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ENDORSED

Filed JUL 22 1999

JOSE O. GUILLEN
Court Executive Officer

J. FLOHR

Deputy

IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF NAPA

PAH/STANLY RANCH, LLC,

Petitioner,

vs.

COUNTY OF NAPA, et al.,

Respondents.

Court No. 26-04804

STATEMENT OF DECISION DENYING
PETITION FOR WRIT OF
ADMINISTRATIVE MANDAMUS

THIS MATTER came on regularly for hearing on 23 June 1999. Petitioner PAH/
STANLY RANCH, LLC, appeared by CHEVALIER, ALLEN & LICHMAN, LLP, by
BARBARA E. LICHMAN, Ph.D., ESQ., and by DICKENSON, PEATMAN & FOGARTY, by
PAUL G. CAREY, ESQ., its attorneys of record.

Respondents COUNTY OF NAPA and NAPA COUNTY AIRPORT LAND USE
COMMISSION appeared by ROBERT WESTMEYER, County Counsel, by LAURA J.
ANDERSON, ESQ., their attorney of record.

Amicus curiae CALIFORNIA PILOTS ASSOCIATION and NAPA AIRPORT PILOTS
ASSOCIATION appeared by JAY C. WHITE, ESQ., their attorney of record.

On 7 July 1999 the court rendered its TENTATIVE DECISION DENYING PETITION
FOR WRIT OF ADMINISTRATIVE MANDAMUS, and directed that counsel for respondent
prepare a PROPOSED STATEMENT OF DECISION. That was accomplished and the
document served by mail on 12 July 1999.

On 15 July 1999 petitioner filed its STATEMENT OF CONTROVERTED ISSUES;

1 PROPOSALS FOR AMENDMENT OF TENTATIVE DECISION AND FOR CONTENT OF
2 STATEMENT OF DECISION; AND REQUEST FOR HEARING.

3 On 21 July 1999 respondent filed its RESPONDENT'S RESPONSE TO PETITIONER'S
4 STATEMENT OF CONTROVERTED ISSUES; PETITIONER'S PROPOSALS FOR
5 AMENDMENT OF TENTATIVE DECISION AND FOR CONTENT OF STATEMENT OF
6 DECISION AND PETITIONER'S REQUEST FOR HEARING.

7 The court has reviewed and considered the entire Administrative Record. The court has
8 also considered the submissions of counsel, their arguments, and has reviewed the citations
9 proffered. The court has also reviewed and considered the submissions of the parties after the
10 TENTATIVE DECISION DENYING PETITION FOR WRIT OF ADMINISTRATIVE
11 MANDAMUS. The court is satisfied that all issues are well and truly before the court, and that
12 no further hearing is necessary before the court may issue its STATEMENT OF DECISION
13 DENYING PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS.

14 GOOD CAUSE APPEARING the court makes its STATEMENT OF DECISION
15 DENYING PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS as follows:

16 At the time of hearing, number of preliminary items were addressed before counsel
17 argued the issues. First, pursuant to agreement of counsel, respondent COUNTY OF NAPA was
18 ordered DISMISSED, without prejudice, from this proceeding. The action is thus directed only
19 to respondent NAPA COUNTY AIRPORT LAND USE COMMISSION.

20 Second, petitioner submitted and requested that additional exhibits (numbers 29, 30, 31,
21 33, 36 and 39) be made a part of the Administrative Record. After argument petitioner agreed to
22 withdraw exhibits 33 and 39. The court then ruled that exhibits 29, 30 and 31 would not be
23 made a part of the Administrative Record; and that exhibit 36, the Airport Master Plan, would be
24 made a part of the Administrative Record.

25 BACKGROUND

26 Petitioner went through the process of preparing draft and final Environmental Impact
27 Reports for its proposed housing, resort and golf development south of the City of Napa
28 (hereafter "City"), but within City limits and within the County Rural-Urban Limit line. The
29 City, as it must, referred the development to the Airport Land Use Commission (hereafter

1 "ALUC") because the development is within the Airport Land Use Plan (hereafter "ALUP") area.
2 The ALUP designates areas surrounding the airport into Zones on an apparently arbitrary scale of
3 Compatibility from A through F, in descending order of interference with, or from, the airport
4 operations.

5 The Stanly Ranch Specific Plan cannot be approved unless it is either consistent with the
6 ALUP, or a finding of inconsistency is overridden by the referring City. The ALUC staffs report
7 on the development recommended a finding of consistency. However, the final decision by the
8 ALUC was that the project is inconsistent.

9 There were four reasons why the ALUC found the project not to be consistent. These
10 findings which petitioner argues are unsupported by substantial evidence are contained in Exhibit
11 28 of the Administrative Record. They are as follows:

- 12 1. "Design Guidelines of the Specific Plan (page A-15) propose certain *uplighting* of
13 landscaping, signage, walls and sculpture. Policy 3.3.5 of the ALUP prohibits the
14 establishment of glare in any airport planning area. The Commission finds that the
15 proposed uplighting may produce glare that may be distracting to the operators of aircraft,
16 and therefore the Specific Plan is **INCONSISTENT** with the ALUP.
- 17 2. The Specific Plan proposes to locate four of five residential neighborhoods, and the
18 employee housing complex, in Compatibility Zone E beneath overflight patterns
19 published by IASCO/JAL for twin engine and Bonanza A-36 aircraft operating at Napa
20 County Airport. Pursuant to Note 7 of Table 3-2 of the ALUP, the location of residential
21 land uses should consider the proximity of flight patterns, frequency of overflight, terrain
22 conditions and types of aircraft. The Commission found that federally mandated flight
23 altitudes applicable to Napa County Airport as an 'uncongested area' may be as low as
24 500 ft. above the ground in the location of Stanly Ranch, and that no altitude standards
25 are mandated for aircraft engaged in instrument landings. The Commission finds that
26 because Specific Plan residential locations do not appear to consider flight patterns or the
27 frequency of overflight that the Specific Plan is therefore **INCONSISTENT** with the
28 ALUP.
- 29 3. The Specific Plan proposes clustered residential development within Compatibility Zone

1 E, as close as approximately 100 ft. from that zone's boundary with Compatibility Zone
2 D, with 550 of the Plan's proposed 594 residential units within Zone E, and only 44
3 residential units, a winery/wine center, and a resort hotel located within Zone F. Pursuant
4 to Policy 3.1.2 of the ALUP, the designation of land uses with respect to noise exposure
5 should evaluate site conditions, terrain, flight patterns, and flight frequency. The
6 Commission finds that the location and density of the Stanly Ranch employee housing
7 complex is too close to Zone D in view of the noise produced by climbing patterns and
8 full-power overflights above that area, and that consideration of relative noise exposure
9 would suggest that all residential uses be located *farther* from the airport, and
10 commercial/resort uses be located *closer* to the airport than proposed. For these reasons,
11 the Commission finds the Stanly Ranch Specific Plan **INCONSISTENT** with the ALUP.

12 4. The Specific Plan proposes to locate 594 permanent residential units at the Stanly Ranch.
13 ALUP discussion of Overflight Compatibility concerns (page 2-7) indicates that *'the most*
14 *effective means of achieving compatibility is to prevent the encroachment of residential*
15 *uses beneath the flight patterns.'* While it is possible that *'community goals [may] dictate*
16 *the need for residential uses within an airport's traffic area.'* Since the City of Napa has
17 failed to demonstrate a need for residential development on the Stanly Ranch where Napa
18 County Airport aircraft are routinely engaged in overflight, the Commission finds the
19 Specific Plan to be **INCONSISTENT** with the ALUP."

20 Petitioner also argues that it was denied appropriate procedural due process during the
21 proceedings before the Commission.

22 Respondent argues that this entire proceeding is mooted by the anticipated action of the
23 Napa City Council which indicated its decision to override ALUC's determination of
24 inconsistency in order to approve the project subject to voter acceptance at election.

25 **STANDARD OF REVIEW**

26 The standard of the court's review is based on ALUC's decision being quasi-
27 adjudicatory. That is, where an agency applies general policies to a particular situation, the
28 decision is quasi-adjudicatory. In this situation, the general policy is ALUP, and of course the
29 specific situation is the Stanly Ranch Specific Plan. The court must decide if ALUC abused its

1 discretion.

2 Therefore, the standard is, whether ALUC's decision is supported by substantial (defined
3 as being of ponderable legal significance, solid, credible, in light of the entire record, not isolated
4 bits, and not speculative, or based on unsubstantiated opinion or clearly erroneous) evidence, and
5 the agency proceeded according to law. The court may not substitute its own judgment for
6 ALUC's, and any conflicts must be resolved in favor of ALUC. *Sequoyah Hills Homeowners*
7 *Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 719.

8 This is therefore a deferential standard. A single finding that is supported by substantial
9 evidence is sufficient to uphold ALUC's conclusion of inconsistency. The court should be able
10 to find the evidence without having to "grope through" the record. *Topanga Association for a*
11 *Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506. The Specific Plan under
12 consideration must generally be in harmony, even if all aspects are not precisely consistent with,
13 the General Plan.

14 Legal conclusions are reviewed de novo. *International Brotherhood of Electrical*
15 *Workers v. Aubry* (1996) 42 Cal.App.4th 861, 868.

16 The court will review the arguments of the parties and its intended rulings below, in the
17 same order as the findings. Thereafter the court will address the issues of procedural due
18 process.

19 The issue of mootness was tossed into a cocked hat at the Napa City Council meeting of 6
20 July 1999¹, and so the court will defer decision on this issue until another day.

21 UPLIGHTING

22 Petitioner's Argument:

23 Oddly, petitioner does not attack Finding #1, except in a footnote that derides this finding
24 as "to [sic] *ludicrous to address*", that lights from the project will be distracting to pilots.
25 Petitioner seems to urge that the lighting objected to is merely soft illumination for foliage, to
26 shadow a tree against a fence, for signage, and is not directed overhead. This kind of lighting is
27 so much less than that from a city that it can't be seen to be a distraction.

28
29 ¹ See Napa Valley Register of 7 July 1999, "Stanly Ranch project dead."

1 Respondent's Response:

2 Respondent of course views this concession as dispositive, arguing that this unattacked
3 finding is the "single finding" needed for the court to uphold ALUC's finding of inconsistency.
4 The view that interference is problematic is supported by the staff report that alluded to possible
5 interference, and a Commissioner with 44 years' flying experience that spoke of light pollution
6 and lighting problems for pilots. *Amicus* points out that the ALUP Handbook notes that lighting
7 is a factor to be considered.

8 ALUC exists in important part to control interference with an airport. It is hard to
9 quantify interference such as noise, so a basic function of ALUC is to prevent encroachment of
10 residential uses below flight patterns. If encroachment cannot be prevented, an ALUC must
11 decide if community goals for increased housing outweigh the goal of minimizing interference.
12 It is admitted here that the airport's flight patterns lie over Stanly Ranch.

13 Petitioner's Reply:

14 Petitioner again urges that the Administrative Record provides absolutely no evidence of
15 lighting problems. The finding is argued to be solely the result of Commissioner Kangas's
16 baseless fears.

17 Ruling:

18 The court concludes that the Administrative Record does contain important reference to
19 "uplighting". (AR 082; 0136; 0152) While the Stanly Ranch Specific Plan says that lighting will
20 be designed not to interfere with what is clearly vehicular traffic, the Stanley Ranch Specific Plan
21 does not make the same promise as to aircraft. The staff report said that placing smaller
22 streetlights, as provided for in the Stanly Ranch Specific Plan, only partially implements the
23 ALUP goal of reducing glare. (AR 010; 011) The court concludes that it is entirely proper that a
24 Commissioner with 44 years of flying experience worry about uplighting, and find that it is not
25 adequately addressed in the Stanley Ranch Specific Plan.

26 The court first concludes that this finding is supported by substantial evidence, and that
27 the petition should be denied.

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LOW FLIGHT ALLOWED

Petitioner's Argument:

Petitioner notes that the Stanley Ranch Specific Plan makes all Zone D land open space, in conformity with the ALUP. Residential land use designations are all in Zones E and F, which is likewise consistent with the ALUP. This, it is argued, is all that is required.

There was no evidence in the Administrative Record that the aircraft that use the airport (at least the IASCO/JAL single engine A-36 and the twin engine C-90) fly at less than 1000 feet above ground level (AGL) over the residential areas of the project. Commissioner Collinson jumped to the conclusion that since the project "visualizes" part of the area as non-congested, Federal Aviation Regulations might allow flights down to 500 feet, and therefore there would be interference.

There is no definition of "congested" or "uncongested". In fact, the project's land use in this area would definitely be "congested", forbidding flights at less than 1000 feet AGL. Commissioner Collinson was also wrong when he said the residential area would be under the "base leg" for takeoff and landing. It's not. It is instead under the downwind leg where 1000-foot altitude is required. IASCO pilots of the C-90's do not descend below 1000 AGL feet until they cross State Route 29, which is well north of the project's residential neighborhoods. The A-36 does not descend below 1000 feet until the extreme northern end of the project area.

The evidence does not support the basis for the finding that "instrument landings" which have no altitude minimums might take place. This appears only three times in the record. Annie Donahue, not a pilot, made this unsupported, speculative suggestion. Commissioner Kangas, a purported pilot, made the same suggestion but had no evidence on which to base his remark, ALUP itself says that these instrument landings take place only in Zone D, not in Zone E. The process would have been well served, it is argued, if the Commissioners had read their own ALUP.

Respondent's Response:

The Commission found that since the area is designated as "uncongested", federal rules permit flying as low as 500 feet AGL, or less for instrument landings. Employee housing in Zone E could be overflowed at this altitude. The Commission concluded that the Stanley Ranch

1 Specific Plan didn't take into account flight patterns or overflight frequency, and therefore was
2 inconsistent with ALUP.

3 It is not true that all ALUP demands is that housing not be built in Zones A through D.
4 ALUC has discretion to determine whether housing in any zone is or is not consistent with
5 ALUP. In fact, ALUP says that as to Zones E and F housing must be considered in relation to
6 flight patterns, frequency of overflight, terrain conditions and type of aircraft. A developer may
7 not place housing anywhere in Zones E and F. Rather, ALUC may determine if housing clusters
8 within these zones is consistent. Here, the proposed clustering places housing directly below
9 flight patterns, contrary to the letter and spirit of ALUP. Proposed aviation easements may
10 reduce, but would certainly not eliminate, noise complaints.

11 ALUC, not petitioner, is responsible for determining interference. While the Stanly
12 Ranch Specific Plan prepared by petitioner said that everything was appropriate and acceptable,
13 that is not a determination that petitioner may make.

14 A JAL flight instructor said that the Bonanza aircraft traffic pattern put flights directly
15 over Stanly Ranch. Traffic for Runway 18R, the one most utilized for training, is directly over
16 Stanly Ranch residential area.

17 The Napa Pilot's Association presented testimony that proposed homes lie directly under
18 the traffic pattern for 18R, the busiest runway. Airplanes will be only 600-1000 feet above
19 houses that are on a knoll 75-foot in elevation.

20 Contrary to petitioner's view, pilots descend while on the downwind leg for landing.
21 This descent allows a pilot to disregard the prohibition against descending below 1000 feet of the
22 highest obstacle within 2000 feet of the aircraft. Since the knoll is on the downwind leg, a pilot
23 may fly under 1000 feet above the houses on the knoll. This leg is directly above the residential
24 portion of Stanly Ranch

25 Even if JAL pilots do not operate below 1000 feet above the residential areas, other pilots
26 may routinely do so. Flights under 1000 feet AGL are permitted because the area is designated
27 as "uncongested".

28 Petitioner's Reply:

29 The residential portions of Stanly Ranch are in Zone E, not Zone D. In Zone E, aircraft

1 will be operating only above 1000 feet AGL.

2 Additionally, it is not ALUC which must take into consideration the interference, but the
3 City, which is responsible for the creation of general plans. Land planning is controlled by the
4 City, not by ALUC. The right to locate homes in the various Zones is entirely a City decision.
5 The argument that the General Plan doesn't have placement of housing for Stanly Ranch, and
6 therefore ALUC may make the decision is wrong. This decision is to be made either by the
7 General Plan or Specific Plan, not by ALUC. This ill-considered conclusion by ALUC does not
8 merit the court's deference.

9 Ruling:

10 A deferential court is unlikely to overturn an administrative decision unless there is
11 essentially so little evidence to support the decision that it is apparent other considerations or
12 pressures prevailed, or that the procedure was deficient as a matter of law. Here, respondent
13 points to the possibility of low flights, and the future possible development of the airport. ALUP
14 does not say that a developer has a free hand in developing all land outside Zones A-D, but that
15 residential housing is prohibited in these Zones. There is nothing in ALUP, which states that
16 ALUC may not restrict development in Zones E and F. A finding that housing in Zone E is too
17 close to Zone D is not irrational, and is here supported by evidence.

18 While it is true that the City through its General Plan and Stanly Ranch through the
19 Specific Plan ultimately control where housing will be placed, Petitioner's argument would act to
20 strip an ALUC of its power to ensure that development near an airport is compatible with the
21 airport. The City retains the power to overturn ALUC through an override. That doesn't mean
22 that ALUC doesn't have the power to determine inconsistency, even if the development of
23 housing is outside Zones A-D.

24 There is also evidence that the housing is below flight patterns, including traffic patterns
25 for Runway 18R. (AR: 012; 015, 017; 0439-440; 0222), and that homes might be only 600-1000
26 feet below the aircraft.

27 The court concludes that, as to this issue, the petition should be denied.

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1 **ZONE E RESIDENCES TOO CLOSE TO ZONE D**

2 Petitioner's Argument:

3 Noise levels are highest near State Route 29; not the employee housing that is nearest
4 Zone D. As long as housing is in Zone E, it is acceptable, according to ALUP.

5 There is no evidence that there are climbing patterns and full power overflights over
6 residential portions of Zone E, except Citizen Bailey's unsupported testimony. There couldn't
7 be, because due to prevailing winds, the area is in the approach path, not departure path. During
8 the rare shift of wind, overflights will not be over Stanly Ranch.

9 Any "flip" of project housing would cause more noise interference, and not less. The
10 evidence shows that while aircraft noise in Zones E and F is insignificant, noise from State Route
11 29 is not. "Flipping" would put houses nearer State Route 29, therefore this would increase noise
12 in residential areas.

13 Respondent's Response:

14 ALUC found the Stanly Ranch Specific Plan inconsistent because residential housing
15 would be located within 100 feet of Zone D. Additionally, 550 houses are in Zone E and only 44
16 in Zone F. ALUC decided that residential uses should be farther from, and commercial uses
17 closer to, the airport. Since this wasn't done, ALUC made a finding of inconsistency.

18 Annoyance, as ALUC found, is difficult to measure, and varies between individuals.
19 ALUC therefore considered letters from residents of Milton Road, which is approximately the
20 same distance from the airport as is the proposed residential areas of Stanly Ranch. It was
21 reasonable and logical for ALUC to base its findings on complaints from present residents that
22 locating houses within 100 feet of the Zone where housing is prohibited and below climbing and
23 full power flying patterns, that annoyance would result.

24 Flight patterns are inherently variable. A pilot with many years' experience testified that
25 during the rainy season, traffic oftentimes must go directly over residential areas planned for
26 Stanly Ranch. There can be one flight per minute by JAL, mostly during the day, but also during
27 the night.

28 Avigation easements are not a guarantee of no complaints. Disclosure is not the preferred
29 method of avoiding complaints; rather keeping sensitive areas noise-free is.

1 Therefore, all petitioner has done is to show that ALUC might have reached another
2 decision, not that this one was unsupported by evidence. Problems of noise that might arise on
3 the downwind leg of the flight patterns are well documented by business owners, residents, and
4 pilots.

5 Petitioner's Reply to Response:

6 The Milton Road citizens' comments are irrelevant because they live in a different area,
7 closer to the airport. The undisputed data is that the decibel level of the Stanly Ranch area will
8 be 47-48, well below the designated compatibility level of 55-60. Only Commissioner Kangas's
9 unsupported statement that full power and climbing take place over the Ranch is in the record.
10 The real fact is that this would occur only 2.5% of the time.

11 ALUC argues that aviation easements won't stop complaints. This isn't what ALUC is
12 about. It may only look into "excessive noise and safety hazards." It has no right to think about
13 future complaints. And notwithstanding, development is already prohibited in Zones A through
14 D where these complaints would originate.

15 Ruling:

16 ALUC was supported in finding that putting almost all the proposed development homes
17 in Zone E rather than Zone F will increase the likelihood of complaints about noise. Many
18 complaints have been received from Milton Road residents, and these homes are approximately
19 the same distance as some of the Zone E houses that are close to Zone D.

20 Also, the finding that flight patterns are variable and may change in the future is not
21 without support. To put houses where the Stanly Ranch Specific Plan directs means that the
22 flight patterns could not change in the future. That result is clearly a restriction on airport
23 development. Aviation easements are necessary, but not a guarantee that residents would not
24 complain and restrict development of the airport.

25 The purposes of ALUC are to promote safety, to control development in the surrounding
26 area so that an airport may develop in the future, and to minimize interference with present and
27 future airport operations. Petitioner's goal here is to limit ALUC to merely considering whether
28 the present situation would probably be consistent. This is not the only purpose for ALUC's.
29 There is no reason why a Commissioner may not draw inferences from the evidence (e.g. that

1 similarly situated folks dislike the results of airport operations and complain about it) and that it
2 would be better to locate houses further away rather than closer to the airport.

3 The fact is that one of the common flight patterns passes over the development. (AR 012;
4 015; 017; 0218; 0222; 0241; 0439) The court concludes that this fact means that the
5 Commissioners may permissibly draw the conclusion that development "should be clustered
6 away from common flight patterns." (ALUP p. 3-8) This could mean that there should be less
7 development in Zone E and more in Zone F.

8 The conclusion reached is at least a rational conclusion based on evidence of flight
9 patterns, and within ALUC's decision-making powers. This finding is likewise supported by
10 substantial evidence, and the petition should be denied.

11 CITY FAILED TO DEMONSTRATE HOUSING NEED

12 Petitioner's Argument:

13 Petitioner argues strenuously that this finding is not legally required; and even if it was,
14 there is sufficient evidence to support the City's need for more housing.

15 This finding would require the City to violate the California Aeronautics Law, by
16 requiring the City to make a finding of need before submitting the project to ALUC. The City by
17 law must submit the project, regardless of a finding of housing need.

18 The DEIR says that there will be a shortfall of 1104 low and very low income housing
19 units by the year 2010. All housing must be within the Rural-Urban Limit line. The project is
20 entirely within the Rural-Urban Limit line, and is one of the last areas available for housing
21 within the Rural-Urban Limit line.

22 Respondent's Response:

23 The ALUP states that prevention of encroachment is the best way to avoid incompatible
24 land use. However, where the "availability of land suitable for residential development is limited
25 and community goals dictate the need for residential uses within an airport's traffic area, some
26 form of buyer notification should be required."

27 Therefore ALUP requires a community need for housing for residential development
28 under flight patterns, not a generalized need for development. Merely because Stanly Ranch is
29 the largest undeveloped area within the Rural-Urban Limit line, doesn't mean that development

1 must be allowed.

2 Petitioner's Reply to Response:

3 The referral by the City of the Stanly Ranch project to ALUC takes place before the City
4 decides to allow the development. Therefore, ALUC's statement that no finding has been made
5 about housing need would necessarily preempt the City's debate about the issues.

6 At any rate, there is absolutely no factual support for the finding in the Administrative
7 Record. The Stanly Ranch Specific Plan environmental documents detail the need for, and the
8 distribution of types of housing.

9 Ruling:

10 The Napa County ALUP provides that the needs of the airport take precedence, unless the
11 community's need for housing is overriding. That is, encroachment is to be avoided unless the
12 countervailing need for housing is such that buyer notification is the way to avoid conflict with
13 the airport.

14 It appears to the court completely proper for ALUC to consider whether there had been
15 any showing that the Stanly Ranch Specific Plan housing development would solve a community
16 housing need such as to override the goal of prevention of encroachment. To find otherwise
17 would be to decide that ALUC could not fulfill its mandate of preventing interference with
18 airport operations unless countervailing considerations exist.

19 The court determines that this finding also was supported by substantial evidence, and the
20 petition should be denied.

21 **PROCEDURAL DUE PROCESS**

22 Petitioner's Arguments:

23 Adjudicatory decisions (those involving a weighing of evidence and discretionary
24 application of a statute or a standard) require due process-notice and opportunity to be heard.
25 (U.S. Constitution, 5th and 14th Amendments; California Constitution Article I § 7; Code of Civil
26 Procedure § 1094.5) Even where the statute involved (e.g. an application for a lot split) does not
27 mandate a hearing, because the decision is quasi-adjudicatory, Code of Civil Procedure § 1094.5
28 requires a hearing with notice and opportunity to be heard.

29 Here, ALUC is depriving Stanly Ranch of a significant property interest, so procedural

1 due process must be provided. The procedure here was deficient because it was not based on
2 evidence in the record, the findings were articulated after public hearings had closed, and the
3 ultimate determination was made without notice and opportunity to be heard.

4 ALUC based its decision on assertions by its Commissioners, unsupported by evidence,
5 and after the close of public hearings, without notice to Stanly Ranch as to:

- 6 1. Altitude mandates in "congested areas"
- 7 2. Relative locations of commercial and residential areas
- 8 3. Problems with "uplighting"
- 9 4. Requirements for City findings of housing need

10 The staff report did not contain analysis of these issues, and found that the project was
11 consistent with ALUP.

12 Respondent's Responses:

13 Petitioner's failure to raise due process claims at the hearing constitutes a complete
14 waiver of this argument. Petitioner never requested that the hearing be re-opened or continued so
15 that it could present other evidence. *Hawthorne Savings and Loan Assoc. v. City of Signal Hill*
16 (1993) 19 Cal.App.4th 148, 156.

17 The "fair trial" provision of Code of Civil Procedure § 1094.5 means a fair administrative
18 hearing, not all the protections of the 14th Amendment due process clause. Petitioner does not
19 have a cognizable property interest unless the administrative agency has no discretion to deny the
20 project. Where the agency may approve or deny, petitioner has no entitlement to develop its
21 property as it wishes. *Gardner v. Baltimore Mayor and City Council* (4th Cir. 1992) 969 F.2d 63,
22 68.

23 Even if 14th Amendment due process rules apply, petitioner received it through notice and
24 opportunities to be heard. Petitioner's lawyer was present at the hearing, and submitted evidence
25 on each occasion. Petitioner's lawyer was the last speaker at the last hearing. Petitioner knew
26 what was being decided.

27 There is no requirement that petitioner be given notice of the intended decision prior to its
28 announcement. Cases cited by petitioner concern termination of parental rights and denial of a
29 sentencing option. Where a substantial liberty interest is at stake, the government must provide a

1 pre-deprivation hearing.

2 *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, cited by petitioner,
3 concerned a City Council sitting as an appeals board where the Council itself had appealed the
4 decision of the Planning Board. The court found that this created an appearance of impropriety, a
5 Brown Act violation for failing to announce the agenda item, and a violation of its own rule that
6 an appellant must identify the ground for the appeal. This deprived the property owner of notice.
7 Here, there were no such multiple violations by ALUC.

8 Petitioner does not cite to the record support for its assertion that the Commissioners
9 made unsupported factual assertions after the close of public hearings. The objection is waived
10 by failure to object at the time, and to request re-opening or presentation of more evidence.

11 Further, these comments were based on evidence of the Stanly Ranch Specific Plan and
12 ALUP, and were proper conclusions. A Commissioner's personal views are permitted regarding
13 community policy or concerns. See *Cohan, supra*.

14 *English v. City of Long Beach* (1950) 35 Cal.2d 155, cited by petitioner, does not apply
15 here. In *English*, the Board heard evidence outside the public hearings and one Board member
16 spoke to a personal doctor while considering the firing of a police officer. English and his lawyer
17 were not present during the taking of this evidence. Here, no evidence was taken when
18 petitioner's lawyer was absent, or outside the public hearings.

19 Petitioner has a valid administrative remedy, appeal to the City Council as was argued in
20 the Demurrer. Petitioner has exercised that remedy and at least initially obtained an override of
21 the ALUC finding of inconsistency.

22 Even if petitioner is right, the court should merely remand to ALUC for rehearing.
23 *English, supra*, (remedy for denial of fair hearing is remand to administrative agency).

24 Petitioner's Reply to Response:

25 *California v. Ramirez* (1979) 25 Cal.3d 260 laid out the considerations for how much
26 process is due in an administrative hearing.

- 27 1. The private interests that will be affected by the public decision
- 28 2. The risk of erroneous deprivation if not enough due process is allowed
- 29 3. The "dignitary" interest deprived by not allowing enough due process

1 4. The governmental interest and the burden of providing more due process

2 In this proceeding, petitioner Stanly Ranch has:

3 1. An immense private interest (to make a profit on its land)

4 2. It has erroneously been deprived of this right by ALUC's refusal to consider the
5 evidence if the City doesn't override. Now, Petitioner must face liability alone. The
6 City did, of course, indicate their willingness to override ALUC in contemplation of
7 submitting the entire project to vote of the electorate.

8 3. The Ranch's dignity is offended by not being informed of the basis of the decision
9 until the Commissioners were deliberating.

10 4. ALUC should have the same interest as Stanly Ranch in a fair hearing and impartial
11 decision.

12 Ruling:

13 The court hesitates to find waiver, as courts properly do unless the finding of waiver is
14 clear or mandated by a procedural statute. In this action the court may not and so will not find
15 that there was waiver.

16 The court concludes that appropriate due process was accorded petitioner. ALUC held
17 hearings at which petitioner appeared, and made findings after the hearings. Petitioner made
18 numerous arguments at numerous hearings. Administrative due process is not the same as
19 judicial due process. *Pomona College v. Superior Court* (1996) 45 Cal.App.4th 1716.

20 The right to develop is not a property right. Petitioner skirts that troublesome issue by
21 saying that ALUC's decision is an unconstitutional taking, well knowing that zoning and
22 development rights have long been held not to be, unless all development is barred. Petitioner
23 definitely does not have a "legitimate claim of entitlement" to its Stanly Ranch Specific Plan,
24 since ALUC has the right to make a finding of inconsistency. *Gardner v. Baltimore Mayor and*
25 *City Council* (4th Cir 1992) 969 F.2d 63, 68. Therefore, there is no deprivation of a property
26 interest subject to 14th amendment due process rights.

27 The assertions made by the Commissioners have sufficient support in the record.

28 1. Altitude mandates are contained in government documents that are in the record.

29 2. The locations of housing and commercial areas are designated in the Stanly Ranch

1 Specific Plan. The Handbook that an ALUC uses in making its decisions emphasizes
2 noise problems with residential areas. Aircraft can fly under 1000 feet when taking off
3 and landing, and there was sufficient evidence that such flights will occur over
4 residential areas of the project. (AR 0241; 0218)

- 5 3. A pilot noted Uplighting, and a Commissioner who has substantial flight experience
6 concluded that it might be a problem. This issue is also addressed in the Handbook.
7 4. The court has already commented on the City housing need issue.

8 The court concludes that under this argument, petitioner was provided appropriate
9 procedural due process, and the petition should be denied on this ground.

10 **JUDGMENT**

11 Judgment shall be entered in favor of respondent and against petitioner as described
12 above. Respondent shall recover their costs in this action. The court will execute herewith the
13 form of [PROPOSED] JUDGMENT DENYING PETITIONER'S PREEMPTORY WRIT OF
14 MANDAMUS earlier prepared by respondent.

15 Dated: 22 July 1999.

16 **RICHARD A. BENNETT**

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18 RICHARD A. BENNETT, Judge
19 Superior Court for Napa County
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