



COMMITTEE FOR  
GREEN FOOTHILLS



Santa Clara Valley Audubon Society  
Founded 1926

Jim Rowe  
Planning Manager  
Morgan Hill Planning Department  
17555 Peak Avenue  
Morgan Hill, California 95037

Re: EIR Comments on the Institute Golf Course, SCH# 2000062092

Dear Mr. Rowe,

On behalf of the Committee for Green Foothills (“CGF”) and the Santa Clara Valley Audubon Society (“SCVAS”), we submit the following comments on the Institute Golf Course Revised Draft EIR (“RDEIR”).

CEQA requires the City to propose and describe mitigation measures to minimize significant environmental impacts identified in the EIR. Cal Pub. Res. Code § 21002.1(a); 14 Cal. Code Regs. § 14126(e). Mitigation includes actions to avoid impacts altogether, minimize impacts, rectify impacts, reduce impacts over time, or compensate for impacts by providing substitute resources or environments. 14 Cal. Code Regs. § 15370.

The City cannot legally approve the Institute Golf Course on the basis of the RDEIR if the City fails to require any of the mitigations described in the RDEIR,<sup>1</sup> or if the City fails to include the Integrated Turfgrass and Pesticide Management Program (“ITPMP”) as described in the attached comment letter from Certified Golf Course Superintendent Kenneth M. Harp. All the RDEIR-identified mitigations, as well as the ITPMP (collectively, “mitigations”) are feasible and necessary to minimize the significant impacts from the Institute Golf Course. Cal Pub. Res. Code § 21002.1(c). Approval without including all the mitigations as conditions of approval would therefore violate the CEQA requirement to mitigate impacts where feasible. Id. In addition, approval of the project without including the ITPMP would violate CEQA because the ITPMP is a feasible mitigation measure that would minimize water quality impacts and therefore must be analyzed in the RDEIR, which has not occurred. 14 Cal. Code Regs. § 15126.4(a)(1)(B).

This letter begins with a section of general comments on the RDEIR, and then follows with a separate section of comments on specific sections of the RDEIR.

### General Comments

1. The RDEIR fails to present any evidence to suggest that any of the proposed mitigations are not feasible. The City therefore cannot use infeasibility as a basis for rejecting a mitigation unless it provides evidence of infeasibility for analysis and comment by the public and by responsible agencies and then recirculates the RDEIR.

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<sup>1</sup> In situations where the RDEIR suggests alternative mitigations, such as the “Mitigation Measure Packages” on pages 50-53, the City would be acting illegally if it fails to require at least one of the proposed alternative mitigations as a condition of approval for each situation in which the RDEIR has proposed alternative mitigations.

2. The only evidence in the record on feasibility of mitigation demonstrates that all the mitigation is feasible, beginning with the fact that the staff and experts developing the RDEIR would not have wasted the effort of proposing mitigations they considered infeasible. The RDEIR fails to indicate whether the proposed mitigation measures not presently incorporated into the proposed project are measures that are commonly used elsewhere, but we are familiar with these types of mitigation and we know that they have been used elsewhere. Responses to this comment should indicate for each mitigation measure whether the experts who have devised these mitigations have seen them used elsewhere. CGF and SCVAS have reviewed many development projects, including golf course projects, and the proposed mitigations are not exceptional in any manner, and therefore have been found to be feasible in many other circumstances. As seen in the attached letter, Golf Course Superintendent Harp is familiar with applying these types of mitigations to golf courses and knows them to be feasible for golf courses. The only “exceptional” aspect of this particular project is the degree of uncertainty caused by the fact that the applicant harmed the environment first, and then initiated the steps for environmental analysis. The fault for that uncertainty rests with the applicant, as should the burden of rectifying the problem of the harm it caused.
3. Some of the proposed mitigation measures will have the effect of reducing the amount of irrigated turf or require the redesign of the course layout. This effect in no way makes the mitigations infeasible. As noted in the RDEIR, this golf course has over two-and-a-half times the amount of irrigated turf as other courses in the region. RDEIR at 84 (50 irrigated acres elsewhere versus 128 acres for this course). As noted in the letter by Golf Course Superintendent Harp, this course is on a parcel that is over 50% larger than many parcels used for golfing, which increases the flexibility in designing the course layout. Therefore, redesign is not a problem with respect to feasibility. Finally, many of the mitigations are overlapping - buffer zones around water bodies protect against many environmental impacts, and the need to reduce total irrigated turf in order to protect water supplies makes buffer zones all the more sensible. Simply put, there is plenty of room for all the mitigations proposed in the RDEIR.
4. Economic factors should play a limited role in restricting the “feasibility” of proposed mitigation measures. The project proponent has illegally constructed and maintained a massive course without regard to its costs, so mitigation measures that might be considered expensive for “bare-bones” golf course are appropriate here. This is clearly an attempt to construct a “high-end” golf course. The level of effort the applicant should put into mitigating its significant impacts should be commensurate with the scale of the project. The applicant has not spared any expense in creating a golf course that it wants, so the applicant should accept comparable levels of expenses in mitigating the damage the golf course is causing to the environment. If economic reasons are cited for infeasibility of mitigation measures, economic data to support that assertion must be provided to the public and responsible agencies for comment.
5. The applicant cannot rely on the fact that mitigation measures may now be more expensive or difficult to construct than they would have been if the applicant had not broken multiple laws and constructed the course before applying for its permit. The City must not reward the applicant for its illegal action.

6. Many of the mitigation measures will result in lower maintenance costs for the course because they require the applicant not to mow, fertilize, or spray pesticides on or near sensitive resources such as streams and ponds. To the extent that economics plays a role, these economic savings are additional reasons why the mitigations are feasible.
7. By creating on-site natural habitats, the mitigations will significantly improve the aesthetics of the course. Someday, golf course users and neighbors will thank the City for requiring the natural habitat improvements.
8. The project description states the golf course is a private course for the use of non-professional golfers, specifically for recreational use by mathematicians at an associated institute. This description means that mitigation measures are feasible even if the mitigation changes the course in a way that makes it less attractive for professional tournaments. If the mitigation measures proposed are similar to those used at other, non-professional golf courses, then that information should be enough to show that the mitigation measures are feasible. As we discuss in detail in our comments below, all proposed mitigation measures are unremarkable and completely feasible.
9. The City cannot reject mitigation measures that eliminate “take” of endangered species as defined in the Endangered Species Act (“ESA”). The applicant did not receive permission to take endangered species. If the City does not require mitigation, the City will be granting a permit for an action known to the City to cause take of endangered species. The City itself would violate the ESA if it grants a permit to a third party to commit an action that causes take of endangered species. *Loggerhead Turtle v. County Council of Volusia County, Florida*, 148 F.3d 1231 (11th Cir. 1998). The way the City can avoid an ESA violation is by requiring, at a minimum, the mitigation described in the RDEIR.
10. The project description means that professional play in PGA tournaments is not an anticipated use of the course, and proposals for such use would require supplemental environmental documentation.

## Specific Comments.

### 1. Visual Impacts.

The DEIR, at page 22, concludes that there will be no significant visual impacts from the proposed project, while acknowledging that, “Views of the hillside from the neighbors near the project site will be obscured when the numerous trees planted along the perimeter of the project site become established.”

The EIR should reconsider the significance of visual impacts on the site. The dense tree planting along the perimeter of the land create a significant, adverse visual impacts for the neighbors and the public as it drives along Foothill or other adjacent roads. In addition, the trees—planted in ugly, artificial-looking rows—fundamentally change the visual character of the area, which is dominated by longer views of the foothills, farmlands, and rural residences. This problem is exacerbated by the type of trees selected. Redwoods and other conifers would not grow in this area naturally, and thus look out of place. This problem will only get worse as the trees grow.

We are submitting photos of the area. From photo number one—taken just to the west of the project site, you can see the view of the foothills from Foothill Road. The following pictures are also from Foothill, but are taken adjacent to the project site. This depicts the hedgerows of trees and the views the neighbors currently have. You can see that the longer views are nearly gone at this point, and will disappear entirely as the trees grow.

A recent count shows that nineteen homes are located directly across Foothill from the project site. Additionally, homes to either side of the project will have their views towards the valley floor obscured as the trees grow.

Additionally, the trees are typically planted too close together for their own well being. Please provide an arborist's opinion as to the long-term health of the trees under the current conditions. If, as we suspect, many trees will suffer or die, will this exacerbate the negative visual impacts.

The mitigation for this impact would be to remove many of the trees, organize those that remain in a more natural looking groups, and remove portions of the berm that many of the trees have been planted on. Ideally, oaks and other trees and shrubs more suitable to the area would be planted instead.

## 2. Wildlife Mitigation Measure Package I (pages 50-53)

**Implement USFWS Mitigation Measure Recommendations.** The Fish and Wildlife Service (“FWS”) recommendations are part of the “Package I” mitigations described on RDEIR page 50 to reduce wildlife impacts. The requirements to purchase 51 acres of offsite-habitat does nothing to alter the golf course and is feasible. FWS identified in its letter an even-smaller 35-acre parcel that could be bought by the applicant, so the mitigation is especially feasible. We additionally note that the applicant's likely violation of the Endangered Species Act through its illegal destruction of habitat in 1997 cannot now be excused on the basis that it would be expensive to mitigate the damage it caused. The cost of purchasing the habitat does not make it infeasible.

FWS proposes that in lieu of purchasing 51 acres on replacement habitat, the applicant may purchase and protect 35 acres of prime habitat currently being considered for purchase by the VTA. RDEIR, App. C-6 at 2. If VTA plans to purchase and protect this prime habitat on its own, and if VTA will not protect additional habitat as a “substitute” for the 35 acres, then this proposed mitigation is legally inadequate. Protecting land through the applicant's purchase that would have been protected anyway might save the VTA some money, but it does not mitigate environmental harm. The City must show how this 35 acre purchase would increase the amount of protected land if the 35-acre option if this mitigation is to be legally adequate.

**Riparian Buffer.** The riparian buffer in Package I mitigations is feasible. As described above in the General Comments, the massive size of this golf course means that altering the course layout as needed for the buffer will not interfere with the ability of golfers, especially amateur golfers, to use and enjoy the course.

**Managing Non-Native Predator Species.** Monitoring ponds for predators of endangered species and drying out those ponds containing predators for 2-3 week periods is an easily-accomplished measure. The alternative is to create a “population sink” where the golf course design becomes a trap for killing red-legged frogs and tiger salamanders.

**Pond buffers.** The proposed 10-foot buffers around the ponds will not interfere with golf course play.

**Maintaining Water Quality of Breeding Ponds/Establish Vegetated Shelves.** As with other measures, this mitigation is unexceptional and does not interfere with golf course play.

**Water Quality Setback from Corralitos Creek.** The proposed 50-foot buffer adds little if any extra burden to the 70-foot average buffer required by FWS. Again, the golf course has plenty of room with the buffer.

### 3. Wildlife Mitigation Measure Package II (pages 51-53)

**Providing a Buffer Zone.** A two hundred-foot buffer zone around water bodies leaves more-than adequate amount of space on the property for an 18-hole golf course. As attested by Golf Course Superintendent Kenneth Harp, the course could easily fit on a much smaller parcel, so the buffers will not interfere with the feasibility of the course.

**Managing Non-Native Predators, Water Quality, Vegetated Shelves, Creek Setback.** Same as the comments above discussing these components of Mitigation Package I.

**Additional Tiger Salamander Mitigation.** Comments are hardly needed. Placing some rocks and branches for habitat could not be easier.

### 4. Riparian Habitat (page 53)

**Setback size.** Comments made above regarding the feasibility of buffer zones apply here as well.

**Other aspects of riparian protection.** All the proposed riparian mitigation measures are commonly done and present no feasibility problems.

### 5. Water Supply Impacts

As pointed out by Golf Course Superintendent Harp in the attached letter, entire 18-hole courses have been built on 125-acre parcels. The applicant currently has 128 acres in irrigated turf, larger than the entire parcel used by other courses. RDEIR at 84. Reducing irrigated turf to 55-60 acres is still up to 20% more turf than that used at other courses in the region. Id. Fifty acres has been shown to be feasible, so 55-60 acres is more than feasible mitigation for significant water supply impacts, which will also reduce pesticide impacts and potential groundwater pollution.

### 6. Traffic Impacts

The discussion of traffic impacts fails to analyze whether the 1997 golf course construction of this project had significant traffic impacts, in terms of volume or wear on roads from heavy equipment. Given the massive size of the construction project, the evidence shows those impacts were significant. The project

applicant should be required to mitigate any construction-related traffic impacts through payments into a fund used to repair roads and to pay for traffic volume impacts, if any, through payments supporting public transportation. The fact that this and other construction-related impacts have already occurred is irrelevant, because the construction is part of the project, and mitigation expressly includes rectifying impacts after they have occurred, and eliminating impacts over time. 14 Cal. Code Regs. § 15370(c)-(d).

## 7. Noise Impacts

As with traffic impacts, the RDEIR should have analyzed construction-related noise impacts. Again, the massive size of the project shows noise impacts were significant. The applicant should pay into a fund for noise abatement. If none exists, the applicant should pay an appropriate amount for retiring and replacing older, noisier vehicles used by the City.

The unincorporated noise mitigation measures on page 91 would additionally reduce the total noise impacts experienced by neighbors, and should be required for this project.

## 8. Air Impacts

As with traffic and noise, air impacts from the 1997 construction should have been analyzed, and were likely to have been significant, especially from dust. The applicant should pay into an air pollution abatement program to mitigate its impacts.

## 9. Secondary Impacts

**Red-legged Frog.** Regarding Mitigation 1, there is plenty of space on the parcel for habitat for all the reasons discussed in the General Comments, above. Mitigations 2-4 are similar to the Wildlife Package Mitigations discussed previously, and those comments apply here. Mitigation 5 – compliance with agencies – is an absolute necessity, so feasibility is irrelevant.

**Tiger Salamander.** Mitigations 1-3 have been discussed in relation to red-legged frogs and Wildlife Packages, and those comments apply here. Mitigation 4 is another example of off-site mitigation. Off-site mitigation is commonly done and is as feasible for the project applicant as it is for anyone else.

## 10. Math Institute

Since construction of the Math Institute is a stated project objective, why are there no drawing of the proposed new building? Please provide a visual depiction of the institute, so that the public can determine whether the building design and massing are appropriate for the site, or whether they might lead to increased visual impacts.

## 11. Cumulative Impacts

**Water Usage.** Please support the statement on page 116 that “agricultural land uses require more water than urban land uses.” Much of the surrounding land uses will be residential, with lawns and other activities typical of residences. They might use as much or more water than the orchards and row crops currently near the site. Please provide typical water usages for orchards, row crops, and residential uses of the densities predicted in area.

Also, how many of the surrounding projects will be drawing on the same groundwater?

Please provide any information on trends in the level of the groundwater table in the area.

There is an inadequate analysis of the effect of having two golf courses (the Institute and Harvey Bear) nearly adjacent to each other. Please provide specific information for the combined water needs of the two courses and whether the groundwater in the area can accommodate that without negatively impacting the local residences which rely on groundwater (e.g. cause them to make their wells deeper).

To mitigate for potential draw-down of groundwater in the area due to the proposed project, a mitigation measure should be included that groundwater levels will be monitored and, if groundwater levels fall below a threshold (to be established), the course would reduce water usage to a level which reduces the impacts to less than significant.

**Farmlands.** To deal with a significant, cumulative loss of agricultural land, the City of Gilroy is implementing a programs whereby those that contribute to the loss of farmland in the future will mitigate that loss by purchasing either fee title or a conservation easement over other farmland in Santa Clara County, and then keeping that land in farming.

We suggest that Morgan Hill consider a similar program of farmland preservation, to reduce the cumulatively significant loss of farmlands from this and other projects. The proposed project could mitigate for its contribution to the cumulative loss of farmland by preserving 57 acres (the amount of prime farmland lost on site) in the region. Please address the feasibility of both aspects of this proposal (i.e. a wider program and the specific amount for this site).

**Serpentine and Sensitive Species.** Similarly, the project’s contribution to a cumulatively significant loss of serpentine habitat and habitats for special status animals (DEIR, page 117-118) could be mitigated by requiring off-site acquisition and preservation of these habitats (as mentioned in the DEIR at page 111). This mitigation appears feasible, in that the project proponent has already agreed with the U.S. Fish and Wildlife Service (FWS) to mitigate for impacts to Red-legged frog by acquiring and preserving off-site habitat. Please describe the current status and content of the agreement with the FWS (acreage, etc), so the public can better understand the nature of off-site mitigation.

## 12. Mitigation Monitoring and Enforcement

The following comments relate to mitigation monitoring and enforcement. Based on past history, we question the City’s ability to adequately monitor or enforce mitigation measures on the site. To an even greater extent, we question the project proponents’ commitment to any mitigation measures which are imposed. The public should be confident that those mitigation measures contained in the DEIR will actually

be implemented in a manner which does indeed reduce impacts to a less than significant level. Therefore, we feel these are legitimate CEQA comments, and we request a response.

Please describe how the mitigation monitoring plan for this project will be compiled.

Please describe the resources the City has to enforce those mitigation measures. In other words, what is the system in place in Morgan Hill for mitigation monitoring, who is responsible for oversight of a project such as this, and is there adequate staffing to ensure that mitigation measures will be inspected?

If a mitigation measure is not implemented, or not implemented adequately, what are the enforcement mechanisms in place in Morgan Hill? Can the proposed project be shut down, or the project proponents fined?

Is there any heightened scrutiny when dealing with a project proponent who has shown a clear disregard for local, state, and federal law, such as the proponents of this project?

If the City is to claim that it has an adequate system in place and adequate staffing to deal with monitoring and enforcement, please explain why these mechanisms were not used in dealing with the project proponent since the late 1990's, when the City first noted that the old grading permit had been violated.

The above information, including a discussion of the City's past failure to monitor or enforce against the proposed project, is relevant to CEQA, in that it will help the public better understand the context of mitigation monitoring and enforcement, and thus have confidence that in the future the project proponents will be held to their permit conditions, giving meaning to the CEQA documents.

Please discuss which proposed mitigation measures lend themselves to performance criteria (e.g. riparian habitat restoration areas shall be monitored yearly for five years and must achieve a success rate of 70%, or replanting shall be required). For those that would benefit from performance criteria, please provide the suggested criteria for public comment).

When the mitigation monitoring plan for the proposed project is drafted, we recommend that it be detailed, clear as to whom responsibility for implementation and oversight of each measure has been assigned, and containing a schedule for inspection and documentation.

## Conclusion

We appreciate the opportunity to comment on the RDEIR, and request responses to the above comments. Please contact us if you have any questions.

Sincerely,

<signed>

Brian A. Schmidt  
Legislative Advocate  
Committee for Green Foothills

<signed>

Craig Breon  
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Santa Clara Valley Audubon Society