



June 22, 2021

**VIA E-MAIL**

The Honorable Dave Whitmer, Chairperson  
and Members of the Napa County  
Airport Land Use Commission  
Napa County  
1195 Third Street, Suite 301  
Napa, CA 94559

Re: June 23, 2021 Special Meeting; Napa County Airport Land Use Commission; Oat Hill Project Application [P21-00056] for the Napa County Airport Land Use Commission – Comments of City of American Canyon

Dear Chair Whitmer and Commission Members,

The City of American Canyon (“City”) is in receipt of and has reviewed the report prepared by staff to the Airport Land Use Commission (“ALUC”) regarding RH Hess Development’s proposed residential project (the “Project”) in the Oat Hill area of the City of American Canyon (ALUC Project No. P21-00056-ALUC). Though we appreciate your scheduling of a Special Meeting of the Napa County ALUC for June 23, 2021, to consider the Project’s consistency with the Napa County Airport Land Use Compatibility Plan (“ALUCP”), we do not believe the staff report accurately characterized the consistency review process or the relevant substantive standards and their applicability to the Project. Moreover, the report analyzes issues outside of the ALUC’s jurisdiction.

First, under Public Utilities Code section 21676(d), the ALUC had 60 days from the date the Project was referred to the ALUC to make a consistency determination. The City referred the Project to the ALUC on March 26, 2021.<sup>1</sup> The ALUC therefore had until May 25, 2021, to complete its consistency review, which it failed to do. The ALUC had all the necessary information for the review since at least February 2021, when the City provided notice of completion of the Initial

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<sup>1</sup> The Project was considered by the City Planning Commission on March 25, 2021, which unanimously recommended approval to the City Council. Accordingly, the Project was referred to the ALUC consistent with ALUCP Policy 2.1.8. The Agenda Staff Report containing detailed Project Description and related analysis is available at <https://cityofamericancanyon.civicweb.net/Portal/MeetingInformation.aspx?Org=Cal&Id=789>.

Study/Mitigated Negative Declaration<sup>2</sup> prepared for the Project.<sup>3</sup> The City further provided supplemental information on May 6 and May 7, 2021, in response to the ALUC's April 23, 2021 letter. The City's March 26 referral and May 6 and May 7 submittals are incorporated herein by reference.<sup>4</sup> These submittals provided the ALUC with more than adequate information to assess the Project, yet the ALUC failed to complete its review within the required statutory timeline. Therefore, the City reserves the right to deem the Project and related entitlements as consistent with the ALUCP by law.

Second, the ALUC's consistency review need not, and should not, address the City CEQA review of the Project. The consistency review is limited to whether the Project is consistent with the State Aeronautics Act and, to the extent the ALUCP complies with state law, the ALUCP's policies on noise and safety.<sup>5</sup> Had the ALUC wished to comment on the Project's CEQA analysis, it could have done so during the public review period. The ALUC chose not to comment. By doing so now, the report appears improperly to conflate the role of the ALUC's consistency review and questions that are relevant only to a responsible agency, a role that is not possessed by the ALUC in this context.

Third, interpretation of the City's General Plan is well-beyond the ALUC's jurisdiction, and the consistency review should not include a purported interpretation of the City's land use planning policies as if it were relevant to questions regarding consistency with the ALUCP. As noted, the Project's consistency review is limited to whether the Project is consistent with the State Aeronautics Act. The City retains ultimate authority to interpret its General Plan and to regulate land use within its boundaries, including within the airport land use area.

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<sup>2</sup> Neither the ALUC, nor ALUC Staff, commented on the Project Draft Mitigated Negative Declaration under the California Environmental Quality Act (Public Resources Code § 21000, *et seq.*, "CEQA") ("Project MND"), during the public review period, and the City was entitled to assume that the ALUC Staff silence indicated it had no comment. *Cf. Cleary v. County of Stanislaus*, 118 Cal.App.3d 348, 355 (1981); *see also, Corona-Norco Unified School Dist. v. City of Corona*, 17 Cal.App.4th 985, 997-998 (1993) (School district failing to substantially comment on proposed negative declaration during public comment period and planning commission hearing precluded from challenging project on CEQA grounds after).

<sup>3</sup> Consistent with the provisions of the Napa County Airport Land Use Plan Regulations, the Project Plans *as well as* the Project MND were furnished to the ALUC Staff on February 8, 2021. ALUCP Policy 2.1.7. The ALUC policies are part of the ALUCP, available at <https://www.countyofnapa.org/DocumentCenter/View/1980>.

<sup>4</sup> On June 1, 2021, the City sent an additional letter to the ALUC following the ALUC's May 19 and 21, 2021 correspondence. The City's June 1 letter reserved the right to deem the Project and related entitlements as consistent with the ALUCP by law, and further highlighted that the Project had submitted all necessary information to the FAA for its review and would be subject to an aviation easement in accordance with Caltrans guidance. The City's June 1 letter is incorporated herein by reference.

<sup>5</sup> Under Public Utilities Code section 21670 the purpose of the Aeronautics Act is to prevent the creation of new noise and safety problems and to protect public health, safety, and welfare by ensuring the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards. Thus, the focus on Project compatibility analysis is on noise and safety.

Finally, the County's ALUCP is out of date and does not reflect current guidance established by the California Department of Transportation ("Caltrans"). The County adopted the ALUCP in 1991 and revised the plan in 1999. Since that time, Caltrans has issued *two* substantial updates to its Airport Land Use Planning Handbook, first in 2002 and then in 2011. The ALUCP has not been revised to incorporate these updates and is inconsistent with various Caltrans guidance regarding safety, noise, and overflight. State law further requires that the County's ALUCP be based on the long-term plans for its airports and utilize noise information based upon those plans. Napa County Airport updated its master plan in 2007 and submitted its Airport Layout Plan to the FAA for approval in 2016. *Neither* of these plans *nor* their updated operations forecasts and subsequent environmental analyses, including updated noise contours, have been incorporated into the ALUCP. Thus, the staff report's consistency review applies inappropriate and outdated standards and information in recommending the ALUC find the Project inconsistent with the ALUCP.

As previously provided, the Project *would not* result in any noise or safety hazards with respect to the Napa County Airport. The Project also would not result in overflight impacts or impacts to navigable airspace.

- *Noise*: The Project is well outside the airport's 65 decibel (dB) Community Noise Equivalent Level (CNEL) boundary, as provided in the County's own documents;
- *Safety*: Zone D of the ALUCP most closely corresponds to "Zone 6: Traffic Pattern Zone" under the Caltrans Handbook; Zone 6 does *not* prohibit residential uses, and instead provides *no limit* on residential density;
- *Overflight*: Though the Project may experience some overflight, the Project would be constructed in accordance with California building regulations, which require that interior noise levels attributable to exterior sources not exceed 45 dB CNEL; these interior noise levels are "clearly acceptable" under the ALUCP. Further, the Project will be subject to an aviation easement, in accordance with Caltrans guidance;
- *Airspace Protection*: Whether the Project would result in a hazard to air navigation is a determination for the FAA, not the ALUC. The Project applicant has submitted the required information to the FAA, and the City anticipates the Project will soon receive Determinations of No Hazard to Air Navigation, as the maximum height of the Project would be below the height of the existing water tank on Oat Hill.

Information provided by the City demonstrates that the Project is consistent with the State Aeronautics Act's standards on safety and noise and is consistent with the ALUCP's policies on safety, noise, airspace protection, and overflight. The ALUCP, including the boundaries of Zone D, are outdated and have not been revised to incorporate updated standards from Caltrans. We therefore request the ALUC consider the Project in accordance with state law and relevant state

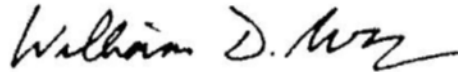
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administrative implementation. The City further reserves the right to consider the Project as consistent with the ALUCP pursuant to Public Utilities Code section 21676(d), and to override the ALUC's determination in accordance with state law.

Thank you for your review and consideration of the matters advanced in this communication.

Very truly yours,

A handwritten signature in black ink, appearing to read "William D. Ross". The signature is fluid and cursive, with a long horizontal stroke at the end.

William D. Ross  
City Attorney

cc: Jason B. Holley, City Manager  
Brent Cooper, Director of Community Development  
William He, Associate Planner

Rick Hess, Project Applicant  
Clark Morrison, Esq.

Jason M. Dooley, Deputy County Counsel  
John McDowell, ALUC Staff  
Minh C. Tran, County Executive Officer