGARET TUSO, a widow

and LAMMERS INVESTMENT CORPORATION, a California corporation and ("Optionee"),  
FAKHRY KAWAR and ANN KAWAR, husband and wife  
who agree as follows:

1. OPTION: Optionor grants to Optionee an option to purchase the Real Property described in Exhibit "A" attached hereto by payment on or before July 18, 1998, of specified sums to Optionor.

2. PURPOSE OF MEMORANDUM OF OPTION TO PURCHASE: This Memorandum of Option to Purchase is prepared for the sole purpose of recordation, and it in no way modifies the provisions of the Option Agreement of even date herewith executed by Optionor and Optionee, the terms of which are incorporated herein by reference.

Executed as of this 22 day of April, 1994

OPTIONOR: TUSO FARMS, INC., a California corporation

By: [Signature]  
Jack Tusso, President

[Signature]  
MARGARET TUSO

OPTIONEE: LAMMERS INVESTMENT CORPORATION,  
a California corporation

By: [Signature]  
David B. Noursi, Vice President

[Signature]  
FAKHRY KAWAR  
[Signature]  
ANN KAWAR

First Am 116140

Description: San Joaquin, CA Document-Year.DocID 1994.85246 Page: 1 of 7  
Order: steve Comment: \_\_\_\_\_



94085246

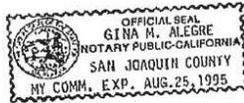
**NOTARY ACKNOWLEDGMENT**

STATE OF CALIFORNIA                    )ss  
COUNTY OF SAN JOAQUIN            )

On JULY 13, 1994, before me, GINA M. ALEGRE, a Notary Public in and for said State, personally appeared JACK TUSO personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature *Gina M. Alegre*



(This area for official notarial seal)

**OPTIONAL:**

DESCRIPTION OF ATTACHED DOCUMENT

NOTARY/DOC (REV 6/04)

Description: San Joaquin, CA Document-Year.DocID 1994.85246 Page: 2 of 7  
Order: steve Comment: FILED IN THE OFFICE OF THE COUNTY CLERK OF SAN JOAQUIN COUNTY CALIFORNIA

94085246

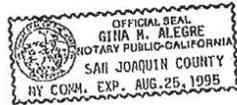
NOTARY ACKNOWLEDGMENT

STATE OF CALIFORNIA )ss  
COUNTY OF SAN JOAQUIN )

On July 18, 1994 before me, Gina M. Alegre, a Notary Public in and for said State, personally appeared MARGARET TUSO personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Gina M. Alegre



(This area for official notarial seal)

OPTIONAL:

DESCRIPTION OF ATTACHED DOCUMENT

NOTARY.DOC (1/14/94)

Description: San Joaquin, CA Document-Year.DocID 1994.85246 Page: 3 of 7  
Order: steve Comment: [unreadable]



94085246

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

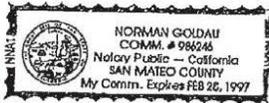
No. 5907

State of Calif.  
County of San Mateo

On 4/22/94 before me, NORMAN GOLDAU, Notary Public  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Fabrizio E. Kawan & Ann Kawan  
NAME(S) OF SIGNER(S)

personally known to me - OR -  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Norman Goldau  
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER
- \_\_\_\_\_ TITLE(S)
- PARTNER(S)       LIMITED
- GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: \_\_\_\_\_

DESCRIPTION OF ATTACHED DOCUMENT

Memorandum of options  
TITLE OR TYPE OF DOCUMENT

70 Purchase  
NUMBER OF PAGES

4/22/94  
DATE OF DOCUMENT

Jack Tuso & Margaret Tuso  
SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:  
(NAME OF PERSON(S) OR ENTITY(ES))

©1993 NATIONAL NOTARY ASSOCIATION • 8236 Rammet Ave., P.O. Box 7184 • Canoga Park, CA 91309-7184

Description: San Joaquin, CA Document-Year.DocID 1994.85246 Page: 5 of 7  
Order: steve Comment: [unclear]





DOC # 2005-167376  
 07/11/2005 02:56P Fee:22.00  
 Page 1 of 6  
 Recorded in Official Records  
 County of San Joaquin  
 GARY W. FREEMAN  
 Assessor-Recorder-County Clerk  
 Paid by SHOWN ON DOCUMENT



RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

R. M. Bonnifield, Esq.  
 Andersen & Bonnifield  
 1320 Willow Pass Road, Suite 500  
 Concord, California 94520

SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

### NOTICE OF ASSIGNMENT OF INTEREST IN OPTION AGREEMENT

This Notice of Assignment of Interest in Option Agreement is made on April 13, 2005 by and between FAKHRY KAWAR and ANN KAWAR (hereinafter collectively, "Assignors") and LAMMERS INVESTMENT CORPORATION (hereinafter "Assignee").

#### RECITALS:

WHEREAS, by Option to Purchase Agreement dated as of March 17, 1994, Assignors and Assignee acquired from TUSO FARMS, INC. and MARGARET TUSO, a widow and unmarried woman, an option to purchase approximately 170.46 acres of land in San Joaquin County, California, known as APN 240-140-16, 240-140-18, 240-140-22 and 240-140-23 (the "Property"), which Property is more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference as if set forth at length, on certain terms and conditions set forth in the Option to Purchase Agreement;

WHEREAS, a written memorandum of the Option to Purchase Agreement dated as of March 17, 1994 was recorded in the Official Records of San Joaquin County, California on July 20, 1994 as Recorder's Instrument No. 94085246;

WHEREAS, on April 21, 1998, TUSO FARMS, INC. and MARGARET TUSO and Assignors and Assignee entered into a First Amendment to Option to Purchase which modified certain terms and conditions of the Option to Purchase Agreement dated as of April 21, 1998;

WHEREAS, a written memorandum of the First Amendment to Purchase Agreement was recorded in the Official Records of San Joaquin County, California on May 5, 1998 as Recorder's Instrument No. 98052416;

WHEREAS, on July 13, 1999, TUSO FARMS, INC. and MARGARET TUSO and Assignors and Assignee entered into a Restated and Amended Option Agreement which modified and amended the terms and conditions;

1

Description: San Joaquin, CA Document-Year.DocID 2005.167376 Page: 1 of 6  
 Order: steve Comment:

WHEREAS, on February 1, 2002, TUSO FARMS, INC. and MARGARET TUSO and Assignors and Assignee entered into a First Amendment to Restated and Amended Option Agreement which modified and amended the terms and conditions;

WHEREAS, on or about January 22, 2004, TUSO FARMS, INC. and MARGARET TUSO and Assignors and Assignee entered into a Second Amendment to Restated and Amended Option Agreement which modified and amended the terms and conditions; and

WHEREAS, with the approval of TUSO FARMS, INC. and MARGARET TUSO, pursuant to the Assignment of Contracts dated as of August 15, 2002, Assignors assigned to Assignee all of their right, title and interest to the Property under the Option to Purchase Agreement, as amended, and the Restated and Amended Option Agreement, as amended;

NOW, THEREFORE, and for fair and valuable consideration, the receipt of which is hereby acknowledged, and the promises and covenants contained herein, Assignors and Assignee agree as follows:

1. Pursuant to the Assignment of Contracts dated August 15, 2002, Assignors assigned to Assignee all of Assignors' right, title, interest in and to the Option to Purchase Agreement dated as of March 17, 1994, as amended, and the Restated and Amended Option Agreement dated as of July 13, 1999, as amended. By the Assignment of Contracts, Assignors delegated to Assignee all of Assignors' duties and obligations of performance under the Option to Purchase Agreement dated as of March 17, 1994, as amended, and the Restated and Amended Option Agreement dated as of July 13, 1999, as amended, and Assignee agreed to assume and perform all duties and obligations that Assignors assigned, as if Assignee had been an original party to the agreements.

2. Notice is hereby given that the Assignment of Contracts dated August 15, 2002 is binding on and shall inure to the benefit of the respective heirs, devisees, legatees, executors, administrators, trustees, successors and assigns of the parties to the Assignment of Contracts.

3. Further notice is hereby given that the Assignment of Contracts shall be governed by and construed in accordance with California law.

4. Any notice or communication required or permitted shall be given in writing addressed as follows:

- (a) If to Lammers Investment Corporation,  
c/o Craig F. Andersen, Esq.  
Andersen & Bonnifield  
1320 Willow Pass Road, Suite 500  
Concord, California 94520  
Fax: (925) 825-0143  
Email: [candersen@AandB.com](mailto:candersen@AandB.com)

With a copy to:

Earl F. Glock, Esq.  
O'Connell & Glock, P.C.  
1100 Connecticut Avenue, N.W., Ninth Floor  
Washington, D.C. 20036-4114  
Fax: (202) 293-7907  
Email: [earlglock@oconnellglock.com](mailto:earlglock@oconnellglock.com)

- (b) If to Fakhry and Ann Kawar:  
2600 Somerset Drive  
Belmont, California 94002-2928  
Fax: (650) 593-1023

IN WITNESS WHEREOF, the parties have executed this Notice of Assignment of Interest in Option Agreement upon and as of the date indicated below.

DATED: 6/1/05, 2005

Fakhry A Kawar  
FAKHRY KAWAR

DATED: 6/1/05, 2005

Ann Kawar  
ANN KAWAR

DATED: April 13, 2005

LAMMERS INVESTMENT CORPORATION

By David Noursi  
DAVID NOURSI, Its Vice President

Description: San Joaquin, CA Document-Year.DocID 2005.167376 Page: 3 of 6  
Order: steve Comment:

EXHIBIT A

COMMITMENT NO. 116140/JH

THE LAND  
CALIFORNIA, COUNTY OF SAN JOAQUIN

IN THE STATE OF  
AS FOLLOWS:

## PARCEL ONE:

A PORTION OF SECTION 6, TOWNSHIP 3, SOUTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN ACCORDING TO THE OFFICIAL PLAT THEREOF, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON PIPE IN THE EAST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 6, BEARING SOUTH 0° 17' EAST 4220.90 FEET FROM THE IRON BOLT AT THE NORTHEAST CORNER OF THE NORTHWEST 1/4 OF SAID SECTION 6; THENCE ALONG THE EAST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 6, SOUTH 0° 17' EAST, 964.50 FEET TO IRON PIPE IN THE NORTH LINE OF RIGHT OF WAY OF THE WESTERN PACIFIC RAILROAD; THENCE ALONG THE NORTH LINE OF SAID RIGHT OF WAY BEING 50 FEET NORTH OF THE CENTER LINE OF THE MAIN LINE TRACK OF SAID RAILROAD, SOUTH 89° 49' WEST 1796.43 FEET TO AN IRON ROD AT THE SOUTHEAST CORNER OF THE TRACT OF LAND CONVEYED TO THE UNITED STATES OF AMERICA BY DEED RECORDED IN BOOK OF OFFICIAL RECORDS OF SAN JOAQUIN COUNTY, VOL. 1061, PAGE 45, SAN JOAQUIN COUNTY RECORDS; THENCE ALONG THE NORTHEASTERLY BOUNDARY LINE OF SAID PROPERTY CONVEYED TO THE UNITED STATES OF AMERICA, AS FOLLOWS:

NORTH 74° 58' WEST 550.5 FEET TO AN IRON ROD; NORTH 16° 08' WEST 317.4 FEET TO AN IRON ROD; NORTH 58° 09' WEST 1563.2 FEET TO AN IRON ROD; SOUTH 89° 41' WEST 437.8 FEET TO AN IRON ROD IN THE EAST LINE OF THE LAMMERS ROAD WHICH IS 25 FEET EAST OF THE WEST LINE OF SAID SECTION 6; THENCE ALONG THE EAST LINE OF THE LAMMERS ROAD, NORTH 0° 11' WEST 40 FEET TO AN IRON PIPE; THENCE NORTH 89° 41' EAST 449.24 FEET TO AN IRON PIPE; THENCE SOUTH 58° 09' EAST 677.57 FEET TO AN IRON PIPE; THENCE NORTH 89° 43' 30" EAST 3152.53 FEET TO THE POINT OF BEGINNING.

## PARCEL TWO:

A TRACT OF LAND SITUATED IN THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA IN THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 3 SOUTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCELS 1 AND 2 AS SHOWN UPON PARCEL MAP RECORDED DECEMBER 31, 1992 IN BOOK OF PARCEL MAPS, VOL. 18, PAGE 167, SAN JOAQUIN COUNTY RECORDS.

Page 1 of 2

EXHIBIT "A"

Description: San Joaquin, CA Document-Year.DocID 2005.167376 Page: 4 of 6  
Order: steve Comment:

COMMITMENT NO. 116140/JH

## PARCEL THREE:

A TRACT OF LAND SITUATED IN THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 3 SOUTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON PIPE IN THE EAST LINE OF THE SOUTHWEST 1/4 OF SECTION 6 BEARING SOUTH 0° 17' EAST 2977.36 FEET FROM THE IRON BOLT AT THE NORTHEAST CORNER OF THE NORTHWEST 1/4 OF SAID SECTION 6; THENCE ALONG THE EAST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 6, SOUTH 0° 17' EAST 590.08 FEET TO AN IRON PIPE; THENCE SOUTH 89° 43' 30" WEST 4175.03 FEET TO AN IRON PIPE IN THE EAST LINE OF THE LAMMERS ROAD WHICH IS 25 FEET EAST OF THE WEST LINE OF SAID SECTION 6; THENCE ALONG THE EAST LINE OF THE LAMMERS ROAD, NORTH 0° 11' WEST 590.08 FEET TO AN IRON PIPE; THENCE NORTH 89° 43' 30" EAST 4174 FEET TO THE POINT OF BEGINNING.

EXCEPT A PORTION OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 3 SOUTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 1 INCH IRON PIPE AT THE NORTHWEST CORNER OF THAT CERTAIN TRACT OF LAND DESCRIBED IN A DEED TO ROY TUSO AND MARGARET TUSO, HUSBAND AND WIFE RECORDED JUNE 8, 1949 IN BOOK OF OFFICIAL RECORDS, VOL. 1213, PAGE 30, SAN JOAQUIN COUNTY RECORDS, SAID POINT OF BEGINNING BEING ON THE EAST LINE OF LAMMERS ROAD (A 50 FOOT ROAD); THENCE ALONG THE NORTH LINE OF SAID TUSO PROPERTY, NORTH 89° 44' 00" EAST 710.00 FEET TO A 3/4 INCH IRON PIPE; THENCE SOUTH 0° 11' EAST 17.00 FEET TO A 3/4 INCH IRON PIPE; THENCE SOUTH 89° 44' 00" WEST AND PARALLEL TO THE NORTH LINE OF SAID TUSO PROPERTY A DISTANCE OF 710.00 FEET TO A 3/4 INCH IRON PIPE ON THE EAST LINE OF SAID LAMMERS ROAD; THENCE ALONG THE EAST LINE OF LAMMERS ROAD, NORTH 0° 11' WEST 17.00 FEET TO THE POINT OF BEGINNING.

Page 2 of 2

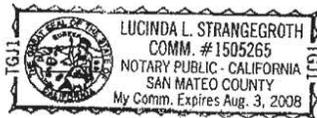
Description: San Joaquin, CA Document-Year.DocID 2005.167376 Page: 5 of 6  
Order: steve Comment:

ACKNOWLEDGMENT

State of California )  
County of San Mateo )

On June, 2005 before me Lucinda L. Strangroth, personally appeared Fakhry Wahan and Ann Kanas, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Lucinda L. Strangroth  
NOTARY PUBLIC

J:\KAWARITUSO\NOTICE OF ASSIGNMENT.wpd

DOC # 2005-167375

07/11/2005 02:56P Fee:25.00

Page 1 of 7

Recorded in Official Records  
County of San Joaquin

GARY U. FREEMAN

Assessor-Recorder-County Clerk  
Paid by SHOWN ON DOCUMENT

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

R. M. Bonnifield, Esq.  
Andersen & Bonnifield  
1320 Willow Pass Road, Suite 500  
Concord, California 94520

SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

**NOTICE OF ASSIGNMENT OF  
INTEREST IN OPTION AGREEMENT**

This Notice of Assignment of Interest in Option Agreement is made on April <sup>13</sup>, 2005 by and between LAMMERS INVESTMENT CORPORATION (hereinafter "Assignor") and TRACY/LAMMERS INVESTMENTS, LLC, a California limited liability company (hereinafter "Assignee").

**RECITALS:**

WHEREAS, by Option to Purchase Agreement dated as of March 17, 1994, Assignor and FAKHRY KAWAR and ANN KAWAR (hereinafter collectively, the "Kawars") acquired from TUSO FARMS, INC. and MARGARET TUSO, a widow and unmarried woman, an option to purchase approximately 170.46 acres of land in San Joaquin County, California, known as APN 240-140-16, 240-140-18, 240-140-22 and 240-140-23 (the "Property"), which Property is more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference as if set forth at length, on certain terms and conditions set forth in the Option to Purchase Agreement;

WHEREAS, a written memorandum of the Option to Purchase Agreement dated as of March 17, 1994 was recorded in the Official Records of San Joaquin County, California on July 20, 1994 as Recorder's Instrument No. 94085246;

WHEREAS, on April 21, 1998, TUSO FARMS, INC. and MARGARET TUSO and Assignor and Kawars entered into a First Amendment to Option to Purchase which modified certain terms and conditions of the Option to Purchase Agreement dated as of April 21, 1998;

WHEREAS, a written memorandum of the First Amendment to Purchase Agreement was recorded in the Official Records of San Joaquin County, California on May 5, 1998 as Recorder's Instrument No. 98052416;

1

Description: San Joaquin, CA Document-Year.DocID 2005.167375 Page: 1 of 7  
Order: steve Comment:

WHEREAS, on July 13, 1999, TUSO FARMS, INC. and MARGARET TUSO and Assignor and Kawars entered into a Restated and Amended Option Agreement which modified and amended the terms and conditions;

WHEREAS, on February 1, 2002, TUSO FARMS, INC. and MARGARET TUSO and Assignor and Kawars entered into a First Amendment to Restated and Amended Option Agreement which modified and amended the terms and conditions;

WHEREAS, on or about January 22, 2004, TUSO FARMS, INC. and MARGARET TUSO and Assignor and Kawars entered into a Second Amendment to Restated and Amended Option Agreement which modified and amended the terms and conditions;

WHEREAS, with the approval of TUSO FARMS, INC. and MARGARET TUSO, pursuant to the Assignment of Contracts dated as of August 15, 2002, the Kawars assigned to Assignor all of their right, title and interest to the Property under the Option to Purchase Agreement, as amended, and the Restated and Amended Option Agreement, as amended; and

WHEREAS, with the written approval of TUSO FARMS, INC. and MARGARET TUSO, pursuant to the Assignment and Assumption of Option Agreement, dated December 20, 2004, Assignor assigned to Assignee all of its right, title and interest to the Property under the Option to Purchase Agreement, as amended, and the Restated and Amended Option Agreement, as amended;

NOW, THEREFORE, and for fair and valuable consideration, the receipt of which is hereby acknowledged, and the promises and covenants contained herein, Assignor and Assignee agree as follows:

1. Pursuant to the Assignment and Assumption of Option Agreement, dated December 20, 2004, Assignor assigned to Assignee all of Assignor's right, title, interest in and to the Option to Purchase Agreement dated as of March 17, 1994, as amended, and the Restated and Amended Option Agreement dated as of July 13, 1999, as amended. By the Assignment and Assumption of Option Agreement, Assignor delegated to Assignee all of Assignor's duties and obligations of performance under the Option to Purchase Agreement dated as of March 17, 1994, as amended, and the Restated and Amended Option Agreement dated as of July 13, 1999, as amended, and Assignee agreed to assume and perform all duties and obligations that Assignor assigned, as if Assignee had been an original party to the agreements.

2. Notice is hereby given that the Assignment and Assumption of Option Agreement, dated December 20, 2004 is binding on and shall inure to the benefit of the respective heirs, devisees, legatees, executors, administrators, trustees, successors and assigns of the parties to the Assignment and Assumption of Option Agreement.

3. Further notice is hereby given that the Assignment and Assumption of Option Agreement shall be governed by and construed in accordance with California law.

4. Any notice or communication required or permitted shall be given in writing addressed as follows:

- (a) If to Lammers Investment Corporation,  
c/o Craig F. Andersen, Esq.  
Andersen & Bonnifield  
1320 Willow Pass Road, Suite 500  
Concord, California 94520  
Fax: (925) 825-0143  
Email: [candersen@AandB.com](mailto:candersen@AandB.com)

With a copy to:

Earl F. Glock, Esq.  
O'Connell & Glock, P.C.  
1100 Connecticut Avenue, N.W., Ninth Floor  
Washington, D.C. 20036-4114  
Fax: (202) 293-7907  
Email: [earlglock@oconnellglock.com](mailto:earlglock@oconnellglock.com)

- (b) If to Tracy/Lammers Investments, LLC,  
c/o Earl F. Glock, Esq.  
O'Connell & Glock, P.C.  
1100 Connecticut Avenue, N.W., Ninth Floor  
Washington, D.C. 20036-4114  
Fax: (202) 293-7907  
Email: [earlglock@oconnellglock.com](mailto:earlglock@oconnellglock.com)

With a copy to:

Craig F. Andersen, Esq.  
Andersen & Bonnifield  
1320 Willow Pass Road, Suite 500  
Concord, California 94520  
Fax: (925) 825-0143  
Email: [candersen@AandB.com](mailto:candersen@AandB.com)

IN WITNESS WHEREOF, the parties have executed this Notice of Assignment of Interest in Option Agreement upon and as of the date indicated below.

DATED: April 13<sup>th</sup>, 2005

LAMMERS INVESTMENT CORPORATION

By David B. Noursi  
DAVID B. NOURSI,  
Its Vice President

TRACY/LAMMERS INVESTMENTS, LLC,  
A California Limited Liability Company

By David B. Noursi  
DAVID B. NOURSI,  
Its Manager/Vice President

EXHIBIT A

COMMITMENT NO. 116140/JH

THE LAND  
CALIFORNIA, COUNTY OF SAN JOAQUIN

IN THE STATE OF  
AS FOLLOWS:

## PARCEL ONE:

A PORTION OF SECTION 6, TOWNSHIP 3, SOUTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN ACCORDING TO THE OFFICIAL PLAT THEREOF, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON PIPE IN THE EAST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 6, BEARING SOUTH 0° 17' EAST 4220.90 FEET FROM THE IRON BOLT AT THE NORTHEAST CORNER OF THE NORTHWEST 1/4 OF SAID SECTION 6; THENCE ALONG THE EAST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 6, SOUTH 0° 17' EAST, 964.50 FEET TO IRON PIPE IN THE NORTH LINE OF RIGHT OF WAY OF THE WESTERN PACIFIC RAILROAD; THENCE ALONG THE NORTH LINE OF SAID RIGHT OF WAY BEING 50 FEET NORTH OF THE CENTER LINE OF THE MAIN LINE TRACK OF SAID RAILROAD, SOUTH 89° 49' WEST 1796.43 FEET TO AN IRON ROD AT THE SOUTHEAST CORNER OF THE TRACT OF LAND CONVEYED TO THE UNITED STATES OF AMERICA BY DEED RECORDED IN BOOK OF OFFICIAL RECORDS OF SAN JOAQUIN COUNTY, VOL. 1061, PAGE 45, SAN JOAQUIN COUNTY RECORDS; THENCE ALONG THE NORTHEASTERLY BOUNDARY LINE OF SAID PROPERTY CONVEYED TO THE UNITED STATES OF AMERICA, AS FOLLOWS:

NORTH 74° 58' WEST 550.5 FEET TO AN IRON ROD; NORTH 16° 08' WEST 317.4 FEET TO AN IRON ROD; NORTH 58° 09' WEST 1563.2 FEET TO AN IRON ROD; SOUTH 89° 41' WEST 437.8 FEET TO AN IRON ROD IN THE EAST LINE OF THE LAMMERS ROAD WHICH IS 25 FEET EAST OF THE WEST LINE OF SAID SECTION 6; THENCE ALONG THE EAST LINE OF THE LAMMERS ROAD, NORTH 0° 11' WEST 40 FEET TO AN IRON PIPE; THENCE NORTH 89° 41' EAST 449.24 FEET TO AN IRON PIPE; THENCE SOUTH 58° 09' EAST 677.57 FEET TO AN IRON PIPE; THENCE NORTH 89° 43' 30" EAST 3152.53 FEET TO THE POINT OF BEGINNING.

## PARCEL TWO:

A TRACT OF LAND SITUATED IN THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA IN THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 3 SOUTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCELS 1 AND 2 AS SHOWN UPON PARCEL MAP RECORDED DECEMBER 31, 1992 IN BOOK OF PARCEL MAPS, VOL. 18, PAGE 167, SAN JOAQUIN COUNTY RECORDS.

Page 1 of 2

EXHIBIT "A"

Description: San Joaquin, CA Document-Year.DocID 2005.167375 Page: 5 of 7  
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COMMITMENT NO. 116140/JH

## PARCEL THREE:

A TRACT OF LAND SITUATED IN THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 3 SOUTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON PIPE IN THE EAST LINE OF THE SOUTHWEST 1/4 OF SECTION 6 BEARING SOUTH 0° 17' EAST 2977.36 FEET FROM THE IRON BOLT AT THE NORTHEAST CORNER OF THE NORTHWEST 1/4 OF SAID SECTION 6; THENCE ALONG THE EAST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 6, SOUTH 0° 17' EAST 590.08 FEET TO AN IRON PIPE; THENCE SOUTH 89° 43' 30" WEST 4175.03 FEET TO AN IRON PIPE IN THE EAST LINE OF THE LAMMERS ROAD WHICH IS 25 FEET EAST OF THE WEST LINE OF SAID SECTION 6; THENCE ALONG THE EAST LINE OF THE LAMMERS ROAD, NORTH 0° 11' WEST 590.08 FEET TO AN IRON PIPE; THENCE NORTH 89° 43' 30" EAST 4174 FEET TO THE POINT OF BEGINNING.

EXCEPT A PORTION OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 3 SOUTH, RANGE 5 EAST, MOUNT DIABLO BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 1 INCH IRON PIPE AT THE NORTHWEST CORNER OF THAT CERTAIN TRACT OF LAND DESCRIBED IN A DEED TO ROY TUSO AND MARGARET TUSO, HUSBAND AND WIFE RECORDED JUNE 8, 1949 IN BOOK OF OFFICIAL RECORDS, VOL. 1213, PAGE 30, SAN JOAQUIN COUNTY RECORDS, SAID POINT OF BEGINNING BEING ON THE EAST LINE OF LAMMERS ROAD (A 50 FOOT ROAD); THENCE ALONG THE NORTH LINE OF SAID TUSO PROPERTY, NORTH 89° 44' 00" EAST 710.00 FEET TO A 3/4 INCH IRON PIPE; THENCE SOUTH 0° 11' EAST 17.00 FEET TO A 3/4 INCH IRON PIPE; THENCE SOUTH 89° 44' 00" WEST AND PARALLEL TO THE NORTH LINE OF SAID TUSO PROPERTY A DISTANCE OF 710.00 FEET TO A 3/4 INCH IRON PIPE ON THE EAST LINE OF SAID LAMMERS ROAD; THENCE ALONG THE EAST LINE OF LAMMERS ROAD, NORTH 0° 11' WEST 17.00 FEET TO THE POINT OF BEGINNING.

Page 2 of 2

Description: San Joaquin, CA Document-Year.DocID 2005.167375 Page: 6 of 7  
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**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of Contra Costa } ss.

On April 13, 2005, before me, Craig F. Andersen, Notary Public  
Date Name and Title of Officer (e.g., Jane Doe, Notary Public)

personally appeared David B. Noursi  
Name(s) of Signer(s)

personally known to me  
 proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

*[Handwritten Signature]*  
Signature of Notary Public

Place Notary Seal Above

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Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



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**ATTACHMENT 5**

## Business Entity Detail

Data is updated weekly and is current as of Friday, August 10, 2012. It is not a complete or certified record of the entity.

Entity Name:	TRACY/LAMMERS INVESTMENTS LLC
Entity Number:	199901910144
Date Filed:	01/19/1999
Status:	ACTIVE
Jurisdiction:	CALIFORNIA
Entity Address:	65 COTTONWOOD COURT
Entity City, State, Zip:	HILLSBOROUGH CA 94010
Agent for Service of Process:	DAVID B. NOURSI
Agent Address:	65 COTTONWOOD COURT
Agent City, State, Zip:	HILLSBOROUGH CA 94010

\* Indicates the information is not contained in the California Secretary of State's database.

\* **Note:** If the agent for service of process is a corporation, the address of the agent may be requested by ordering a status report.

- For information on checking or reserving a name, refer to [Name Availability](#).
- For information on ordering certificates, copies of documents and/or status reports or to request a more extensive search, refer to [Information Requests](#).
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## Business Entity Detail

Data is updated weekly and is current as of Friday, August 10, 2012. It is not a complete or certified record of the entity.

<b>Entity Name:</b>	WESTERN CORRAL INVESTMENTS LLC
<b>Entity Number:</b>	199901910145
<b>Date Filed:</b>	01/19/1999
<b>Status:</b>	ACTIVE
<b>Jurisdiction:</b>	CALIFORNIA
<b>Entity Address:</b>	65 COTTONWOOD COURT
<b>Entity City, State, Zip:</b>	HILLSBOROUGH CA 94010
<b>Agent for Service of Process:</b>	DAVID B. NOURSI
<b>Agent Address:</b>	65 COTTONWOOD COURT
<b>Agent City, State, Zip:</b>	HILLSBOROUGH CA 94010

\* Indicates the information is not contained in the California Secretary of State's database.

\* **Note:** If the agent for service of process is a corporation, the address of the agent may be requested by ordering a status report.

- For information on checking or reserving a name, refer to [Name Availability](#).
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<b>Education, Health, &amp; Social:</b>	<b>Total population:</b> 36,264,467 (100%)
<b>Professional, Scientific, &amp; Mgmt:</b> 1,972,451 (12%)	<b>White:</b> 22,891,250 (63%)
<b>Retail trade:</b> 1,853,966 (11%)	<b>Other:</b> 6,495,684 (18%)
<b>Manufacturing:</b> 1,770,742 (11%)	<b>Asian:</b> 4,844,980 (13%)
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<b>Construction:</b> 1,304,774 (8%)	<b>Native American:</b> 564,768 (2%)
<b>Finance, Insurance, &amp; Real Estate:</b> 1,242,567 (8%)	<b>Hawaiian &amp; Pacific Islander:</b> 198,013 (1%)
<b>Other Services:</b> 859,999 (5%)	
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**ATTACHMENT 6**

2/28/12

Arab Bank - Jordan: H.E. Mr Samir Farhan Kawar

**Name** : Mr. Samir Farhan Khalil Kawar  
**Title** : Member of the Board of Directors  
**Date of membership** : 29/3/2002  
**Date of birth** : 29/10/1934  
**Academic qualifications** : B.Sc. in Agricultural Engineering, University of Arizona, USA 1959  
M.Sc. in Agricultural Mechanical Engineering, Kansas State University, USA 1961



**Experiences** : - Managing private businesses (since 1965)  
- Head of the Natural, Mineral and Industrial Resources - Section, Jordanian National Construction Council (1962 - 1965)  
- Formerly, Minister of several ministries and member of the - - Senate, House of Representatives, the National Consultative Council and many of its committees.

**Memberships** : - Chairman of the Board of Directors of Arab Bank Australia Ltd., Australia.  
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- Founding Member of the Salt Construction Establishment, Jordan  
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- Member of Amman Chamber of Industry, Jordan  
- Chairman and Board member in many private companies in Jordan

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**ATTACHMENT 7**

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## Saga of a Valley

### Many twists lead up to sudden reversal of development plan

Michael Hytha, Patricia Jacobus, Chronicle Staff Writers  
Wednesday, May 20, 1998

Nolan Sharp thought that 34 years of hard work on his ranch in the Tassajara Valley had earned him the right to sell his property to anyone he wanted.

Including developers.

``Our soil, our land," Sharp said, ``is our retirement."

But this week, anti-growth crusaders in Contra Costa unsaddled Sharp, a veterinarian who along with other property owners unexpectedly withdrew a decade-old, 5,330-home development proposal. And yesterday the Board of Supervisors took the first step toward making the valley east of San Ramon an agricultural preserve.

It was a fitting finale to the Tassajara saga, with a cast of characters and series of plot twists setting it apart from the typical Bay Area land disputes that pit environmentalists against developers.

For years, Tassajara has been a valley rife with mistrust, defections and scandal, a landscape complicated by an odd assortment of characters: far-flung speculators, old-time ranchers and a determined cabi-

net minister in Jordan.

Critics conceded that they had some sympathy for Sharp's plight. But when all was said and done, they considered him no more than a prop for out-of-town speculators -- the ones who would be doing the real cashing in.

``People tend to think of (the Tassajara development group) as a bunch of little Nolan Sharps," said county Supervisor Donna Gerber. ``... The truth has been quite different from that."

Samir Kwar decided to stake a claim to territory in Tassajara in 1984, after taking a drive along the narrow road that winds through it.

The valley was beautiful, and the lure of U.S. incentives for foreign investors like him certainly didn't hurt, either.

Kwar's forefathers migrated from Nazareth to Jordan in 1926, launching a family empire that now includes much of the kingdom's travel, shipping and insurance business -- and also real estate.

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"I have what you call a love affair with the land," Kawar said on a recent visit.

Kawar started his Contra Costa shopping spree with a hilly 571-acre tract -- the largest in the Tassajara -- and an adjacent 70-acre parcel to provide a more direct link to the road.

Kawar didn't need much time to land himself in trouble.

His longtime business partner from Jordan, Fuad Abujaber, sued him for fraud in connection with the \$1.35 million purchase.

Abujaber accused Kawar of transferring ownership of the property to a Cayman Islands company he controlled and then selling Abujaber a one-third share for \$2.17 million six months later.

One month before trial, Abujaber and Kawar settled the suit out of court, returning ownership to Kawar for a price that he said reflected its market value.

Back home in Jordan, Kawar was on a path toward a cabinet post -- but in Contra Costa, he was well on his way to becoming one of the most controversial developers in a county full of them.

Soon after Kawar became a player in the Tassajara, he was doing business with the Tassajara Valley Property Owners Association, a disparate group of landholders brought together like a team for a pick-up basketball game.

Along with Sharp and Kawar, there was a would-be garbage dump developer, an heir to the founder of the Breuner's furniture chain, descendants of the valley's pioneers and a Japanese businessman who built a tony Danville restaurant.

But landowners frustrated by long delays and mounting costs started bailing out -- and Kawar wound up purchasing three more large parcels, just to preserve the organization and protect his considerable investment.

Kawar says he had not intended to expand his holdings, but he eventually owned one-quarter of the entire valley.

To complicate matters, Contra Costa leaders demanded a master plan for the entire 4,326-acre Tassajara, complete with its own schools, stores and parks.

Kawar and the Tassajara property owners complied, only to have their best efforts backfire.

As it turned out, the master plan, submitted in 1991, attracted far more attention than developing lots one at a time.

By this point, Contra Costa voters -- fed up with gridlocked freeways and vanishing open space -- had started electing anti-growth representatives. And many wanted to kill the Tassajara project.

To grease the political wheels, the Tassajara group knew it had to throw some money to politicians.

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After all, developers had been using campaign donations to lay the foundation for nearly a half-century of suburban expansion.

But a scandal developed when some Tassajara members got busted in a money-laundering fiasco.

Kuzuo Sugitani, a Japanese businessman who owned 129 acres next to Kawar's land, was fined \$96,900 by the state Fair Political Practices Commission in 1995 for laundering contributions to county supervisors, water district candidates and other politicians with a hand in the project's fate.

In connection with the incident, Sugitani's real estate broker, former Danville Councilman Doug Offenhartz, was fined \$62,000.

Sugitani sold his land to Kawar, whose brother Fakhry paid \$22,000 in 1996 to settle allegations that he laundered \$5,496 in contributions to supervisorial candidates.

The scheme was not sophisticated. One check had a notation: ``Donation for Samir."

Kawar tried to downplay the scandal, claiming his brother -- a naturalized American citizen who lives in Belmont and represents Kawar's interests in the Tassajara -- was unfamiliar with American campaign contribution laws.

Indeed, competing developers and some political insiders began referring to the association as the ``gang that couldn't shoot straight."

Kawar and the Tassajara group may have made their biggest mistake by playing up the organization's local roots -- and trying to minimize the fact that the vast majority of the acreage belonged to land speculators who live far beyond the valley.

The omission branded the project with a mark of hypocrisy in the eyes of opponents.

Sharp, the president of the Tassajara group, owns only 16 acres in the valley -- compared with Kawar's 1,157 acres.

In fact, Sharp and the five other association members who live full time in the valley lay claim to only 144 acres among them.

While Sharp made the public appearances touting the project, Kawar was almost invisible, staying in Jordan and leaving the day- to-day management of his assets to his brother.

In Kawar's absence, assumptions about him and his wealth abounded. Local politicians and even some of the Tassajara ranchers frequently misidentified him as a member of Jordan's royal family.

Gerber, who refers to Sharp as a ``poster child," admitted that she would have looked more favorably on homegrown ranchers than outside land speculators.

But any sympathy from Gerber was overshadowed by the dominance of the far-flung speculators. She

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says that although the Tassajara property owners haven't lied about who owns the land, they haven't been forthright about it, either.

She even referred to Sharp as a "poster child" -- something that made fellow Tassajara property owner Sid Corrie Jr. bristle.

"Nolan Sharp is our pulse on the people," said Corrie, who has tussled with politicians and sued the county when they blocked his plans for a new dump near Pittsburg. "She (Gerber) couldn't carry a saddle next to him."

But Gerber ended up victorious. Her push to make Tassajara an agricultural preserve forced the owners to abandon the plan.

"Supervisor Gerber has said she believes she was elected to stop Tassajara Valley," Sharp said in statement Monday, "and I'm here to confirm, Supervisor Gerber, that you have done that."

Before the association announced its withdrawal from the project Monday, the tab for planning costs had passed the \$5 million mark.

Kawar, meanwhile, has been silent since the decision. Now it appears he may be stuck with \$22 million worth of grazing land.

"Kawar, he's wonderful," said Supervisor Mark DeSaulnier of Concord, who opposed the plan. "He's a really nice man, articulate, polite."

"He made a bad investment."

#### **Development demise in tassajara valley**

The coalition of 12 property owners in Contra

Costa's Tassajara Valley dropped plans for 5,330 new homes.

Though the Tassajara Valley Property Owners Association plays up the group's roots among the area's ranching families, outside land speculators own much of the land. International businessman Samir Kawar owns one-quarter of the entire valley. People who do not belong to the association own more than half of the 4,326 acres.

#### **Samir kawar**

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Jordanian businessman

and

cabinet minister.

1,157 acres

**Sid corrie jr.**

East Bay developer.

297 acres

TVPOA members,

other than Kawar,

who do not live

in the valley.

357 acres

TVPOA members who

live on property full

time.

144 acres

OTHER property

in Tassajara

Valley.

2,371 acres

JOHN BLANCHARD/The Chronicle

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/1998/05/20/MN54181.DTL>

This article appeared on page **A - 17** of the San Francisco Chronicle

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**ATTACHMENT 8**

Attorney Earl Glock | Lawyer in Washington DC

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**Contact Information**

Phone: (202) 293-7909

Fax: Not Available

**Admitted to Practice Law**

1980, Virginia, District of Columbia, US Court of Appeals, Fourth Circuit and US Court of Federal Claims; 1981, US District Court for the District of Columbia, US Court of Appeals for the District of Columbia Circuit and US Tax Court; 1982, US Court of Appeals for the Federal Circuit; 1985, US District Court, Eastern District of Virginia and US Supreme Court; 2000, Maryland

**Education**

College: ML in Taxation, (1988), University of Notre Dame, BA, with honors, 1974; Georgetown University, MSFS, 1980

Law School: Georgetown University (JD, 1980)

Graduated Law School: 1980

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District of Columbia Bar; Virginia State Bar; American Bar Association (Member: International Law Section; U.S. Activities of Foreigners and Tax Treaties Committee, Taxation Section).

### Biographical Information

Phi Sigma Alpha.

Born: Johnstown, Pennsylvania, December 15, 1952

Advisory Counsel Attorney at Law Senior Attorney District Judge Lawyer

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#### Social Networking Search

Search and connect with Attorney Earl Glock on these social networking sites.

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## **Response to Letter No. 10 David Helm**

- 10.1 The Project Applicant has acquired and currently owns title to the majority of the acreage within the ESP site, as evidenced by copies of grant deeds provided to the City, and the City has been informed that the Project Applicant has been given the authorization of all other owners of the remaining ESP acreage to pursue processing of the application filed with the City of Tracy to obtain entitlements to develop the ESP property on their behalf. Further, the City has been informed that the Project Applicant has entered or will soon enter into an option/purchase agreement(s) giving it an equitable interest in the entire remaining acreage within the ESP site, which acreage it will thereafter acquire in fee ownership through exercise of its rights under the option/purchase agreement. Documents substantiating the Project Applicant's control over the property are on file with the City of Tracy located at 333 Civic Center Plaza, Tracy, CA 95376.

**Comment Letter No. 11****"1.8.2 ALTERNATIVE 10: 1993 ALUCP RUNWAY LENGTH**

Under the 1993 ALUCP Runway Length Alternative (Alternative 10), all the same uses would develop as proposed by the Modified ESP (a minimum of 1,000 to a maximum of 2,250 residential units, 180,000 square feet of retail, office, and other commercial uses, and four acres of parks per 1,000 residents). Like the Modified ESP, three acres of Neighborhood Parks per 1,000 residents would be built throughout Ellis, and the one acre of Community Park per 1,000 residents requirement could be met with either the donation of land from the Project Applicant for a Family Swim Center or the payment of an in lieu fee. All underlying zoning would be Residential Mixed (TR-Ellis). However, under Alternative 10, the runway lengths at the Tracy Municipal Airport would be similar to those identified in the 1993 ALUCP, which are shorter than those identified in the 2009 ALUCP. Thus, under Alternative 10, runway 8-26 at the Tracy Municipal Airport would be 3,418 feet long and 100 feet wide and runway 12-30 would be 3,996 feet long and 100 feet wide (or as adjusted by the City's recent survey), as opposed to the 2009 ALUCP runway 8-26 length of 3,438 feet long and 100 feet wide and runway 12-30 length of 4,002 feet long and 100 feet wide."

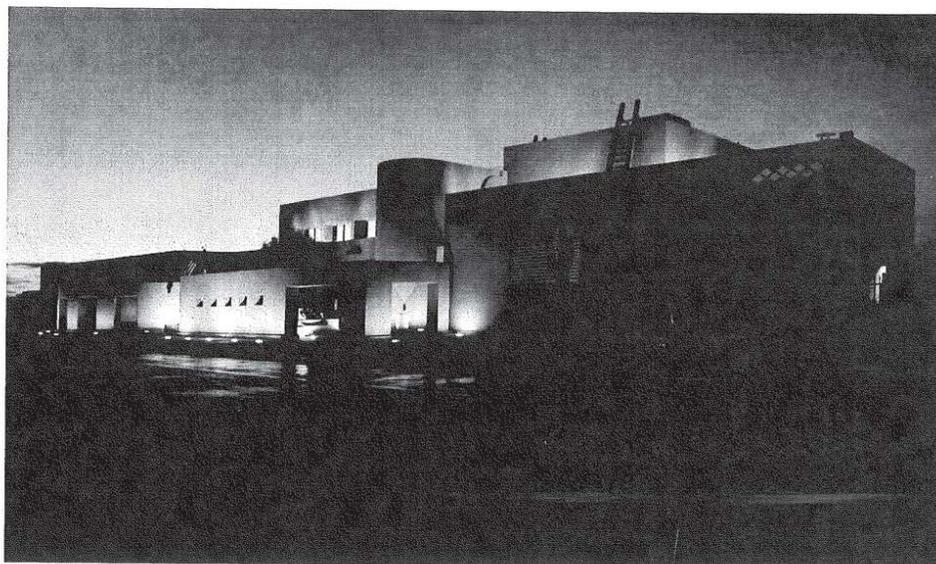
11.1

The information is simply inaccurate and the alternative is illegal and should be removed.

<b>U.S. DEPARTMENT OF TRANSPORTATION</b> <b>FEDERAL AVIATION ADMINISTRATION</b>		<b>AIRPORT MASTER RECORD</b>		PRINT DATE: 08/22/2012 AFD EFF 07/28/2012 Form Approved OMB 2120-0015	
> 1 ASSOC CITY: TRACY		4 STATE: CA		LOC ID: TCY	
> 2 AIRPORT NAME: TRACY MUNI		6 REGION/ADO: AWP/SFO		5 COUNTY: SAN JOAQUIN CA	
> 3 CBD TO AIRPORT (NM): 03 SW		7 SECT AERO CHT: SAN FRANCISCO		FAA SITE NR: 02359.*A	
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> 10 OWNERSHIP: PU		> 70 FUEL: 100LL A		90 SINGLE ENG: 61	
> 11 OWNER: CITY OF TRACY		> 71 AIRFRAME RPRS: MAJOR		91 MULTI ENG: 2	
> 12 ADDRESS: 400 EAST 10TH STREET TRACY, CA 95376-4008		> 72 PWR PLANT RPRS: MAJOR		92 JET: 1	
> 13 PHONE NR: 209-831-6262		> 73 BOTTLE OXYGEN: LOW		TOTAL: 64	
> 14 MANAGER: ROD BUCHANAN		> 74 BULK OXYGEN: LOW		93 HELICOPTERS: 2	
> 15 ADDRESS: 400 EAST 10TH TRACY, CA 95376-4008		> 75 TSNT STORAGE: TIE		94 GLIDERS: 0	
> 16 PHONE NR: 209-831-6262		> 76 OTHER SERVICES: CHTR, INSTR, RNTL		95 MILITARY: 0	
> 17 ATTENDANCE SCHEDULE: ALL ALL 0800-1800				96 ULTRA-LIGHT: 20	
			<b>FACILITIES</b>		<b>OPERATIONS</b>
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19 ARPT LAT: 37-41-20.4000N ESTIMATED		> 81 ARPT LGT SKED: SEE RMK		102 AIR TAXI: 300	
20 ARPT LONG: 121-26-29.8000W		> 82 UNICOM: 123.075		103 G A LOCAL: 20,475	
21 ARPT ELEV: 193.0 SURVEYED		> 83 WIND INDICATOR: YES-L		104 G A ITNRNT: 39,225	
22 ACREAGE: 310		> 84 SEGMENTED CIRCLE: YES		105 MILITARY: 0	
> 23 RIGHT TRAFFIC:		> 85 CONTROL TWR: NONE		TOTAL: 60,000	
> 24 NON-COMM LANDING: NO		> 86 FSS: RANCHO MURIETA		OPERATIONS FOR 12	
> 25 NPIAS/FED AGREEMENTS:NGRY		> 87 FSS ON ARPT: NO		MONTHS ENDING 04/04/2008	
> 26 FAR 139 INDEX:		> 88 FSS PHONE NR:			
		> 89 TOLL FREE NR: 1-800-WX-BRIEF			
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> 32 WIDTH:		100 100			
> 33 SURF TYPE-COND:		ASPH-G ASPH-F			
> 34 SURF TREATMENT:					
35 GROSS WT: SW		50.0 50.0			
36 (IN THSDS) DW		70.0 70.0			
37 DTW		120.0 120.0			
38 DDTW					
> 39 PCN:					
<b>LIGHTING/APCH AIDS</b>					
> 40 EDGE INTENSITY:		MED MED			
> 42 RWY MARK TYPE-COND:		BSC - G / BSC - G BSC - G / BSC - G		- / - - / -	
> 43 VGS:		P2L / P2L / V4L		/ / /	
44 THR CROSSING HGT:		20 / 20 / 30		/ / /	
45 VISUAL GLIDE ANGLE:		3.40 / 3.00 / 3.00		/ / /	
> 46 CNTRLN-TDZ:		N - N / N - N N - N / N - N		- / - - / -	
> 47 RVR-RV:		- N / - N - N / - N		- / - - / -	
> 48 REIL:		N / N N / N		/ / /	
> 49 APCH LIGHTS:		/ /		/ /	
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> 51 DISPLACED THR:		271 / 295 / 261		/ / /	
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> 53 OBSTN MARKED/LGTD:		/ /		/ /	
> 54 HGT ABOVE RWY END:		8 / 15 25 / 15		/ / /	
> 55 DIST FROM RWY END:		350 / 500 1,100 / 510		/ / /	
> 56 CNTRLN OFFSET:		140R / 0B 0B / 280R		/ / /	
57 OBSTN CLNC SLOPE:		18:1 / 20:1 36:1 / 20:1		/ / /	
58 CLOSE-IN OBSTN:		N / N N / N		/ / /	
<b>DECLARED DISTANCES</b>					
> 60 TAKE OFF RUN AVBL (TORA):		/ /		/ /	
> 61 TAKE OFF DIST AVBL (TODA):		/ /		/ /	
> 62 ACLT STOP DIST AVBL (ASDA):		/ /		/ /	
> 63 LNDG DIST AVBL (LDA):		/ /		/ /	
>] ARPT MGR PLEASE ADVISE FSS IN ITEM 86 WHEN CHANGES OCCUR TO ITEMS PRECEDED BY >					
> 110 REMARKS:					
A 014 AIRPORT COORDINATOR: BRUCE LUDEMAN (209-831-6215) CITY OF TRACY COMMUNITY SERVICES SUPERVISOR, AIRPORT AND TRANSIT MANAGEMENT					
A 016 FAX: (209) 831-4212.					
A 081 RWY APT ACTVT MRL RY 08/26 & RY 12/30, PAPI RYS 08 & 26 VASI RY 30 - CTAF.					
A 110 THIS AIRPORT HAS BEEN SURVEYED BY THE NATIONAL GEODETIC SURVEY.					
A 110-1 BALLOON AND PARAPLANE ACTIVITY ON THE AIRPORT.					
A 110-2 WEATHER ROBOT PHONE (209) 835-6098.					
A 110-3 AEROBATIC AREA ADJ/WI 1 SMR FROM 500 AGL - 3000 MSL SR-SS.					
111 INSPECTOR: ( S )		112 LAST INSP: 01/12/2011		113 LAST INFO REQ:	

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# **North Las Vegas Airport SJR-3 Flight Safety Review and Recommendations**



**Submitted to the  
Nevada Legislative Commission  
by the  
SJR-3 Stakeholder Group  
November 1, 2009**

CLARK COUNTY  
DEPARTMENT OF AVIATION**General Aviation**

North Las Vegas Airport  
Henderson Executive Airport  
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October 27, 2009

Lorne Malkiewich, Secretary  
Nevada Legislative Commission  
401 South Carson Street  
Carson City, NV 89701-4747

Dear Mr. Malkiewich:

Senate Joint Resolution No. 3 (SJR-3) of the 2009 Nevada State Legislature, urged the Federal Aviation Administration (FAA) and the Clark County Department of Aviation (CCDOA) to convene a stakeholder group comprised of representatives including the FAA, CCDOA, the City of North Las Vegas, the Clark County Aviation Association, the Aircraft Owners and Pilots Association, neighborhood residents and airport tenants to analyze concerns and make recommendations to improve flight safety standards at North Las Vegas Airport. Although the FAA did not participate as a stakeholder member, the Manager of the FAA Las Vegas Flight Standards District Office did provide extensive technical advice during the meetings. The attached report presents the unanimous findings of the stakeholder group.

The highlights of the report are featured in the executive summary. This information is supported by more detailed data reported in the main body of the report. A brief historical and operational overview of North Las Vegas Airport is provided, the responsibilities of the FAA and CCDOA are outlined, recent airport safety improvements are enumerated, and a review of aircraft accidents within approximately the past 10 years on and near the airport is included using data from the National Transportation Safety Board. The report concludes with 13 recommendations the stakeholder group believes can serve to improve the safe operation of general aviation aircraft using North Las Vegas Airport.

I would like to personally extend my appreciation to everyone that participated for their time and effort in the completion of this project.

Sincerely,

Cecil Johnson  
Assistant Director, General Aviation, Clark County Department of Aviation  
Chairman, SJR-3 Stakeholder Group

cc: Senator Steven Horsford  
Assemblywoman Marilyn Kirkpatrick  
Randall H. Walker, Director, Clark County Department of Aviation  
Rosemary A. Vassiliadis, Deputy Director, Clark County Department of Aviation

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## EXECUTIVE SUMMARY

North Las Vegas Airport is owned and operated by the Clark County Department of Aviation. Opened in 1941, it is a general aviation "reliever" airport designed to attract light aircraft traffic from nearby McCarran International Airport. It is the second busiest airport in Nevada and one of the 100 busiest airports in the United States with over 600 based aircraft. According to a recent study the airport annually contributes over \$136 million to the local economy.

Two aircraft accidents in the vicinity of North Las Vegas Airport in 2008 prompted the Nevada State Legislature to examine safety at the airport. A resolution of the Nevada State Legislature urged the formation of a stakeholder group to review current operational practices and make recommendations to improve flight safety at North Las Vegas Airport. This report presents the findings of this group, including the following:

- By law the Federal Aviation Administration (FAA) is solely responsible for monitoring and regulating aviation safety.
- The Clark County Department of Aviation (DOA) is responsible for maintaining infrastructure on airport grounds, including airfield lighting, signage, taxiways and runways.
- The Federal Aviation Administration and the Clark County Department of Aviation have partnered to improve safety at the airport in recent years through aviation education and facility improvements.
- Between January 1999 and September 2009, North Las Vegas Airport experienced 2.23 million takeoffs and landings. Forty-three accidents were recorded by the National Transportation Safety Board (NTSB) during this period within a 10-mile radius of the airport. The annual number of accidents has declined over this period. Those accidents range from a high of 7 in 2000 and 2003 to a low of 1 in 2007 and 2009 (Appendix C).
- Over this period, 75 percent of accidents were attributable to pilot error (Appendix D).
- Three of the 43 accidents involved experimental aircraft. Experimental aircraft account for 7 percent of the total number of based aircraft at North Las Vegas Airport and represent 7 percent of all accidents (Appendix G).
- Through examination of available data, it was determined that of a total of 43 accidents, 32 or 74 percent involved based aircraft, and 11 or 26 percent involved transient aircraft. Of a total of 32 based aircraft accidents, 8 or 25 percent involved flight instructional activities. Five of these 8 accidents, or 63 percent, involved the use of helicopters by flight schools (Appendix G).

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- A review of accident data reveals different causes for accidents that occurred both on and off airport property. Loss of directional control was the most frequent cause of accidents on airport property. Fuel system mismanagement was the most frequent cause for accidents occurring off airport property (Appendix E).
- Additional research and analysis by the National Transportation Safety Board is warranted to better determine the causal effects of all aircraft accidents at North Las Vegas Airport.
- None of the accidents were attributable to airport infrastructure or other site conditions at North Las Vegas Airport.

This report presents specific recommendations to enhance flight safety standards at North Las Vegas Airport.

## INTRODUCTION

Senate Joint Resolution No. 3 of the 2009 Nevada State Legislature (SJR-3) became effective on May 22, 2009 (Appendix A). On August 22, 2008 a Kilgore Velocity experimental aircraft experienced engine trouble and collided with a residence, resulting in the fatalities of the pilot and two occupants in the house. On August 28, 2008 a Navajo twin-engine aircraft manufactured by Piper Aircraft Corporation experienced an onboard fire and the aircraft impacted a house while attempting to return to the airport for an emergency landing. The pilot was fatally injured.

This resolution urged the Federal Aviation Administration to work closely with the Clark County Department of Aviation and the entire aviation community in Clark County to convene a stakeholder group with representation from each of the following for the purpose of improving safety:

- The Federal Aviation Administration
- The Clark County Department of Aviation
- The City of North Las Vegas
- The Aircraft Owners and Pilots Association
- Clark County Aviation Association
- Residents of neighborhoods surrounding the North Las Vegas Airport
- Tenants of the North Las Vegas Airport

This stakeholder group was directed to issue a preliminary analysis of concerns regarding the current flight safety practices at North Las Vegas Airport and to make recommendations to improve flight safety standards at the airport, particularly with respect to experimental aircraft.

On August 26, 2009, September 22, 2009 and October 13, 2009, meetings of the stakeholder committee were held with the following committee members:

- Anita Wood, North Las Vegas City Council
- Janice Ridondo, Resident of the City of Las Vegas<sup>1</sup>
- Cecil Johnson, Clark County Department of Aviation
- Stacy Howard, Aircraft Owners and Pilots Association
- David Lerner, Clark County Aviation Association
- Kenny Scherado, North Las Vegas Airport Commercial Tenant
- Dave Edwards, North Las Vegas Airport Tenant<sup>2</sup>
- Dan Markoff, North Las Vegas Airport Tenant (Absent 10/13/09)

<sup>1</sup> Ms. Ridondo is a long term resident of a neighborhood near North Las Vegas Airport, and an employee of Clark County, Nevada

<sup>2</sup> Mr. Edwards is also Vice President of the Clark County Aviation Association and a member of the Experimental Aircraft Association

The following individuals participated in the SJR-3 meetings and provided extensive technical advice:

- Pete Yiakos, Manager, Federal Aviation Administration Las Vegas Flight Standards District Office (Absent 9/22/09)
- Ben Czyzewski, Airport Manager, Clark County Department of Aviation
- Doug McNeeley, Sr. Management Analyst, Clark County Department of Aviation

Discussion was held concerning the regulation of general aviation aircraft, previous steps taken by the Clark County Department of Aviation to improve safety at the airport, potential safety enhancements, and methods to improve communication with area residents. Based on this discussion and a review of the causal factors involved in aircraft accidents associated with the airport, it is the purpose of this report to analyze available data and provide recommendations to improve flight safety standards at North Las Vegas Airport.

#### **AIRPORT BACKGROUND**

The Clark County Department of Aviation owns and operates McCarran International Airport and four general aviation airports, including North Las Vegas Airport. The following information provides a brief historical and operational perspective:

- North Las Vegas Airport opened as the Sky Harbor Airport on December 7, 1941.
- Clark County purchased the airport in 1987. After it was purchased, Clark County Department of Aviation began a multi-million dollar renovation of the facility, including construction of a 15,600 square foot terminal building that opened in 1992.
- The primary mission of the airport today is to attract as many general aviation aircraft as possible from McCarran International Airport to reduce congestion at this busy commercial airport.
- In 2008 North Las Vegas had 165,197 takeoffs and landings, making it the second busiest airport in Nevada after McCarran International Airport.
- The North Las Vegas Airport has 286 enclosed hangars, 214 shade hangars and 171 outdoor parking spaces. Currently, there are 659 aircraft based at the airport, from two-seat training aircraft to business jets.

- The airport is 914 acres in size, making it larger than LaGuardia Airport in New York, Midway Airport in Chicago or Reagan National Airport in Washington, DC.
- In 2008 the Clark County Department of Aviation sold over 1.3 million gallons of fuel at North Las Vegas Airport.
- Over 1 million pounds of air freight, primarily small packages and documents were processed through the North Las Vegas Airport in 2008.
- The airport contributes 1,771 jobs and over \$136 million in annual economic benefits to the community, according to an economic impact study completed by the University of Nevada in 2005.
- There are 20 commercial businesses located at the airport, including flight schools, aircraft maintenance facilities, office and hangar rental companies, aircraft charter operators and a Grand Canyon sightseeing airline.
- The airport provides a host of community services. A senior Civil Air Patrol squadron based at the airport flies vital search and rescue missions. Air ambulance flights transport critically ill patients from the airport to receive care at specialized treatment centers throughout the region. Charitable organizations also fly needy patients for treatment throughout the Southwest United States. The Las Vegas Metropolitan Police fly patrols from the airport to help safeguard the community. Traffic reporters fly from the airport to broadcast reports that make daily commuting safer and easier.
- The airport is certified by the Federal Aviation Administration under 14 CFR Part 139 which provides increased inspection and maintenance activity.

#### **DELINEATION OF RESPONSIBILITY**

Federal law provides that the United States Government has exclusive sovereignty of airspace in the United States and requires the FAA Administrator to prescribe regulations regarding the flight of aircraft to prevent collisions and to protect persons and property on the ground. Accordingly, the functions of the FAA include such items as:

- Operation of the air traffic control system in the United States, including the North Las Vegas Air Traffic Control Tower
- The establishment of training requirements for pilots and aircraft technicians.
- The establishment of aircraft operating procedures.

- The issuance of pilot certificates and the enforcement of all Federal Aviation Regulations.
- The establishment of aircraft maintenance procedures, including the construction process for experimental aircraft.

It should also be noted that under Federal Aviation Regulations the FAA grants considerable responsibility and authority to the pilot in command. The following is stated in 14 CFR 91.3 (a):

The pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft.

The Clark County Department of Aviation owns and operates North Las Vegas Airport, along with three other general aviation airports, Henderson Executive, Jean Sport, Perkins-Field Overton and McCarran International. The Department of Aviation does not have jurisdiction over the regulation of aviation safety. They are primarily responsible for maintaining infrastructure on the ground including buildings, airfield lighting, signage, taxiways and runways. The specific responsibilities of Department of Aviation managers, supervisors, and employees fall into a number of broad categories, as follows:

- Daily inspection of pavement, safety areas, pavement markings, lighting, navigational aids, obstructions, fueling operations, construction areas, equipment related to emergency response, security measures for public protection, and potential wildlife hazards.
- Routine maintenance of all airport facilities, and 24-hour response to urgent maintenance requirements.
- Oversight of all airport construction projects.
- The promulgation and enforcement of rules and regulations regarding the use of airport facilities.
- Oversight of all airport security measures.
- Compliance with all local, state, and federal environmental regulations.
- Oversight of all airport fueling operations and the provision of various aviation services and products for based and transient aircraft and pilots.
- Drafting and issuing leases and other grants of occupancy for space at the airport for use by commercial and individual tenants.

- Drafting and issuing Requests for Proposals for companies wanting to provide commercial services at the airport.
- The preparation of and adherence to the annual airport operating budget.

#### **AIRPORT SAFETY MEASURES**

In recent years, the Clark County Department of Aviation has undertaken a significant number of capital projects and other measures to improve safety at the North Las Vegas Airport. The North Las Vegas Airport has received over \$80 million in grants from the FAA since 1987 for capital projects. The funding for federal grants used within the Clark County Airport System comes primarily from the users of the aviation system through a tax on aviation fuel purchased and airline tickets, not general tax revenue. Future capital projects at North Las Vegas Airport will be evaluated for their ability to improve safety and airport capacity. Although the airport is under a program of continuous improvement, there are no plans to expand the physical boundaries of the airport or change the type of air traffic that uses the facility.

- A new Runway 12R GPS instrument approach was commissioned in October 1996 at North Las Vegas Airport to enable pilots to maintain instrument flying proficiency.
- A new parallel Runway 12L – 30R was constructed in November 2001 at the airport to provide a more efficient flow of air traffic and segregate primary flight training activities.
- A new air traffic control tower with state-of-the art equipment was constructed and put into service in April 2000.
- Additional airport directional signage and pavement markings were installed throughout 2003 to help prevent runway incursions.
- An Enhanced Airport Lighting System was installed in December 2004 to help prevent runway incursions. This system included above ground lights placed at 29 taxiway intersections and in pavement lights at three intersections to increase situational awareness.
- Beginning in January 2005, bi-monthly meetings are conducted by the Department of Aviation to discuss safety procedures with based individual and commercial tenants.
- A Memorandum of Understanding was signed in August 2005 between the Department of Aviation and the Federal Aviation Administration to segregate helicopter training activity and reduce helicopter flights over neighborhoods surrounding the airport.

- In October 2005, North Las Vegas Airport was certified by the Federal Aviation Administration under 14 CFR Part 139, which provides increased inspections and maintenance activities at the airport facility.
- A new Runway 12L Instrument Landing System was commissioned in December 2005 to assist pilots in maintaining instrument proficiency.
- Runway End Identifier Lights were installed at the end of each runway at the airport in November 2006 to improve situational awareness for pilots approaching the airport at night.
- An educational brochure was created by the FAA in cooperation with the Department of Aviation and distributed to pilots throughout the region in October 2006 to help reduce runway incursions.
- General Aviation Airports Rules & Regulations were adopted by the Clark County Board of Commissioners in January 2007 to ensure a safe operating environment at the airport.
- In June 2007 interactive information was placed on the airport website outlining methods that based and transient pilots can use to guard against runway incursions.
- A Motor Vehicle Driving Safety Manual was issued in September 2007 by the Department of Aviation to provide information for the safe operation of vehicles on the airfield.
- The procurement and operational introduction of an airport ground support incident vehicle in July 2007. This vehicle is equipped with dry chemical and foam fire retardant.
- An airport emergency drill was conducted in September 2007 involving multiple agencies and utilizing National Incident Management System protocol.
- General Aviation Airports Operating Directives were adopted in December 2007 to further clarify safe operating procedures on the airfield.
- A capital project was completed in March 2008 to cover drainage channels on the airfield to eliminate potential obstructions.
- Information on aviation safety is continuously presented in a newsletter sent bi-monthly to each based tenant by the Department of Aviation.
- North Las Vegas became one of the first airports in the country to participate in an FAA Pilot Study and submit a Safety Management System

(SMS) study and manual to the FAA. This will be used to help establish SMS standards to be used by over 600 airports nationwide.

- A project to remove high-tension power lines immediately south of the airport along Carey Ave. and relocate them underground commenced in September 2009.

#### **AIRCRAFT ACCIDENT ANALYSIS**

The National Transportation Safety Board (NTSB) maintains the official database of aircraft accidents occurring within the United States. This database may be accessed by the general public at [www.nts.gov](http://www.nts.gov), and it was used in compiling information for this report. Accident data for North Las Vegas Airport between January 1999 and August 2009 is summarized in Appendix B.

The committee reviewed accident data for North Las Vegas Airport. The following criteria were used as the basis for analysis:

- The geographic area of inquiry was narrowed to within a ten (10) nautical mile radius of the airport. The selected geographic area encompasses most of the “congested” area in the immediate vicinity of the airport, and it excludes accidents that were attributed to the airport but actually occurred in remote areas during the en route portion of flight.
- The analysis period was narrowed to the timeframe between January 1999 and September 2009. This is the time period when most of the airport safety improvements were incorporated. The FAA Las Vegas Flight Standards District Office (FSDO) also selected this timeframe as a representative sampling of aircraft accidents for analysis.

Based upon the stated criteria, a total of 43 accidents were selected for final analysis. The findings below are based upon that analysis:

- Between 1999 and 2009 there were 2.23 million takeoffs and landings at North Las Vegas Airport.
- The total annual number of aircraft accidents at North Las Vegas Airport has declined over the inquiry period, from a high of 7 accidents in 2000 and 2003 to a low of 1 accident in 2007 and 1 accident in 2009 year to date. However, while the number of on airport accidents has declined significantly in the past four years, the number of off airport accidents has remained relatively constant (Appendix C).
- Through examination of available data, it was determined that of a total of 43 accidents, 32 or 74 percent involved based aircraft, and 11 or 26 percent involved transient aircraft. Of a total of 32 based aircraft accidents, 8 or 25

percent involved flight instructional activities. A total of 28 accidents, 65 percent, occurred on airport property and 15 accidents, 35 percent, occurred off airport property. Five of these 8 accidents, or 63 percent, involved the use of helicopters by flight schools. NTSB accident data does not reveal in every case if the certified flight instructor or the student pilot was operating the controls at the time of an accident.

- Forty of the 43 total accidents, 93 percent, during the period analyzed involved manufactured aircraft (Appendix G).
- Three of the 43 accidents involved experimental aircraft. Experimental aircraft account for 7 percent of the total number of based aircraft at North Las Vegas Airport and represent 7 percent of all accidents (Appendix G).
- As a result of the above-referenced accidents, 14 fatalities resulted (Appendix F).
- The number of fatalities attributable to manufactured aircraft during this period was 11 and accounted for 73 percent of the total. One accident on December 25, 2003 resulted in 6 deaths (Appendix F).
- The number of fatalities attributed to experimental aircraft during this period was 3 and accounted for 27 percent of the total. Three of the 7 fatalities that occurred off airport, or 43 percent, involved experimental aircraft. These airport fatalities are attributed to the accident that occurred on August 22, 2008 (Appendix F)
- According to the NTSB Probable Cause Report, the experimental aircraft accident of August 22, 2008 resulted from a partial loss of engine power due to the owner/builder's inadequate installation of the supercharger system and belt-tensioning adjustment. This underscores the importance of the recent prohibition by the FAA FSDO of any Phase I flight activity at North Las Vegas Airport and the need to prohibit a waiver of the minimum number of required flight test hours under Order 8130.2F, *Airworthiness Certification of Aircraft and Related Products*.
- Of the 43 total accidents, 32 accidents, 75 percent, were attributable to pilot error. A total of 7 accidents, 16 percent, were due to mechanical issues including failure of components and maintenance errors. In addition, a total of 1 accident, 2 percent, was due to controller error, a total of 1 accident, 2 percent, was due to pilot incapacitation, and 2 accidents, 5 percent, were due to unknown causes (Appendix D).
- NTSB identified 28 accidents as occurring on airport property. The most prevalent factor involving aircraft was a loss of directional control (a total of 10 accidents, or 36 percent), primarily as a result of windy conditions. The

next most prevalent cause of aircraft accidents on airport property was the mechanical malfunction of landing gear (a total of 3, or 11 percent). There was one aircraft aerodynamic stall, or 4 percent. A total of 10 accidents, or 36 percent, were attributable to other factors including an unstable approach with excessive speed, pilot incapacitation, and controller error. The only factor involved in helicopter accidents on airport was inadequately performed autorotations that resulted in hard landings (a total of 4, or 14 percent) (Appendix E).

- The causal factors involved in the 15 accidents off airport property were very different than those on airport property. The most prevalent cause of these accidents was fuel system mismanagement (a total of 6 accidents, or 40 percent) involving either the incorrect positioning of switches or miscalculating the fuel consumption rate and exhaustion of the fuel supply. Additionally, 2 accidents, 13 percent, were caused by a loss of engine power for unknown reasons. There was one aircraft aerodynamic stall, or 7 percent. The remaining 4 aircraft accidents, or 26 percent, were attributable to unrelated factors including insufficient climb rate and striking an obstruction. Two accidents, or 13 percent, involved helicopters (Appendix E).
- Of the total number of accidents, 42 involved aircraft used for private business and recreational use (Part 91) and one involved an aircraft used for commercial purposes (Part 135 Charter).
- The number of aircraft accidents by type (manufactured/ experimental) could not be compared with the number of annual aircraft operations to determine an accident rate because the FAA does not retain this information.

#### RECOMMENDATIONS

Based on the analysis of aircraft accidents and other information presented in this report, the SJR-3 Stakeholder Group makes the following recommendations to improve flight safety at North Las Vegas Airport:

1. The Las Vegas FAA Flight Standards District Office FSDO issued a memorandum on December 9, 2008 to its inspectors to no longer permit any Phase I flight operations of experimental aircraft from North Las Vegas Airport. This bans experimental aircraft from using the airport until they have completed the first phase of flight time, either 25 or 40 hours depending on the aircraft's engine and propeller combination. The FAA FSDO should monitor and ensure adherence by local experimental aircraft builders to this published, prohibition. The FAA FSDO should not grant any waivers of the minimum number of flight test hours specified in Order 8130.2F, *Airworthiness Certification of Aircraft and Related Products*,

Section 9, Paragraph 152c(1). The FAA FSDO and the Clark County Department of Aviation should work collaboratively on any proposed changes in the prohibition of Phase I flight or the conditions under which waivers may be granted.

2. The FAA should continue to take immediate and appropriate enforcement action when it is determined that Federal Aviation Regulations have been violated. This FAA FSDO intervention should better promote pilot adherence to Federal Aviation Regulations.
3. The FAA FSDO should prepare a detailed annual report for distribution to the local aviation community regarding enforcement action initiated against any pilot or other certificate holder within their jurisdiction. This report will protect individual identity, but should include a brief description of each investigative case and enforcement action taken. The total number of investigative cases initiated compared with the total number for the previous year. This will provide comparative analysis to measure trends in enforcement activity.
4. The FAA should require local FAA Operations Inspectors, Designated Examiners, Certified Flight Instructors and the FAAS Team to emphasize the importance of proper fuel management techniques and the effect of crosswinds and density altitude on aircraft performance during all Bi-Annual Flight Reviews and Practical Flight Tests. Heightened awareness of these factors by pilots should increase safety.
5. The FAA FSDO should continue the periodic and unannounced monitoring of activities in the Air Operations Area of the airport to ensure that pilots, aircraft mechanics and flight instructors are following safe operating practices and adhering to Federal Aviation Regulations. Unannounced visits by the FAA FSDO inspectors should increase the overall effectiveness of the enforcement program.
6. Additional research and analysis by the National Transportation Safety Board is encouraged to provide as much information as possible regarding the causal factors involved in each general aviation aircraft accident. More detailed analysis will capture all available data and may suggest additional methods to reduce aircraft accidents.
7. The FAA FSDO should encourage awareness of and adherence to Federal Aviation Regulations and safe aircraft operating practices through educational initiatives at the local, regional, and national level, including information posted on the FAAS Team website, [www.faasafety.com](http://www.faasafety.com). The Aircraft Owners and Pilots Association should also be encouraged to communicate safety information to local pilots. Ongoing educational efforts

serve to increase situational awareness and prepare pilots to more effectively handle airborne emergencies.

8. The FAA Air Traffic Control Tower at North Las Vegas Airport should be encouraged to record announcements on the Automatic Terminal Information Service (ATIS) that pilots "check density altitude" when the air temperature is over 85 degrees Fahrenheit and state the actual reading. This information is used by pilots during flight planning to calculate aircraft takeoff and climb performance.
9. The FAA Air Traffic Control Tower at North Las Vegas Airport should adhere to guidance in the *Aeronautical Information Manual* regarding standard airport traffic patterns. To the extent possible they should minimize the requirement for pilots to fly extended downwind, base, or final legs. By remaining in close proximity to the airport pilots are in better position to return to the airport during emergency situations.
10. The Clark County Department of Aviation should be encouraged to purchase available vacant land adjacent to North Las Vegas Airport, particularly in or near any Runway Protection Zone (RPZ), to ensure that remaining open area is preserved in the immediate vicinity of the airport. This will provide an expanded area for aircraft to land during emergencies.
11. The cities of North Las Vegas and Las Vegas should be encouraged to enact legislation to prohibit the construction of new buildings, communication towers or other obstructions above a safe height in the immediate vicinity of North Las Vegas Airport. Existing structures that may be determined to pose a hazard to air navigation near the airport should be evaluated using a cost and benefit analysis for alteration or removal. This will help eliminate the possibility of aircraft striking tall structures within the immediate vicinity of the airport.
12. The cities of North Las Vegas and Las Vegas should be encouraged to enact legislation to prohibit the further construction of residential housing or other non-compatible land uses within the immediate vicinity of North Las Vegas Airport. The City of North Las Vegas is addressing this issue in the current revision of its Zoning Ordinance (Title 17). As part of this process, North Las Vegas has also submitted its draft Air Terminal Environs Ordinances to the Clark County Department of Aviation for review and comment. This reduces the possibility of non-compatible development near the airport and aids in future community planning.
13. The Clark County Department of Aviation, the Clark County Aviation Association and other stakeholders should be encouraged to work together to establish open communication with local residents regarding North Las Vegas Airport. The methods used to establish communication include, but

are not limited to, airport open house events, programming dedicated to the airport on Clark County Cable Television Channel 4, public meetings and the distribution of informational brochures. This will serve to increase awareness on the part of the general public regarding continued airport safety enhancements, economic contributions and community benefits.

### **SUMMARY**

North Las Vegas Airport is an active general aviation airport ranked as the second busiest airport in Nevada. Between January 1999 and September 2009 there were 2.23 million takeoffs and landings and a total of 43 accidents in the immediate vicinity of the airport.

The annual number of accidents at the airport has declined in recent years. The Federal Aviation Administration and the Clark County Department of Aviation have each instituted a variety of proactive safety measures. The Department of Aviation has worked closely with airport stakeholders to make constructive changes that enhance safety at all of their facilities, particularly North Las Vegas Airport. An important objective of the Department of Aviation is to work with residents to ensure that airport operations are compatible with the surrounding community.

While the risk of aircraft accidents can never be completely mitigated, the clear objective of aviation stakeholders as well as area residents is to reduce the number of aircraft accidents at North Las Vegas Airport. The most significant finding of this report is the very specific and unique factors involved in aircraft accidents that have occurred on and off the airport. None of the accidents reviewed for this report were attributable to infrastructure or other site conditions at North Las Vegas Airport, including the inspection, maintenance or repair of runways and taxiways, lighting, signage, pavement markings or navigational aids under the direct care, custody and control of the Clark County Department of Aviation.

The SJR-3 Stakeholder Group believes any initiatives to improve flight safety standards should involve a collaborative effort on the part of the Federal Aviation Administration, the Clark County Department of Aviation and other stakeholders. Recommendations from this SJR-3 Stakeholder Group have been presented in this report. These recommendations are specific and should result in an even safer operating environment at North Las Vegas Airport.

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## Appendix A – SJR-3

Senate Joint Resolution No. 3—Senator Horsford

Joint Sponsor: Assemblywoman Kirkpatrick

FILE NUMBER.....

SENATE JOINT RESOLUTION—Urging the Federal Aviation Administration and the Clark County Department of Aviation to convene a stakeholders' group to develop and make recommendations to improve flight safety standards at the North Las Vegas Airport, particularly with respect to experimental homebuilt aircraft.

**Legislative Counsel's Digest:**

Federal law provides that the United States Government has exclusive sovereignty of airspace of the United States and requires the Administrator of the Federal Aviation Administration to prescribe regulations on the flight of aircraft to prevent collisions between aircraft and to protect persons and property on the ground. (49 U.S.C. § 40103) This resolution urges the Federal Aviation Administration to work closely with the Clark County Department of Aviation to convene a stakeholders' group to develop and make recommendations to improve flight safety standards at the North Las Vegas Airport, particularly with respect to experimental homebuilt aircraft.

WHEREAS, The expansion of urban areas in Clark County increasingly places homes and neighborhoods directly in the flight paths of aircraft flying to and from the North Las Vegas Airport; and

WHEREAS, Flights of experimental homebuilt aircraft to and from the North Las Vegas Airport are increasingly common; and

WHEREAS, Experimental homebuilt aircraft have higher accident rates than other types of aircraft and accounted for more than 12 percent of airplane accidents nationwide in 2007; and

WHEREAS, Experimental homebuilt aircraft have been involved in nine accidents at airports within the Clark County airport system since 2003, three of which were at the North Las Vegas Airport; and

WHEREAS, A crash involving an experimental homebuilt aircraft flying from the North Las Vegas Airport resulted in the deaths of two persons on the ground in 2008; and

WHEREAS, The Federal Aviation Administration sets standards for the number of hours experimental homebuilt aircraft must be tested before such aircraft can be operated at airports such as the North Las Vegas Airport; and

WHEREAS, Some of the experimental homebuilt aircraft operated at the North Las Vegas Airport may have been operated without having met those national standards; and



- 2 -

WHEREAS, The safety of persons who live near the North Las Vegas Airport is of the highest concern to the people of this State; and

WHEREAS, The Clark County Department of Aviation cannot regulate the flights of experimental homebuilt aircraft to and from the North Las Vegas Airport because federal law provides the United States Government with exclusive sovereignty of airspace in the United States; now, therefore, be it

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That the Nevada Legislature expresses serious concerns regarding the current flight safety practices at the North Las Vegas Airport; and be it further

RESOLVED, That the Nevada Legislature urges the Federal Aviation Administration to work closely with the Clark County Department of Aviation and the entire aviation community in Clark County to convene not later than June 1, 2009, a stakeholders' group, which must include, without limitation:

1. A representative from the Federal Aviation Administration;
2. A representative of the Clark County Department of Aviation;
3. A representative of the Clark County Aviation Association;
4. A representative of the City of North Las Vegas;
5. A representative of the Aircraft Owners and Pilots Association;
6. Residents of neighborhoods surrounding the North Las Vegas Airport; and
7. Tenants of the North Las Vegas Airport; and be it further

RESOLVED, That the stakeholders' group shall, on or before August 1, 2009, issue its preliminary analysis of the concerns regarding the current flight safety practices at the North Las Vegas Airport; and be it further

RESOLVED, That the stakeholders' group shall, on or before November 1, 2009, develop and make recommendations to improve flight safety standards at the North Las Vegas Airport, particularly with respect to experimental homebuilt aircraft, for submission to the appropriate entities for consideration and to the Legislative Commission; and be it further

RESOLVED, That the Nevada Legislature urges the Nevada Congressional Delegation to use its best efforts to encourage the Federal Aviation Administration to participate in this endeavor; and be it further

RESOLVED, That the Secretary of the Senate prepare and transmit a copy of this resolution to the Administrator of the Federal



- 3 -

Aviation Administration, the Board of County Commissioners of Clark County, the Director of the Clark County Department of Aviation, the North Las Vegas City Council and each member of the Nevada Congressional Delegation; and be it further

RESOLVED, That this resolution becomes effective upon passage.

20 09



Appendix B

# **AIRCRAFT ACCIDENT DATABASE JANUARY 1999 TO SEPTEMBER 2009**

## **NORTH LAS VEGAS AIRPORT**

**Data Source: National Transportation Safety Board  
Accidents more than 10 nautical miles (NM) from the airport are excluded  
and are identified as shaded**

Appendix B – Accident Summary Data

NORTH LAS VEGAS AIRPORT

Date	Location	N-Number	Make/Model	Mfr	Type of Operation	Fa tal	Error	Description
4/22/2009	Off Airport	N17YS	Schweizer 269C	M	Based Part 91 Instructional	0	Awaiting Probable Cause Report	The helicopter lost engine power while attempting to land on high terrain, resulting in a hard landing. A probable cause has not yet been issued.
4/14/2009	On Airport	N4816D	Cessna 182	M	Based Part 91	0	PE	The pilot lost directional control while attempting to land and veered off the pavement into the dirt causing a prop strike and wing damage.
8/28/2008	Off Airport	N212HB	Piper PA-31-350	M	Transient Part 91	1	Awaiting Probable Cause Report	The aircraft departed VGT, experienced an onboard fire and was returning for an emergency landing when it crashed into a home 1.2 miles W of the airport. NTSB has not yet issued a probable cause.
8/22/2008	Off Airport	N415MK	Kilgore Velocity 173RG	E	Based Part 91	3	ME	An experimental homebuilt aircraft departed VGT on a test flight and crashed into a house 1.1 miles SE of the airport.
6/28/2008	Off Airport	N4063W	Piper Lance	M	Transient Part 91	4	PE	The pilot departed VGT and struck rapidly rising terrain in a mountain valley near Mt. Charleston. Lack of situational awareness and density altitude were causal factors.
2/29/2008	Off Airport	N958CP	Schweizer 269C	M	Based Part 91 Instructional	0	PE	A helicopter departed VGT and crashed in high terrain due to the student pilot's failure to maintain control and the instructor's inadequate supervision. Lack of suitable terrain for an emergency landing was also a contributing factor.

M – Manufactured, E – Experimental, PE – Pilot Error, ME – Mechanical Error, CE – Controller Error  
 Accidents more than 10 nautical miles (NIM) from the airport are excluded and are identified as shaded

11/8/2007	Off Airport	N881CP	Cessna T182	M	Transient Part 91	2	PE	An aircraft operated by the Civil Air Patrol departed VGT during night VFR conditions and subsequently crashed into high terrain 13 miles SW of Las Vegas.
4/7/2007	Off Airport	N1079M	Cessna 172	M	Based Part 91 Instructional	0	ME	A solo student pilot attempting to land on Runway 12L and landed on Decatur Blvd. adjacent to the airport after a loss of engine power for undetermined reasons.
11/26/2006	Off Airport	N414AY	Cessna 414	M	Based Part 91	0	PE	The aircraft's right engine experienced a loss of power and the aircraft collided with a fence during an emergency landing in a residential area. The probable cause was fuel starvation as the result of the pilot's improper fuel management.
11/24/2006	Off Airport	N977SA	Cessna T210	M	Transient Part 91	0	PE	The aircraft lost engine power and collided with a telephone line during the forced landing attempt 2 miles NE of VGT due fuel exhaustion and the pilot's fuel mismanagement.
8/8/2005	On Airport	N58431	Hughes 369D	M	Based Part 91 Instructional	0	PE	A student pilot was conducting an autorotation at VGT when the tail rotor and stinger contacted the ground due to his improper flight control use and the instructor's inadequate supervision.
7/21/2005	On Airport	N7JUP	Aero Commander 680	M	Transient Part 91	0	PE	As the aircraft rotated and became airborne it settled and impacted the ground as the result of excessive flap selection and high density altitude.
7/20/2005	On Airport	N4961D	Cessna 172	M	Based Part 91 Instructional	0	PE	After touching down on Runway 12L, the aircraft veered left, struck a ditch and collided with an airport location sign due to the solo student pilot's failure to maintain directional control.

M – Manufactured, E – Experimental, PE – Pilot Error, ME – Mechanical Error, CE – Controller Error  
 Accidents more than 10 nautical miles (NIM) from the airport are excluded and are identified as shaded

5/5/2005	On Airport	N337DR	Gulfstream 695	M	Based Part 91	1	Pilot Incapacitation	A passenger took control of the aircraft and made a hard landing at VGT after the pilot experienced a cardiac event in the air and died. <sup>5</sup>
	Off Airport	N6663P	Cessna P210	M	Based Part 91	0	PE	A pilot returning to VGT made a forced landing in an open field 6 mile NE after a total loss of engine power. The probable cause was determined to be fuel exhaustion.
10/30/2004	Off Airport	N6675X	Cessna 210A	M	Based Part 91	0	ME	While descending to land at VGT, the pilot experienced a total lack of power and landed on a nearby residential street. The NTSB could not determine a cause for the reported power failure.
9/5/2004	On Airport	N994RW	Robinson R-22	M	Based Part 91 Instructional	0	PE	A helicopter hit the ground hard during a practice autorotation due to the flight instructor's misjudged flare and delayed recovery.
5/27/2004	On Airport	N5010X	Raytheon Premier Jet	M	Based Part 91	0	PE	The aircraft was landing on Runway 7 when it left the pavement at the departure end and crashed through the perimeter fence due to an unstabilized approach, excessive speed and the presence of a tailwind.
5/22/2004	Off Airport	N154ZP	American Blimp Corp. A-1-50	M	Transient Part 91	0	PE	A blimp collided with a one story office building while attempting to takeoff from VGT due to winds and the pilot's inability to obtain a sufficient rate of climb.
12/25/2003	On Airport	N364JR	Beech A36TC	M	Transient Part 91	6	Unknown	On initial climb from Runway 12R the pilot declared an unspecified emergency and then crashed. The NTSB could not determine a specific cause of this accident.

M – Manufactured, E – Experimental, PE – Pilot Error, ME – Mechanical Error, CE – Controller Error  
 Accidents more than 10 nautical miles (NM) from the airport are excluded and are identified as shaded

9/23/2003	On Airport	N8604N and N146PM	Piper Arrow and Piper Mirage	M	Transient and Based Part 91	0	CE	A landing Piper Arrow and a departing Piper Mirage collided at the intersection of Runways 12L and 7. The NTSB identified the failure of FAA personnel to maintain proper separation as the probable cause.
8/31/2003	On Airport	N103TK	Piper Malibu	M	Based Part 91	0	PE	The aircraft crashed short of Runway 12R due to the pilot's failure to maintain an adequate approach speed during approach for the aircraft's flight configuration.
7/27/2003	On Airport	N499R	Hogarty Lancair IV P	E	Transient Part 91	0	PE	The aircraft settled to the ground during takeoff and the main landing gear collapsed due to the pilot's premature lift-off before airspeed was attained resulting in a stall.
6/1/2003	Off Airport	N991RW	Robinson R-22 Helicopter	M	Based Part 91 Instructional	0	PE	The helicopter collided with a wire during a pinnacle approach due to the pilot's failure to maintain adequate visual lookout.
4/25/2003	On Airport	N43VB	Cessna 182	M	Based Part 91	0	PE	Aircraft landing on Runway 25 crashed during day VFR due to the pilot's inadequate compensation for gusty cross wind conditions and a failure to maintain directional control.
4/4/2003	Off Airport	N553CH	Cessna 172	M	Based Part 91 Instructional	2	PE	The aircraft descended near vertically to ground impact on a private pilot practical flight test due to the applicant pilot's failure to maintain adequate airspeed while maneuvering.
3/30/2003	Off Airport	N95DC	Beechcraft V35	M	Based Part 91	0	PE	The aircraft lost power on departure and crashed into nearby obstacles due to fuel starvation as a result of the pilot's mismanagement of his fuel supply.

M – Manufactured, E – Experimental, PE – Pilot Error, ME – Mechanical Error, CE – Controller Error  
 Accidents more than 10 nautical miles (NM) from the airport are excluded and are identified as shaded

10/12/2002	On Airport	N2209F	Cessna 310	M	Based Part 91	0	PE	Pilot became distracted when approaching Runway 30L during night VFR conditions and slid to a stop with retracted landing gear.
9/25/2002	Off Airport	N601GM	Bell 206 Helicopter	M	Based Part 91	0	PE	The helicopter experienced an emergency hard landing 2 miles S of VGT due to inadequate pre-flight planning that resulted in fuel exhaustion.
8/31/2002	Off Airport	N3184	Breezy RLU-1A	E	Based Part 91	0	PE	While maneuvering around a large rock formation the aircraft entered a box canyon and crashed due to both pilot's failure to maintain an adequate terrain clearance altitude.
6/23/2002	On Airport	N160RA	Cessna 172	M	Based Part 91	0	PE	The aircraft was taxiing when it departed the taxiway and came to rest in a concrete drainage ditch due to the pilot's decision to fly after dark with an inoperative landing light and his unfamiliarity with the airport.
6/14/2002	Off Airport	N7041B	Robinson R-22 Helicopter	M	Based Part 91 Instructional	0	PE	The helicopter collided with the ground while attempting a downwind takeoff from a remote practice area due to the student pilot's control inputs and the instructor's lack of adequate supervision.
6/6/2002	On Airport	N7196W	Robinson R-22 Helicopter	M	Based Part 91 Instructional	0	PE	While attempting an autorotation the helicopter landed hard and was damaged due to the student pilot's improper control inputs and the instructor's lack of adequate supervision.

M – Manufactured, E – Experimental, PE – Pilot Error, ME – Mechanical Error, CE – Controller Error  
 Accidents more than 10 nautical miles (NM) from the airport are excluded and are identified as shaded

3/29/2002	Off Airport	N7040C	Robinson R-22 Helicopter	M	Based Part 91 Instructional	0	PE	The helicopter collided with the ground and rolled over while practicing autorotations in a remote area due to the failure of the instructor to properly judge the landing flare.
11/9/2001	On Airport	N8232M	Cessna 210	M	Based Part 91	0	ME & PE	On the first flight following an annual inspection during night VFR conditions, the landing gear would not fully extend and the right main gear collapsed upon landing. This was due to the failure of maintenance personnel to properly diagnose the cause of a reported maintenance discrepancy and the pilot's improper handling of the emergency.
6/4/2001	On Airport	N209TA	Piper Navajo	M	Based Part 135	0	ME	When the aircraft touched down at VGT the right main gear collapsed due to fatigue failure of a landing gear component.
5/19/2001	Off Airport	N9820R	Beech M35	M	Based Part 91	1	ME & PE	The aircraft collided with obstructions during a forced landing precipitated by a loss of power. The probable cause was the pilot's failure to properly install an oil filter during an owner-assisted annual inspection, which resulted in oil exhaustion and a loss of power.
4/1/2001	On Airport	N9572H	Cessna 172	M	Based Part 91	0	PE	During an aborted landing the pilot collided with a fence due to his inadequate compensation for existing cross wind conditions and his failure to maintain runway alignment.

M – Manufactured, E – Experimental, PE – Pilot Error, ME – Mechanical Error, CE – Controller Error  
 Accidents more than 10 nautical miles (NM) from the airport are excluded and are identified as shaded

12/14/2000	Off Airport	N7189K	Robinson R-22 Helicopter	M	Based Part 91 Instructional	0	PE	During an autorotation landing the helicopter touched down hard resulting in substantial damage due to the instructor's inadequate supervision of the second pilot.
9/22/2000	On Airport	N2963P	Piper PA-22	M	Transient Part 91	0	PE	During landing the aircraft veered off the runway and the nose gear collapsed due to the pilot's inadequate compensation for gusty and variable cross wind conditions.
9/16/2000	On Airport	N27CG	Stevens Starduster II	E	Based Part 91 Instructional	0	ME	On the landing rollout the aircraft ground looped causing substantial damage due to the failure of a mechanical component in the tail wheel.
9/2/2000	On Airport	N739HA	Cessna 172	M	Based Part 91	0	PE	While attempting to land on Runway 25 the aircraft landed in the dirt off the runway due to the failure of the pilot to maintain proper airspeed which resulted in a stall.
7/28/2000	On Airport	N3386D	Cessna 180	M	Transient Part 91	0	PE	The aircraft bounced on landing and veered off the runway causing the right main landing gear to separate from the aircraft due to the pilot's failure to maintain directional control.
4/28/2000	On Airport	N2193S	Cessna 210	M	Transient Part 91	1	PE	During a go-around attempt the aircraft impacted the ground and it was destroyed due to the pilot's failure to maintain control during cross wind conditions.
4/28/2000	On Airport	N9344C	Cessna 180	M	Based Part 91	0	PE	The aircraft landed right of the runway centerline and then nosed down causing substantial damage due to the pilot's inadequate compensation for existing cross wind conditions.

M – Manufactured, E – Experimental, PE – Pilot Error, ME – Mechanical Error, CE – Controller Error  
 Accidents more than 10 nautical miles (NM) from the airport are excluded and are identified as shaded

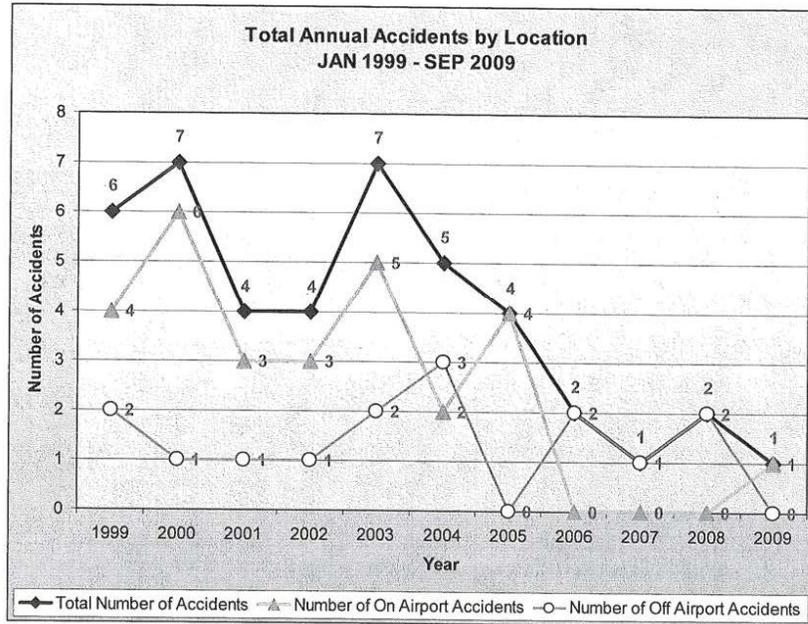
10/14/1999	Off Airport	N1024B	Piper Navajo	M	Based Part 135	1	PE	The aircraft collided with mountainous terrain after takeoff from VGT due to the pilot's lack of situational awareness and various errors on the part of air traffic controllers.
8/29/1999	Off Airport	N40RP	Cessna P210	M	Based Part 91	0	PE	The aircraft was in the traffic pattern when the engine lost power due to the pilot's failure to follow recommended procedures for use of the fuel pump. The aircraft subsequently collided with the ground causing substantial damage.
8/20/1999	Off Airport	N2654W	Mooney M20	M	Based Part 91	1	PE	The aircraft was in the traffic pattern when it began a wing rocking motion and descended until it collided with a tree and a residence, causing an explosion and fire. It was determined the pilot executed a steep turn at low altitude resulting in an accelerated stall and loss of control.
7/2/1999	On Airport	N180HW	Cessna 180	M	Based Part 91	0	PE	During the takeoff roll the aircraft experienced a gust of wind that nosed it over due to the pilot's failure to compensate for the existing cross wind conditions.
5/8/1999	On Airport	CGIUX	Cessna 172	M	Transient Part 91	0	PE	During an aborted landing the aircraft struck a chain link fence and impacted the ground due to the pilot's premature rotation and failure to attain and maintain sufficient airspeed.

M – Manufactured, E – Experimental, PE – Pilot Error, ME – Mechanical Error, CE – Controller Error  
 Accidents more than 10 nautical miles (NM) from the airport are excluded and are identified as shaded

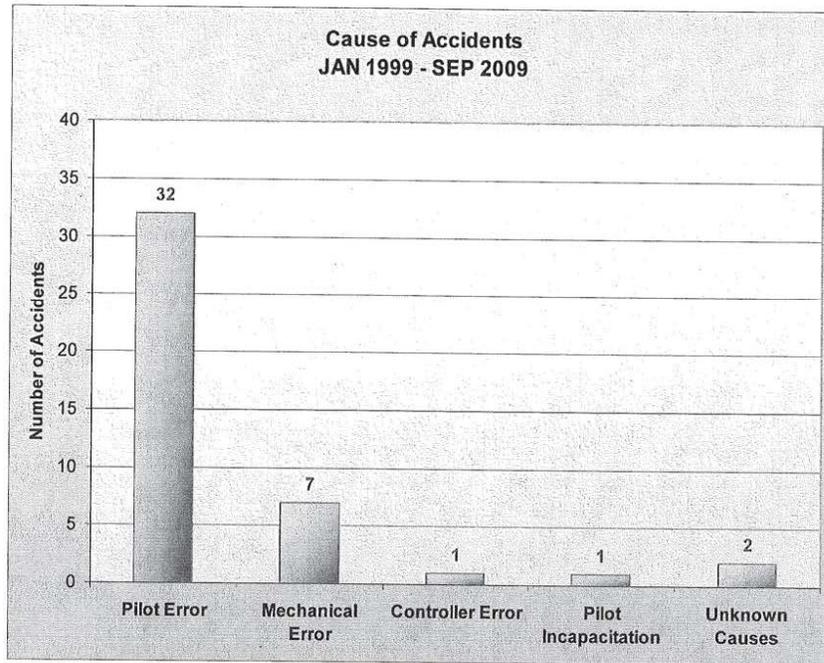
4/10/1999	Off Airport	N88212	Bellanca 7KCAB	M	Based Part 91	0	PE	While performing aerobatic maneuvers at altitude the control stick became jammed, the pilot was unable to regain control, and he abandoned the aircraft and parachuted to the ground. It was determined this was due to the pilot's failure to secure loose items in the cockpit before attempting aerobatic maneuvers.
4/10/1999	On Airport	N3289L	Cessna 172	M	Based Part 91	0	PE	On takeoff the aircraft veered to the right and struck a taxiway sign due to the pilot's failure to maintain directional control.
1/31/1999	On Airport	N58431	McDonnell Douglas 369D	M	Based Part 91	0	PE	While performing a practice autorotative landing the tail stinger contacted the ground due to the pilot's failure to properly judge the landing flare maneuver.
1/17/1999	Off Airport	N857JA	Abraham J G II/Erickson K One design	E	Based Part 91	0	ME	The pilot pressed the left rudder pedal while practicing outside snap rolls. The rudder pedal went all the way to the floor with no resistance. The cable had separated from the rudder horn due to the improper installation. The aircraft entered an unrecoverable right bank and the pilot parachuted to safety.

M – Manufactured, E – Experimental, PE – Pilot Error, ME – Mechanical Error, CE – Controller Error  
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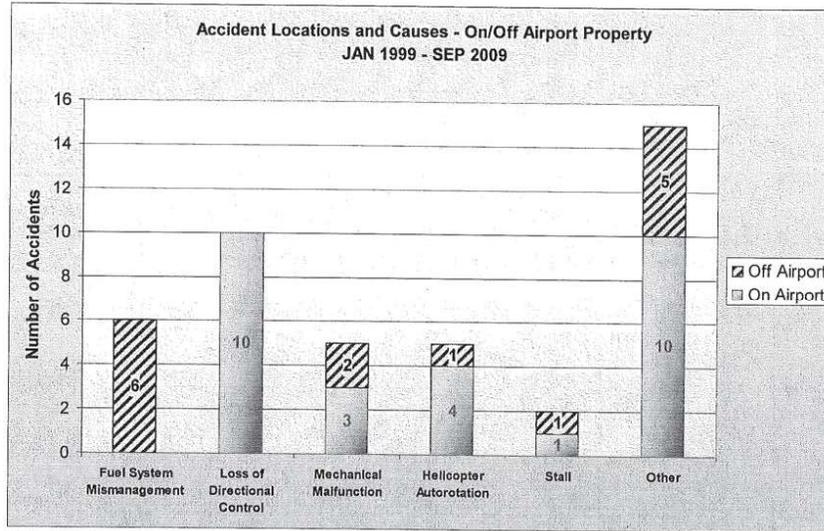
Appendix C – Total Annual Accidents by Location



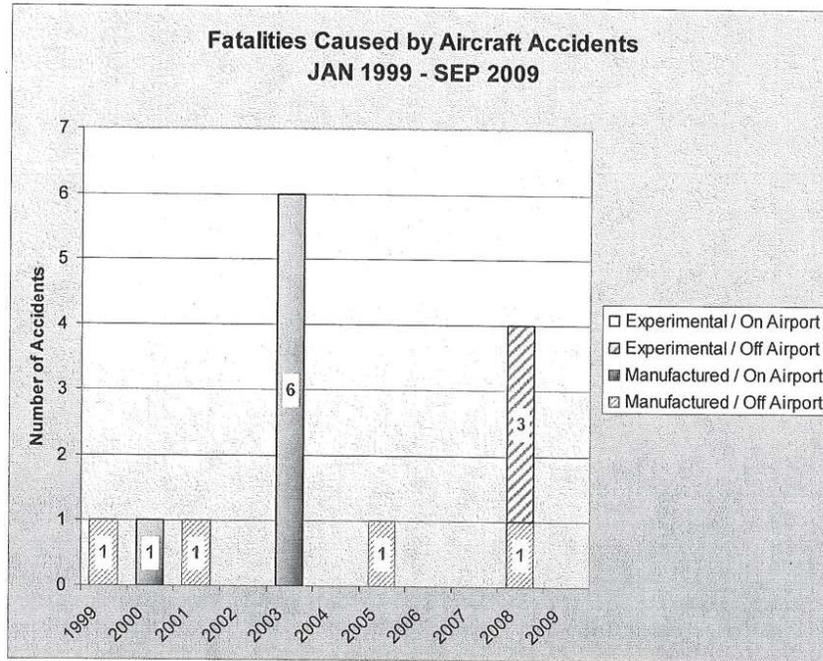
Appendix D – Cause of Accidents



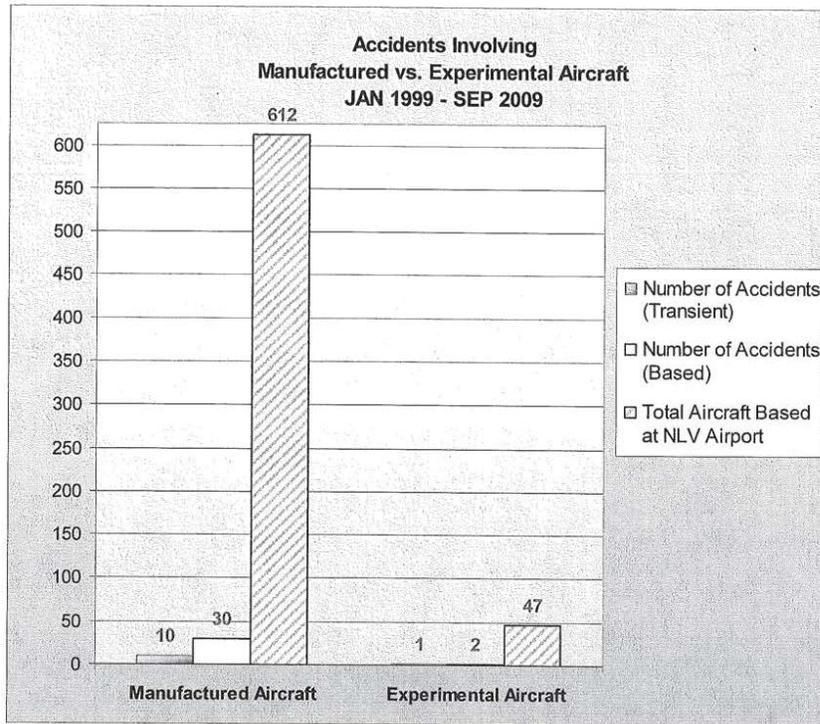
Appendix E – Accident Locations and Causes – On/Off Airport Property



Appendix F – Fatalities Caused by Aircraft Accidents



Appendix G – Accidents Involving Manufactured vs. Experimental Aircraft



## GLOSSARY

**Aircraft Accident** – An occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight and all such persons have disembarked, and in which any person suffers death or serious injury, or in which the aircraft receives substantial damage. (*National Transportation Safety Board, 49 Code of Federal Regulations, Part 830.2*)

**Based Aircraft** – An aircraft that is operational & air worthy, which is typically based at an airport for the majority of the year. (*Federal Aviation Administration, National Based Aircraft Inventory Program, Frequently Asked Questions*)

**Experimental Aircraft** – A special airworthiness certificate in the experimental category is issued to operate an aircraft that does not have a type certificate or does not conform to its type certificate and is in a condition for safe operation. Additionally, this certificate is issued to operate a primary category kit-built aircraft that was assembled without the supervision and quality control of the production certificate holder. Special airworthiness certificates may be issued in the experimental category for the following purposes: research and development, showing compliance with regulations, crew training, exhibition, air racing, and market surveys. (*Federal Aviation Administration website, [www.faa.gov](http://www.faa.gov)*)

**Flight School** – Any pilot school, flight training center, air carrier flight training facility, or flight instructor certified under 14 CFR Part 61, 121, 135, 141, or 142; or any other person or entity that provides instruction under 49 United States Code (U.S.C.) Sub-title VII, Part A, in the operation of any aircraft or flight simulator. (*Transportation Security Administration, 49 Code of Federal Regulations, Part 1552.1*)

**Flight Training** – Training, other than ground training, received from an authorized flight instructor in flight in an aircraft. (*Federal Aviation Administration, 14 Code of Federal Regulations, Part 61.1*)

**Transient Aircraft** – Operations that are performed by an aircraft, either Instrument Flight Rules (IFR), Special Visual Flight Rules (SVFR), or Visual Flight Rules (VFR) that lands at an airport, arriving from outside the airport area, or departs an airport and leaves the airport area (This is synonymous with itinerant aircraft). (*Federal Aviation Administration website, [www.faa.gov](http://www.faa.gov)*)

**Part 91** – The Federal Aviation Regulation that governs the operation of aircraft within the United States, including such items as minimum safe altitude, radio communications and air traffic control procedures. Most general aviation pilots and aircraft operate under this regulation (14 CFR Part 91.1(a)).

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**Response to Letter No. 11  
Dave Anderson**

- 11.1 Please Refer to Master Response 2.0-1 (Airports) and Master Response 2.0-2 (Master Alternative 10 Response).

**Comment Letter No. 12**

**Steve Nicolaou**

Attorney At Law

445 W. 11th Street, Suite C  
 Tracy, California 95376  
 September 4, 2012

William Dean *VIA E-MAIL TRANSMISSION – william.dean@ci.tracy.ca.us*  
 CITY OF TRACY  
 333 Civic Center Plaza  
 Tracy, California 95376

**Re: City of Tracy Modified Ellis Project – Draft Revised EIR**

Dear Mr. Dean:

As part of the proposed Modified Ellis Project (“MEP”), the applicant, Surland Companies (“Surland”), is making the representation that the MEP would be governed by the 2009 Airport Land Use Compatibility Plan (“2009 ALUCP”), thereby creating a greater safety zone approach than what was envisioned by the original Ellis Project that is currently the subject of litigation.

However, in the Draft EIR for the MEP, the applicant is proposing an Alternative 10 which would allow a residential mixed use within a portion of the 2009 ALUCP safety zone by having the MEP governed instead by the 1993 ALUCP. According to Alternative 10 (*Draft Revised EIR, Chapter 6 “Alternatives”, Section 6.5.2.*) this would occur if runway 8-26 at the Tracy Municipal Airport (“Airport”) was 3,418 feet long and 100 feet wide under the 1993 ALUCP, versus 3,438 feet long and 100 feet wide under the 2009 ALUCP, and if runway 8-30 at the Airport was 3,996 feet long and 100 feet wide under the 1993 ALUCP versus 4,002 feet and 100 feet wide under the 2009 ALUCP.

12.1

As you are aware, as a result of the 2007 repaving work that was done by California Pavement Maintenance, Inc. (“CPMI”) at the Airport, it appears that in addition to the shoddy repaving work that was done by CPMI, runway 8-30 was shortened by 6 feet, to 3,996 feet, and a Notice to Airmen (“NOTAM”) was filed by the City with the FAA to reflect the foregoing. It is also my understanding that the City is attempting to secure funding from the Federal Aviation Administration (“FAA”) to correct the problems associated with the shoddy work done by CPMI, including having its length corrected to 4,002 feet.

Given the foregoing, there are several issues that need to be addressed:

1. Would Surland be permanently precluded from developing a residential mixed use within the 2009 ALUCP safety zone approach while the City was seeking to obtain funding to lengthen runway 8-30 to the correct length of 4,002 feet, or would Surland be able to develop utilizing the 1993 ALUCP after a certain period of time, and what would be that period of time?

12.2

(209) 832-2501 • Fax (209) 832-0085

William Dean  
CITY OF TRACY  
September 4, 2012  
Page 2

2. What would be the impact to the Airport if Surland was able to develop the Airport utilizing the 1993 ALUCP as opposed to the 2009 ALUCP? | 12.3

My reason for asking the last question is this: if Surland was able to somehow develop the MEP utilizing the 1993 ALUCP versus the 2009 ALUCP, wouldn't that course of action essentially hamper the Airport's ability to be considered a "mid-sized" airport under FAA guidelines and consign it to being a "small sized" airport? It seems to me that such an outcome would have a huge economic impact not just to the Airport but also to the City's future plans for economic growth and development. If I recall correctly, at the recent State of the City address, the CEO of Prologis, Hamid Moghadam, made mention of the fact that the Airport in asset that could act as an incentive to attract businesses to our City. Why would we then want to hamper it by building homes within the 2009 ALUCP safety zone approach? | 12.4

In conclusion, I believe that the Draft EIR is woefully inadequate in addressing what type of impact Alternative 10 would have on the economic well-being of the Airport and the overall economic development of the City. These impacts, in my opinion, need to be thoroughly addressed and weighed in considering the overall efficacy and benefit of the MEP to the City and its citizenry as a whole. | 12.5

Thank you for your consideration of this matter.

Sincerely,

  
\_\_\_\_\_  
STEVE NICOLAOU

SN/sn

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## **Response to Letter No. 12 Steve Nicolau**

- 12.1 Please refer to Master Response 2.0-2 (Master Alternative 10 Response).
- 12.2 The currently approved 2009 ALUCP governs land uses within the airport sphere of influence, and that includes the portion of the ESP site that falls within the sphere. Therefore, the Project Applicant is required to adhere to the land use restrictions identified in the 2009 ALUCP.
- 12.3 Please refer to Response 12.2, above.
- 12.4 Please refer to Master Response 2.0-2 (Master Alternative 10 Response).
- 12.5 Please refer to Master Response 2.0-2 (Master Alternative 10 Response).

**Comment Letter No. 13****Steve Nicolaou**

Attorney At Law

445 W. 11th Street, Suite C  
 Tracy, California 95376  
 September 5, 2012

**VIA E-MAIL TRANSMISSION** – [william.dean@ci.tracy.ca.us](mailto:william.dean@ci.tracy.ca.us)

William Dean  
 CITY OF TRACY  
 333 Civic Center Plaza  
 Tracy, California 95376

**Re: City of Tracy Modified Ellis Project – Draft Revised EIR**

Dear Bill:

The purpose of this letter is to amplify and clarify the point I made in my letter to you dated September 4, 2012 with respect to the above-referenced matter wherein I expressed to you my concern that the Draft EIR did not address the economic impacts associated with Alternative 10 on the Tracy Municipal Airport (“Airport”) and/or the City of Tracy (“City”).

As you are aware, an EIR will be deemed as not fulfilling its informational obligations if it fails to consider a project’s individual and cumulative potential to indirectly cause urban/suburban decay by promoting a downward economic spiral. ***Bakersfield Citizens for Local Control v. City of Bakersfield (2004) 124 CAth 1184, 1193.***

13.1

As I am sure you will recall, the City, both through its Council and the staff, have always stated that the Airport is a valuable asset that could be used as a tool for economic development in the City.

My concern is that the Draft Revised EIR does not adequately address the Modified Ellis Project’s individual and cumulative potential to contribute to decay to the City by promoting a downward economic spiral under the scenario envisioned by Alternative 10 of the Draft Revised EIR if the Airport was governed by the 1993 ALUCP as opposed to the 2009 ALUCP based on the different runway lengths, especially since the City Council has identified the Airport as being a very important asset in its arsenal for promoting economic development so as to avoid the type of urban/suburban decay that would contribute to a downward economic spiral for the City.

Thank you for your consideration of this matter.

Sincerely,



STEVE NICOLAOU

SN/sn

(209) 832-2501 • Fax (209) 832-0085

**Response to Letter No. 13  
Steve Nicolau**

- 13.1 Please refer to Master Response 2.0-1 (Master Airport Compatibility Response) and Master Response 2.0-2 (Master Alternative 10 Response).

## Comment Letter No. 14

September 11, 2012

Bill Dean  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

Re: Modified Ellis Specific Plan Project, City of Tracy  
Comments on Draft Revised Environmental Impact Report (State Clearinghouse No. 2012022023)

Dear Mr. Dean:

The following are our comments and observations on the Draft Revised Environmental Impact Report for the above-referenced project.

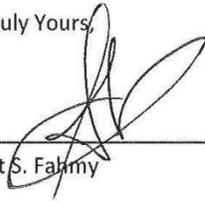
- 1. Amended and Restated Development Agreement Terms: We have reviewed the "Amended Tracy Ellis Development Agreement (DA) Terms" dated July 26, 2012. However, we find this summarized information insufficient in order for us to properly review the complete project. Please provide the latest version of the Amended and Restated Development Agreement for a more thorough and complete review of the proposed project. In addition, I'd like an extension of the Draft Revised EIR public review period in order to review the Draft DA. 14.1
  
- 2. Evaluation of Environmental Impacts (Land Use and Planning): Objectives and policies of the General Plan have not been properly considered in this analysis, including but not limited to, Objective LU-14 to "promote efficient residential development patterns and orderly expansion of residential acres to maximize the use of existing public services and infrastructure". The development of this project will result in the bypassing of more contiguous projects already within the City limits and closer to existing public services and infrastructure. This exaggerated extension of services and utilities, as well as the locking up of Residential Growth Allocations (RGAs) to the most outer limits of the City's service area, while vacant parcels are located between the project and heart of Tracy, is an example of a disconnect in the planning process that will lead to a mismanagement of City finite resources. 14.2

3. LAFCO's Reliance on CEQA Documentation Questionable: The Draft Revised EIR analysis also does not properly consider compliance with the policies of LAFCo. For example, this project does not satisfy the requirements of Section 56744 ("...territory shall not be incorporated into, or annexed to, a city pursuant to this division if, as a result of that incorporation or annexation, unincorporated territory is completely surrounded by that city or by territory of that city on one or more sides...").

14.3

I appreciated this opportunity to review and comment on the Draft Revised EIR for the Ellis Specific Plan project and look forward to future discussions regarding RGAs and their distribution by the City of Tracy.

Very Truly Yours,



Stewart S. Fahmy

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## Response to Letter No. 14 Stewart Fahmy

- 14.1 The proposed Development Agreement (DA) is currently still being negotiated. However, the basic terms of the agreement have been finalized. It is common for a DA to not be agreed upon until after the CEQA process is complete. Once finalized, should the DA be significantly different than what was analyzed as part of the EIR, a reassessment of environmental impacts would occur at that time.

The Draft Revised EIR was circulated to the State Clearinghouse, trustee agencies, responsible agencies, other government agencies, and interested members of the public for a 45-day review period as required by CEQA. The review period for this Draft Revised EIR started July 30, 2012 and ended September 13, 2012 for a total of 46 days. Therefore, the City has met the requirements of CEQA for the public review period and an extension of the public review period is not necessary.

- 14.2 The City respectfully disagrees that implementation of the proposed Project would result in the bypassing of more contiguous projects within City limits. Should the Project be approved, it would not necessarily preclude the development of other projects elsewhere within the City. The Project is being proposed at its current location because the Project Applicant, along with others, owns land within the proposed Project site. Development exists directly east of the site, as well as further north. Additionally, the environmental impacts associated with the extension of services and infrastructure were fully analyzed in the Modified Draft Revised EIR.

- 14.3 It is the position of the City that the annexation of the ESP area is a "Policy Issue," not an environmental issue that will be considered by decision makers. Additionally, other background information, analysis of environmental impacts, and mitigation measures contained within the Original Ellis EIR regarding annexation remain valid, and as described in Chapter 2, that information has been incorporated by reference into the Draft Revised EIR. This includes an exhaustive review of the Original ESP consistency with all applicable land use plans, policies or regulations of an agency with jurisdiction over the project site and impacts associated with the project site's potential annexation.

Section 56744 fully states the following: "Unless otherwise determined by the commission pursuant to subdivision (m) of Section 56375, territory shall not be incorporated into, or annexed to, a city pursuant to this division if, as a result of that incorporation or annexation, unincorporated territory is completely surrounded by that city or by territory of that city on one or more sides and the Pacific Ocean on the remaining sides." Incorporation of the ESP site would act as an extension of the City of Tracy to the west. Unincorporated County land would remain to the north, south, east, and west of the City, and the site is not adjacent to the Pacific Ocean. Therefore, incorporation of the ESP site into the City of Tracy would not create an island.

**Comment Letter No. 15**

**From:** John Favors [[mailto:john\\_favors@yahoo.com](mailto:john_favors@yahoo.com)]  
**Sent:** Wednesday, September 12, 2012 2:53 PM  
**To:** William Dean  
**Subject:** DEIR Comment State Clearinghouse No. 2012022023

John Favors  
2119 Lara LN  
Tracy, CA 95377

Wednesday, September 12, 2012

Mr. Bill Dean,

I object to the development of the Ellis 2012 Specific Plan Project/DEIR (MODIFIED ELLIS PROJECT DRAFT REVISED ENVIRONMENTAL IMPACT REPORT)(State Clearinghouse No. 2012022023). This project violates agreements the City has in its Grant Deed for the airport. The project proposes modifying the airport. This proposed modification open the door to many cascading environmental Impacts not mentioned the Environmental Impact Report. Thos issue include; but, are not limited to preventing future growth of the airport, reducing the size and serviceability of the airport modifying the approach characteristics to the instrument approaches, and reducing sales tax revenue to the city. When the airport was build it was classified as a Class C airport. One critical factor is the classification of an airport is the length of the runways. 4000' is a critical number. Tracy's Airport's runways were originally longer than this critical length. The project proposes shortening the runways to just below 4000' A five foot change from its current length to any amount below 4000' changes the category of the airport to "small" (A or B). This has a major impact on the airport by changing it to a small airport, It prevents commerce from accruing at the airport due to the runway length will prevent medium sized aircraft from landing at the airport. The situation is worse.

Tracy just entered a twenty-five year contract with a fuel vendor that is based on the fuel vendor being able to sale fuel to medium sized aircraft that could land on a runway 4000' long. That income would help allow the same vendor to sale other aviation fuels at prices that were highly competitive to the other fuel vendors in the valley. Tracy's historic low fuel prices have brought a significant amount of sales tax revenue to the city. This Environmental Impact Report (EIR) fails to mention the devastating effect their proposed development will have on the airport

15.1

and the people that earn their livings at the airport as well as the people that operate their businesses at the airport.

There is a complete absence of mention of the impacts the modified ESP will have on the Airport, the City obligations to maintain and “Grow” (as stated in the deed to the property) as well as the established businesses the operate there, the lack of tax revenue from the loss of JET A fuel sales, nor the increase of noise complaints to the city due to a residential development under the departure end of two 70 year old runways. Residential units and a family swim center should not be located at the departure end of a runway. Doing so simply does not make sense.

John Favors  
Tracy Resident

15.1  
cont

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## **Response to Letter No. 15 John Favors**

15.1 Please refer to Master Response 2.0.1 (Master Airport Compatibility Response).

**Comment Letter No. 16**

**From:** Inderdeep Sethi [<mailto:inderdeep.sethi@gmail.com>]  
**Sent:** Wednesday, September 12, 2012 3:33 PM  
**To:** William Dean  
**Subject:** Tracyairport DEIR Comment State Clearinghouse No. 2012022023

Inderdeep Sethi  
1579 Dove Way  
Tracy, CA 95376

Wednesday, September 12, 2012

Mr. Dean,

I strongly object to the development of the Ellis 2012 Specific Plan Project/DEIR (MODIFIED ELLIS PROJECT DRAFT REVISED ENVIRONMENTAL IMPACT REPORT)(State Clearinghouse No. [2012022023](#)). This project violates agreements the City has in its Grant Deed for the airport. The project proposes modifying the airport. This proposed modification opens the door to many cascading environmental impacts not mentioned in the Environmental Impact Report. Those issues include; but, are not limited to preventing future growth of the airport, reducing the size and serviceability of the airport, modifying the approach characteristics of the instrument approaches, and reducing sales tax revenue to the city.

When the airport was built it was classified as a Class C airport. One critical factor in the classification of an airport is the length of the runways. 4000' is a critical number. Tracy's Airport's runways were originally longer than this critical length. The project proposes shortening the runways to just below 4000', a five foot reduction from its current length to any amount below 4000' changes the category of the airport to "small" (A or B). This has a major impact on the airport by changing it to a small airport, It prevents commerce from accruing at the airport due to the runway length that will prevent medium sized aircraft from landing at the airport. The situation is even worse.

City of Tracy just entered into a twenty-five year contract with a fuel vendor which is based on the vendor being able to sell fuel to aircraft that could land on a runway >4000' long due to safety, technicality and insurance reasons. That income would help allow the same vendor to sell other aviation fuels at prices that were highly competitive to the other fuel vendors at airports in the vicinity. Tracy's historic low fuel prices

16.1

have brought a significant amount of sales tax revenue to the city. This Environmental Impact Report (EIR) fails to mention the devastating effect their proposed development will have on the airport and the people that earn their livings at the airport, as well as the people that operate their businesses at the airport.

16.1  
cont

There is nary a mention of the impact the modified ESP will have on the Airport, the City obligations to maintain and “Grow” (as stated in the deed to the property) as well as the established businesses that operate there, the lack of tax revenue from the loss of JET A fuel sales, nor the increase of noise complaints to the city due to a residential development under the departure end of two 70 year old runways. Residential units and a family swim center should not be located at the departure end of a runway. Doing so simply does not make sense.

Inderdeep Sethi  
Tracy Resident

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## **Response to Letter No. 16 Interdeep Sethi**

16.1 Please refer to Master Response 2.0.1 (Master Airport Compatibility Response).

# Comment Letter No. 17

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

From: George Riddle [<mailto:g-riddle@sbcglobal.net>]  
Sent: Thursday, September 13, 2012 10:11 AM  
To: William Dean  
Subject: Ellis 2012 Specific Plan Project documents/DEIR Comments

Mr. Bill Dean,  
Assistant Development and Engineering Services Director City of Tracy  
333 Civic Center Plaza, Tracy, CA 95376  
[william.dean@ci.tracy.ca.us](mailto:william.dean@ci.tracy.ca.us)  
209-831-6400  
fax 209-831-6439.

Ellis 2012 Specific Plan Project documents/DEIR Comments

CEQA requires that an adequate risk & safety analysis must be performed.  
In that analysis airport-related hazards analysis must be complete and accurate.

The DEIR claims "ESP would not expose people or property to significant airport-related hazards".

This simply is not true as Ellis sits under the approach and departure areas at the end of Tracy Municipal Airport's main runway!

17.1

DEIR quote, "Impact would be less-than-significant and no mitigation is required."

The DEIR concludes that safety and noise impacts from airport are significant but unavoidable!

These impacts are directly avoidable through relocating the project. The EIR must legitimately consider alternative locations and also consider the reduction of risk in an alternate location. The Ellis EIR must adequately address the many significant impacts of the development on the airport including current and future operations. It does not!

Additionally, Traffic, pipeline, RR, and school impacts are significant impacts that are not adequately addressed.

17.2

There are a number of serious non-compliance issues regarding many sections of the DEIR. Of specific concern to Tracy Municipal Airport are all of the following sections and items:

17.3

1-2 to 1-6  
3-3, 3-10, 3-13, 3-25

4.3-3, 4.4-1, 4.5, 4.7-22, 4.9-1 4.9-2, 4.9-7, 4.9-9, 4.9-10, 4.9-11, 4.9-14  
4.10-6, 4.10-8, 4.10-13, 4.10-17, 4.10-23, 4.10-24  
6-29

Each and every one of these items is in non-compliance with at least one and generally more of the following requirements:

The Tracy Municipal Airport Instrument of Transfer agreement with the US Government.

The City of Tracy must “operate the airport property as an airport in perpetuity” (forever).

Also, the City “shall prevent any land use either within or outside the boundaries of the airport that will pose a hazard to landing, taking-off, or maneuvering of aircraft at the airport or otherwise limit its usefulness as an airport.”

Title 49, United States Code subtitle VII – FAA Grant Assurances. Upon accepting federal airport grants, the City assured the federal government under Title 49, United States Code that it agreed to several grant assurances. The most important of these for the operation of the airport requires the City to:

B.1. Duration and Applicability.

Continue to operate the facility as a public-use airport.

C. 20. Hazard Removal and Mitigation.

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

C. 21. Compatible Land Use.

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft.

Public Utilities Code Section 21674.7 of the State Aeronautics Act.

The City must use the most current safety and noise data from the updated 2009 Airport Handbook.

Public Utilities Code Section State Aeronautics Act. Airport Hazard.

Airport hazard means any structure, object of natural growth, or use of land,

17.3  
cont

17.4

17.5

which obstructs the air space required for flight of aircraft in landing or taking off at an airport or which is otherwise hazardous to the landing or taking off.

17.5  
cont

Some of these issues of non-compliance have already been decided in previous court cases:

City of Watsonville vs. Watsonville Pilots Association  
City of Tracy/Surland vs. TRAQC

Of immediate concern at the Planning Commission hearing on August 22 was the City allowing, via the Ellis EIR, the reduction of the runway length to 3996 feet in direct conflict with Councils direction to Staff at the May City Council meeting to maintain the length at more than 4001 feet. Alternative 10 detailed below must be removed from the project as it violates every single one of the requirements and restrictions outlined above.

17.6

6-34 6.5.2 ALTERNATIVE 10: 1993 ALUCP RUNWAY LENGTH

Tracy Municipal Airport runway 08-26 would be 3,418 feet long and 100 feet wide and runway 12-30 would be 3,996 feet long and 100 feet wide (or as adjusted by the City's recent survey),as opposed to the 2009 ALUCP runway 8-26 length of 3,438 feet long and 100 feet wide and runway 12-30 length of 4,002 feet long and 100 feet wide.

17.7

1.8.2 ALTERNATIVE 10: 1993 ALUCP RUNWAY LENGTH

Under the 1993 ALUCP Runway Length Alternative (Alternative 10), all the same uses would develop as proposed by the Modified ESP (a minimum of 1,000 to a maximum of 2,250 residential units, 180,000 square feet of retail, office, and other commercial uses, and four acres of parks per 1,000 residents). Like the Modified ESP, three acres of Neighborhood Parks per 1,000 residents would be built throughout Ellis, and the one acre of Community Park per 1,000 residents requirement could be met with either the donation of land from the Project Applicant for a Family Swim Center or the payment of an in lieu fee. All underlying zoning would be Residential Mixed (TR-Ellis).

17.8

However, under Alternative 10, the runway lengths at the Tracy Municipal Airport would be similar to those identified in the 1993 ALUCP, which are shorter than those identified in the 2009 ALUCP. Thus, under Alternative 10, runway 8-26 at the Tracy Municipal Airport would be 3,418 feet long and 100 feet wide and runway 12-30 would be 3,996 feet long and 100 feet wide (or as adjusted by the City's recent survey),as opposed to the 2009 ALUCP runway 8-26 length of 3,438 feet long and 100 feet wide and runway 12-30 length of 4,002 feet long and 100 feet wide.

Another major flaw is detailed below. The Ellis location at the end of the Tracy Municipal Airport's main runway creates two significant issues:

17.9

First, the arrival/departure of aircraft over the project at attitudes as low as 265' creates significant safety and noise issues. These can not be ignored as in

the EIR.

AIRPORT HAZARDS

Impact 4.9-2:

Implementation of the Modified ESP would result in the placement of people and structures within the flight approach to Tracy Municipal Airport. Determination: Less than Significant Impact.

A portion of the ESP site is located within the 2009 ALUCP Outer Approach/Departure Zone 4. This has the potential to create a significant impact if incompatible development is allowed. Development within an airport safety zone requires land use restrictions to minimize risks to both people working and residing in this area, and aircraft utilizing the airport.....

Given the special design considerations included in the 2009 ALUCP, as well as the low intensity of the proposed Limited Use designation, it is anticipated that implementation of the Modified ESP would not expose people or property to significant airport-related hazards. Furthermore, development within the airport sphere of influence would be subject to review and approval by affected regulatory agencies with jurisdiction over that portion of the Modified ESP site. However, it should be noted that for any discretionary reviews and /or approvals subsequent to the adoption of the Modified Ellis Specific Plan, the Project Applicant reserves the right to require that the land uses be subjected to the ALUCP in effect at the time of the application. As the Modified ESP would be in conformance with the 2009 ALUCP, and consistent with the special design considerations included in the ALUCP, impacts related to the placement of people and structures within the Outer Approach/Departure Zone would be considered less than significant. No mitigation measures are required.

17.10

Second, this significant issue outlined below is non-compliant.

Impact 4.9-4:

Impacts associated with airport hazards and airport land use compatibility are considered less than significant, since the 2009 Airport Land Use Compatibility Plan was recently adopted and incorporated the anticipated future development associated with the project into consideration as part of their analysis. In addition, all future developments within the Airport’s Sphere of Influence would be required to adhere to the regulations and requirements within the 2009 ALUCP as well as Federal Aviation Administration (FAA) regulations, and the City’s 1998 Airport Master Plan – Tracy Municipal Airport. Based on this, impacts associated with airport hazards are not considered cumulatively considerable.

17.11

Another significant flaw in the EIR it in section 6-16.

Finally, while each of these sites may reduce the Project’s exposure to airport and railroad-related noise impacts, they would be anticipated to result in similarly significant and unavoidable impacts on traffic and circulation, greenhouse gas emissions, and air quality. In addition, despite the fact that each of these off-site locations is located outside of the airport flight path, they were rejected as suitable alternative sites for the reasons described below.

17.12

While other issues would remain constant with these alternate locations, all of the airport related impacts would be eliminated.

Additionally, The EIR can not use the 1993 ALUCP.

The report created from a multi-discipline study of two aircraft accidents in a neighborhood located at the end of North Las Vegas Airports main runway demonstrates why placing Ellis at the end of the Tracy Airports main runway is a bad idea. One on the main conclusion of the report available here:

<http://download.aopa.org/epilot/2009/SJR3-Report.pdf> stated below:

11. The cities of North Las Vegas and Las Vegas should be encouraged to enact legislation to prohibit the construction of new buildings, communication towers or other obstructions above a safe height in the immediate vicinity of North Las Vegas Airport. Existing structures that may be determined to pose a hazard to air navigation near the airport should be evaluated using a cost and benefit analysis for alteration or removal. This will help eliminate the possibility of aircraft striking tall structures within the

immediate vicinity of the airport.

12. The cities of North Las Vegas and Las Vegas should be encouraged to enact legislation to prohibit the further construction of residential housing or

other non-compatible land uses within the immediate vicinity of North Las Vegas Airport. The City of North Las Vegas is addressing this issue in the current revision of its Zoning Ordinance (Title 17). As part of this process, North Las Vegas has also submitted its draft Air Terminal Environs Ordinances to the Clark County Department of Aviation for review and comment. This reduces the possibility of non-compatible development near the airport and aids in future community planning.

The reasons that we have safety zones near airports is detailed in the report available here:

<http://www.airdisaster.com/reports/ntsb/AAR73-06.pdf>. The report that addresses an accident where an aircraft crashed into an ice cream parlor that was built across the street from a runway once again demonstrates why development does not belong at the end of airport runways.

Thanks,

VR

George Riddle

17.13

17.14

## Response to Letter No. 17 George Riddle

- 17.1 Please refer to Master Response 2.0.1 (Master Airport Compatibility Response).
- 17.2 Without additional information as to how traffic, pipeline, railroad, and school impacts are not adequately addressed, no response is possible. However, traffic related impacts are described and analyzed in great detail on pages 4.13-1 through 4.13-52 of the Draft Revised EIR. Pipeline related impacts are described and analyzed in great detail on pages 4.7-10 through 4.7-22 and 4.7-25 through 4.7-33 of the Draft Revised EIR. Railroad related impacts are described and analyzed in great detail on pages 4.10-16 and 4.10-18 through 4.10-26 of the Draft Revised EIR. School impacts are described and analyzed in great detail on pages 3B.9-9 through 3B.9-10 of the previously prepared Draft EIR.
- 17.3 Please refer to Master Response 2.0.1 (Master Airport Compatibility Response).
- 17.4 Please refer to Master Response 2.0.1 (Master Airport Compatibility Response).
- 17.5 Please refer to Master Response 2.0.1 (Master Airport Compatibility Response).
- 17.6 Please refer to Master Response 2.0.1 (Master Airport Compatibility Response).
- 17.17 Please refer to Master Response 2.0.1 (Master Airport Compatibility Response).
- 17.8 Please refer to Master Response 2.0.1 (Master Airport Compatibility Response).
- 17.9 Please refer to Master Response 2.0.1 (Master Airport Compatibility Response).
- 17.10 Please refer to Master Response 2.0.1 (Master Airport Compatibility Response).
- 17.11 Please refer to Master Response 2.0.1 (Master Airport Compatibility Response).
- 17.12 Please refer to Master Response 2.0.1 (Master Airport Compatibility Response).
- 17.13 Please refer to Master Response 2.0.1 (Master Airport Compatibility Response).
- 17.14 Please refer to Master Response 2.0.1 (Master Airport Compatibility Response).